

CR 2022/5 - AIA Australia Limited - provision of free membership, allocation of points, and free or discounted goods and services to members of a health and wellness program



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Class Ruling

AIA Australia Limited – provision of free membership, allocation of points, and free or discounted goods and services to members of a health and wellness program

❶ 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 this Ruling. That is, you will not pay any more tax or 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 of the provision of free membership of a health and wellness program, the allocation of points and receipt of free or discounted goods and services to members of the AIA Vitality program.
2. Full details of this scheme are set out in paragraphs 11 to 36 of this Ruling.
3. All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986* (FBTAA), unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this arrangement. Potential purchasers/users must form their own view about the arrangement.

Who this Ruling applies to

4. This Ruling applies to you if you are an employer with an eligible AIA life insurance policy and offer employees membership of the AIA Vitality program.

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When this Ruling applies

5. This Ruling applies from 1 April 2020 to 31 March 2024.

Ruling

6. The provision of free membership to the AIA Vitality program by employers to employees is an external period residual benefit.

7. The valuation of the benefit is the expenditure incurred to the provider under an arm's length transaction, being less than \$300 per annum.

8. The benefit will be an exempt minor benefit, as the notional taxable value is below \$300, and it is considered unreasonable to treat the benefit as a fringe benefit.

9. The allocation of points to members of a health and wellness program is not in respect of employment, and is therefore, not a fringe benefit.

10. The provision of free or discounted goods and services to members of a health and wellness program is not a fringe benefit as it arises out of a personal contract between the employee and AIA as a result of levels of achievement reached by the employee through the program and does not arise out of their employment.

Scheme

11. 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.

12. AIA Australia Limited (AIAA) is an Australian-resident insurance company that offers a range of insurance products to retail consumers, including life and health insurance.

13. The employer is required to have an eligible AIA life insurance policy to offer employees membership of the AIA Vitality program. The health and wellness program is a science-based program based on behavioural economics principles which encourages permanent lifestyle and behavioural changes through:

- health checks, nutritional assessment and fitness assessments via a range of online and offline health assessments
- healthy eating, exercise and fitness and lifestyle and wellbeing through goal setting, discounts on gym memberships and fitness devices
- rewards – flights, entertainment and shopping vouchers to motivate participants with ongoing rewards.

14. Online health assessments offered through the health and wellness program include nutrition assessments, skin self-assessment, health review, fitness assessment and mental wellbeing assessment.

15. The AIA Terms and Conditions state the eligibility to become an AIA Vitality Member at clause 1.1:

To be an AIA Vitality Member, you must:

- ordinarily reside in Australia;
- provide a valid and unique email address and contact phone number;

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- be at least 18 years old;
- be an individual and not a company or trust; and
- be insured under an eligible insurance policy or be an eligible person associated with the holder of an eligible insurance policy (for example, an employee of an employer or member of a fund, that has taken out an eligible insurance policy) as determined by us; and
- meet any other eligibility criteria or conditions described as part of your application process.

16. Participants in the health and wellness program accumulate points through a range of non-employment related activities including completing health assessments, undergoing preventative health checks, attending gym/outdoor fitness sessions and tracking and achieving fitness milestones (via a fitness device).

17. Points are used to determine which program status a participant has.

18. Different rewards are available for participants, with greater discounts and rewards available for participants who are on a higher status.

19. Rewards include discounts on a limited number of flights, discounts on gym memberships, retail shopping vouchers and other benefits.

20. The rewards which are available at each status during each membership year are capped.

21. Points are not redeemed for rewards, they cannot be transferred to other participants, cannot be bought, additional points cannot be purchased and at the start of each membership year each participant resets to zero points.

22. The AIA Terms and Conditions discuss 'Earning AIA Vitality Points' at clause 4.1:

By undertaking activities you can earn AIA Vitality Points. AIA Vitality Points expire at the end of each membership year. The number of AIA Vitality Points you earn for an activity and information on the way we calculate and award points is set out on the member portal. You agree that we may change the number of points allocated to an activity or the way in which we award or calculate points from time to time.

