

TD 93/D169 - Fringe Benefits Tax: are outplacement services provided to current and former employees in the nature of work related counselling and thus exempt from fringe benefits tax under section 58M of the Fringe Benefits Tax Assessment Act 1986 ("the Act")?

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This document has been finalised by TD 93/153.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Fringe Benefits Tax: are outplacement services provided to current and former employees in the nature of work related counselling and thus exempt from fringe benefits tax under section 58M of the *Fringe Benefits Tax Assessment Act 1986* ("the Act")?

1. Section 58M exempts from fringe benefits tax various benefits including work-related counselling. The benefit provided must consist of work-related counselling of the employee or associate of the employee, or the benefit must be associated with such work-related counselling.
2. Subsection 136(1) of the Act defines "work-related counselling" and means amongst other things counselling provided to an employee by an employer *which improves or maintains the quality of the performance of employees' duties*. The counselling does not have to maintain or improve the quality of the performance of a particular employee, as long as it improves or maintains the quality of the performance of any of the organisation's employees.
3. Outplacement services are quite commonly provided by employers to employees before and after they are made redundant to assist them to organise their skills and experience in order to obtain satisfactory new employment. Such services, as they are normally provided, are considered to fall within the meaning of counselling as defined in paragraph (d) of the definition of "work-related counselling" in subsection 136(1).
4. It is considered that as the provision of outplacement services to employees made redundant improve or maintain the quality of the performance of the remaining employees, these services fall within the definition of "work-related counselling" and as such are exempt benefits under section 58M.

Example:

XJEK Limited is a large producer of woollen garments. Recently it has not been doing well financially and has decided to close one of its factories. This closure will result in displacement and loss of a large number of its employees. XJEK hires the services of a consultant to provide outplacement services (such as; coaching them in