Without limiting the above:

- the number of points you can earn may be different from other AIA Vitality Members and will depend on a range of factors such as the activity you are doing, your health goals and risk factors and the terms of your membership (including your membership category);
- we may adjust the number of points you can earn for each activity, depending on your individual health status or how important the activity is to your health status;
- certain activities or categories of activities may have limits as to how many points you can earn over a certain time period;
- we may require certain evidence of an activity being completed in an acceptable format prior to awarding any points;

23. The health and wellness program has verified positive health outcomes with a positive correlation between higher participation levels and higher rates of health improvements.

24. Each member of the health and wellness program is bound by the terms and conditions of the health and wellness program which is an agreement between AIAA and

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the individual member (Membership Agreement). The employers are not a party to the Membership Agreement.

25. The Membership Agreement provides AIAA with the ability to cancel or suspend membership of the health and wellness program for breaches of conditions.

26. The AIA Terms and Conditions discusses 'Entitlement to benefits' at clause 5.1:

The AIA Vitality Program offers a range of benefits to members such as vouchers, discounts, cashbacks, rewards and other products and services provided by us or our partners from time to time. Your entitlement to benefits at any time is shown on the member portal and is determined by us and may be based on your membership category, activities you complete, the number of AIA Vitality Points you have earned, your AIA Vitality Status in accordance with the rules set out in these terms, the member portal (including any information or rules contained on the member portal) and in the benefit guides, and any other special terms and conditions of your AIA Vitality Membership. Some benefits may be available to you before you earn any AIA Vitality Points or undertake any activities.

If you cease to be an AIA Vitality Member or breach these terms, you will no longer be entitled to benefits. The availability of benefits may be ceased, withdrawn, suspended or discontinued by us at our discretion.

27. The Recommended Retail Price for a 12-month membership of the health and wellness program is \$138 per member, paid annually.

28. The health and wellness program is offered through a corporate program for employers who maintain a group life insurance policy with AIAA for their employees.

Offer to employees

29. Employees who wish to participate in the health and wellness program need to activate their AIA Vitality membership through AIA Vitality and some employees may choose not to do this.

30. Access to the health and wellness program is not provided under a salary sacrifice arrangement. Employees who choose to participate will not have any reduction in their remuneration and employees who choose not to participate will not have any increase in their remuneration.

31. Access to AIA Vitality is not provided to employees as a reward for services, rather it is part of a broader policy to improve the health and wellness of employees.

32. The employer will pay a fee to AIAA to allow all employees to access the health and wellness program (Fee).

33. The Fee is calculated based on the total number of employees who will be allowed access to the AIA Vitality program.

34. The total cost of offering AIA Vitality to all employees may vary depending on the number of employees who opt-in and the level of engagement among those employees.

35. The employer pays for the total predicted population and that figure is reconciled with actual population size on an annual basis, with a credit applied where necessary. In this scheme, the per eligible employee rate is fixed.

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36. The employer is required to have an eligible AIAA life insurance policy to offer employees membership of the AIA Vitality program.

Commissioner of Taxation

9 February 2022

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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Is the provision of free membership of a health and wellness program an exempt minor benefit under section 58P?

37. The definition of 'fringe benefit' is provided in subsection 136(1):
- 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) a person (in this paragraph referred to as the arranger) other than the employer or an associate of the employer under an arrangement covered by paragraph (a) of the definition of arrangement between:
 - (i) the employer or an associate of the employer; and
 - (ii) the arranger or another person; or
 - (ea) a person other than the employer or an associate of the employer, if the employer or an associate of the employer:
 - (i) participates in or facilitates the provision or receipt of the benefit; or
 - (ii) participates in, facilitates or promotes a scheme or plan involving the provision of the benefit;
- and the employer or associate knows, or ought reasonably to know, that the employer or associate is doing so;
- 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; or
 - ...
 - (s) ...

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38. It is accepted that the provision by employers to employees of free membership of a health and wellness program is a benefit.

39. The free membership is provided by AIA Vitality who is not the employer or an associate of the employer. The benefit will be a fringe benefit if provided by a third party under an arrangement between the third party and the employer or an associate of the employer, or the employer or an associate of the employer facilitates or promotes the scheme, under paragraphs 136(1)(e) and (ea).

40. Paragraph (a) of the definition of 'arrangement' in subsection 136(1) states: any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable by legal proceedings.

41. This requirement will be satisfied as the free membership will be provided under an agreement between employers and AIA.

42. The fringe benefit will be a taxable fringe benefit unless excluded by any of paragraphs (f) to (s) of the definition of 'fringe benefit' in subsection 136(1). One exclusion is paragraph (g) stating that an exempt benefit will not be a fringe benefit. An exempt benefit includes minor benefits under section 58P. A benefit will be minor, and exempt, if its notional taxable value is less than \$300 and it would be unreasonable to treat the minor benefit as a fringe benefit considering the criteria stated in paragraph 58P(1)(f):

(f) having regard to:

(i) the infrequency and irregularity with which associated benefits, being benefits that are identical or similar to:

(A) the minor benefit; or

(B) benefits provided in connection with the provision of the minor benefit:

have been or can reasonably be expected to be provided;

(ii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of the minor benefit and any associated benefits, being benefits that are identical or similar to the minor benefit, in relation to the current year of tax or any other year of tax;

(iii) the amount that is, or might reasonably be expected to be, 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;

(iv) the practical difficulty for the employer in determining the notional taxable values in relation to the current year of tax of:

(A) if the minor benefit is not a car benefit – the minor benefit; and

(B) if there are any associated benefits that are not car benefits – those associated benefits; and

(v) the circumstances surrounding the provision of the minor benefit and any associated benefits including, but without limiting the generality of the foregoing:

(A) whether the benefit concerned was provided to assist the employee to deal with an unexpected event; and

(B) whether the benefit concerned was provided otherwise than wholly or principally by way of a reward for services rendered, or to be rendered, by the employee;

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it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit in relation to the employer in relation to the current year of tax;

the minor benefit is an exempt benefit in relation to the current year of tax.

43. In summarising these requirements, the benefit that arises from the provision of free membership of AIA Vitality will be an exempt minor benefit if:

- (i) the notional taxable value of the benefit is less than \$300, and
- (ii) it can be concluded on the basis of the factors listed in paragraph 58P(1)(f) that it would be unreasonable to treat the benefits as a fringe benefit.

44. Guidance as to the application of both of these requirements is provided in Taxation Ruling TR 2007/12 *Fringe benefits tax: minor benefits*.

Is the notional taxable value of the benefit less than \$300?

45. The definition of 'notional taxable value' in subsection 136(1) provides that the 'notional taxable value' of the benefit that arises from the free membership of AIA Vitality is the amount that would be the taxable value if the benefit was a fringe benefit.

46. The benefit will be a residual benefit under section 45 as it is a benefit that does not fit within the specific categories contained in Divisions 2 to 11.

Will the provision of the free membership be an in-house or external residual fringe benefit?

47. In general terms, an in-house residual benefit requires the employer or an associate of the employer to be carrying on a business that consists of, or includes, the provision of identical or similar benefits principally to outsiders. As neither the employers, nor their associates, carries on a business that consists of, or includes the provision of identical or similar benefits principally to outsiders, the benefit will be an external residual benefit.

Will the provision of the free membership be a period, or non-period residual fringe benefit?

48. The benefit will be provided for more than one day, and therefore the benefit will be an external period residual benefit.

The valuation of an external period residual fringe benefit

49. The methods that are used to calculate the taxable value of an external period residual benefit are contained within section 51 which states:

Subject to this Part, the taxable value of an external period residual fringe benefit in relation to an employer in relation to a year of tax is:

- (a) where the provider was the employer or an associate of the employer and the recipients overall benefit was purchased by the provider under an arm's length transaction – the amount paid or payable by the provider in respect of the recipients current benefit;
- (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to

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the provider under an arm's length transaction in respect of the provision of the recipients current benefit – the amount of that expenditure; or

(c) in any other case – the notional value of the recipients current benefit;

reduced by the amount of the recipients contribution insofar as it relates to the recipients current benefit.

50. As the provider is neither the employer, nor an associate of the employer, paragraph 51(a) will not apply. Paragraph 51(b) will apply because the employer will incur expenditure to AIAA (the provider).

51. The Recommended Retail Price for membership of the health and wellness program for an ordinary member of the public who is covered by an eligible life insurance policy is \$138 per annum, which is less than \$300. The membership benefits which are available to an ordinary member of the public who pays an annual membership contribution are the same as for employees who receive free membership of the health and wellness program.

52. It is therefore reasonable to conclude that the component of the fee payable by the employer which is in respect of the free membership of the health and wellness program is \$138 per annum per employee, which is less than \$300 per employee.

Is the benefit specifically excluded from section 58P?

53. In-house fringe benefits and tax-exempt body entertainment benefits are specifically excluded from being minor benefits, and as the free membership of AIA Vitality is not either of these types of benefits, it is not specifically excluded from section 58P.

The criteria used to determine if it is unreasonable to treat the benefit as a fringe benefit

The infrequency and irregularity with which associated identical or similar benefits are provided

54. Paragraphs 187 to 189 of TR 2007/12 discuss what is meant by 'associated benefits'. Paragraph 188 states:

For the purposes of the minor benefits exemption the term 'associated benefits' is defined in subsection 58P(2) to mean a benefit that is any of the following:

- identical or similar to the minor benefit;
- provided in connection with the provision of the minor benefit; or
- identical or similar to a benefit provided in connection with the provision of the minor benefit.

55. Paragraph 189 of TR 2007/12 goes on to state:

In addition:

- the associated benefit and the minor benefit must relate to the same employment of a particular employee, and
- an associated benefit does not include a benefit that is an exempt benefit under any provision of the FBTAA other than this section (that is, section 58P).

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56. Paragraph 190 of TR 2007/12 explains what is meant by the phrase 'in connection with' as follows:

A benefit that is provided 'in connection with' the minor benefit is one that is provided in conjunction with the minor benefit. For example if accommodation, board and electricity benefits are provided in conjunction with the payment of minor telephone expenses, these benefits are provided in connection with the telephone expense payment benefit.

57. Paragraphs 200 to 202 of TR 2007/12 discuss the terms 'infrequent and irregular' and 'identical' and 'similar' as follows:

200. The first criterion to be considered is the infrequency and irregularity with which associated benefits, being benefits that are identical or similar to the minor benefit or benefits that are given in connection with the minor benefit, are provided, or can reasonably be expected to be provided.

201. It is important to note that although this is the first criterion listed, it is not the main, or only, criterion and 'regard must be had to all factors, even if only to consider that a particular factor is irrelevant in the circumstances'.

202. 'Infrequency and irregularity' and 'identical or similar' are not defined in the FBTAA and therefore take their ordinary meaning.

58. The benefit provided to employees is the waiving of the annual membership fee. Associated identical or similar benefits are the waiving of annual membership fees in subsequent years. The provision of the benefit is regular, being an annual fee.

59. The benefit will be provided infrequently, being at most once a year. Employees may choose to use the membership for one year, or for several years.

60. This scenario is similar to Example 2 of TR 2007/12, which states 'The Christmas party is provided infrequently but on a regular basis (being every Christmas). However regard must also be had to the remaining criteria.'

The sum of the notional taxable values of the minor benefit and associated benefits which are identical or similar to the minor benefit in the current year of tax or any other year of tax

61. This criterion is discussed at paragraphs 218 to 224 of TR 2007/12, which state:

218. The second criterion to be considered is the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of the minor benefit and any associated benefits, being benefits that are identical or similar to the minor benefit, in relation to the current year or any other year of tax.

219. This criterion addresses the situation where there are multiple occasions where identical or similar benefits are provided to an employee.

220. In the *NAB* case Ryan J found that:

The sum of the presumptively minor benefit and all the associated benefits to Mr Brewster both in the current year of tax (amounting on the evidence to about \$8,000) was substantial in the current tax years and might reasonably be expected to be similarly substantial in subsequent tax years.

221. The greater the value of the minor benefit and identical or similar benefits, the less likely it is the minor benefit will qualify as an exempt benefit.

222. The value of the benefits in the current year as well as in any other year must be taken into account when determining the total value of benefits for the purposes of this criterion.

223. This will apply to identical or similar benefits that have been provided in the past and are likely to be provided in the future.

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224. Even if the value of each benefit is below the minor benefits threshold, the sum of the values of the benefits provided, being identical benefits in the current year of tax, the previous year and those that are reasonably expected to be provided in the future, and all taken into consideration under this criterion.

62. Paragraph 58P(1)(e) places a threshold of 'less than \$300' on the notional taxable value of a minor benefit. This threshold test applies to *each* benefit provided to an individual employee, and/or *each* benefit provided to an associate of an employee, to which section 58P may apply. The threshold test is not an upper limit on the total value of minor benefits that any individual employee may receive.

63. The value of a minor benefit must relate to the 'current year of tax'. Where a benefit is provided over a period which covers two or more FBT years, only the benefit provided in the current year of tax is considered in determining the notional taxable value.

64. The notional taxable value of the minor benefit will be the annual membership fee of less than \$300. The annual membership fee charged in all subsequent years of the agreement between employers and AIA Vitality will be associated benefits which are identical or similar to the minor benefit in the current year or any other year of tax.

65. The sum of the notional taxable value of the minor benefit and associated benefits that are identical or similar to the minor benefit may differ between different employees depending on the number of years the benefit is provided.

66. However, the notional taxable value of the annual membership fee of \$138 is not considered substantial, even where it is repeated for a number of years, a factor supporting the benefit qualifying as an exempt minor benefit.

The sum of the notional taxable values of any other associated benefits in the current year of tax or any other year of tax

67. This criterion is discussed at paragraphs 225 to 231 of TR 2007/12, which state:

225. The third criterion to be considered is the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of any associated benefits provided in relation to the current year of tax or any other year of tax.

226. Other associated benefits will include benefits which themselves may also be minor benefits.

227. This criterion has regard to any other associated benefits; that is, associated benefits which are not identical or similar to the minor benefit. This will include those associated benefits which are provided in connection with the minor benefits and benefits which are identical or similar to a benefit provided in connection with the minor benefit.

68. There are no other associated benefits in the current year of tax or any other year of tax.

The practical difficulty in determining the notional taxable values of the minor benefit and any associated benefits

69. The benefit will be provided to an indeterminate number of employees.

70. An employer will pay an Annual Fee to AIAA to allow all employees to access the health and wellness program (Fee).

71. The Fee is calculated based on the total number of employees who will be allowed access to the AIA Vitality program.

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72. The total cost of offering AIA Vitality to all employees may vary depending on the number of employees who opt-in and the level of engagement among those employees.

73. The employer pays for the total predicted population upfront and that figure is reconciled with actual population size on an annual basis, with a credit applied where necessary.

74. The per eligible employee rate is fixed.

75. Therefore, although there may be a degree of practical difficulty in reconciling the Fee with the actual population size, the notional taxable value of the benefit can be readily determined as the Recommended Retail Price for membership of the health and wellness program.

The circumstances surrounding the provision of the minor benefit and any associated benefits, including whether it was provided to the employee to assist with an unexpected event, and whether it was wholly or principally as a reward for services rendered by the employee

76. Consideration of the circumstances surrounding the provision of the minor benefit, indicate that the free membership is not provided to assist an employee to deal with an unexpected event.

77. Whether a benefit has been provided wholly or principally for services rendered or to be rendered will depend on the circumstances.

78. The provision to employees of free membership to AIA Vitality is part of the broader employer policy to improve the health and wellness of employees. It is offered to all employees and their choice to participate does not reduce their remuneration, nor do employees who choose not to participate have an increase in their remuneration. Access to the health and wellness program is not provided under a salary sacrifice arrangement (SSA).

79. As the provision of free membership to the health and wellness program was not provided under a SSA, it cannot be said that the benefit was provided 'wholly or principally' as a reward for services rendered or considered to have been provided as a substitute for salary or wages.

80. As the benefit is not provided as part of a SSA, nor provided wholly or principally as a reward for service, this factor supports the benefit qualifying as an exempt minor benefit.

Conclusion

81. The valuation of the benefit is the expenditure incurred to the provider under an arm's length transaction, being less than \$300 per annum.

82. In weighing up all the factors in paragraph 58P(1)(f), it is considered unreasonable to treat the benefit as a fringe benefit.

83. The benefit will be an exempt minor benefit.

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Is the allocation of points to members of a health and wellness program a fringe benefit as defined in subsection 136(1)?

84. Employees can accumulate AIA Vitality Points by undertaking various activities. The points are calculated taking into account the activities being undertaken, the employee's health goals and risk factors, and the terms of the employee's membership.

85. The number of AIA Vitality Points can be viewed by an employee at any time on the member portal.

86. AIA Vitality Points are a way of measuring an employee's participation and progress in the AIA Vitality Program. The points do not have any cash value and are not convertible into cash. Points do not give an employee contractual rights and are not property or currency.

87. Points cannot be purchased and are not transferrable to any other person. Points expire at the end of an employee's membership year and on termination of their AIA Vitality Membership.

88. The allocation of points is a benefit to employees. The benefit will be a fringe benefit if the benefit was provided to the employee in respect of his or her employment.

89. The allocation of points is determined by AIA Vitality under the Membership Agreement between the member and AIA based on the level of achievement by the member. AIA Vitality solely calculates and allocates the points based on the member's achievements. The points are not allocated by reason of the employment of the employees, and employers do not facilitate the allocation of points to members.

90. The allocation of points to members of a health and wellness program is not in respect to employment, and is therefore, not a fringe benefit.

Is the receipt of free or discounted goods and services by members of a health and wellness program a fringe benefit as defined in subsection 136(1)?

91. Entitlement to benefits to members resulting from AIA Vitality Points includes vouchers, discounts, cashbacks, rewards and other products and services.

92. An employee will receive a benefit of free or discounted goods and services by being a member of AIA Vitality and accumulating sufficient points. The benefit will be a fringe benefit if the benefit was provided to the employee in respect of his or her employment.

93. The provision of free or discounted goods and services arises out of a personal contract between the employee and AIA as a result of levels of achievement reached through the program. They do not arise out of their employment, and the employer does not facilitate the acquisition of points by enabling employees to complete the tasks required to reach certain levels of benefits.

94. Taxation Ruling TR 1999/6 *Income tax and fringe benefits tax: flight rewards received under frequent flyer and other similar consumer loyalty programs* provides that flight rewards received under a consumer loyalty program are not subject to fringe benefits tax as they result from a personal (that is, non-employment) contractual relationship.

95. The two exceptions outlined in TR 1999/6, namely where the person with the personal contract is also an employer and provides the flight reward received to an employee in respect of employment or in respect of the employment of an employee, and where a flight reward is provided to an employee or the employee's associate under an 'arrangement' for the purposes of the FBTAA, that results from business, do not apply.

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96. The receipt of free or discounted goods and services by members of AIA Vitality is not in respect to employment, and is therefore, not a fringe benefit.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 1999/6; TR 2007/12

Legislative references:

- FBTA 1986 45
- FBTA 1986 51
- FBTA 1986 58P
- FBTA 1986 136(1)
- TAA 1953

ATO references

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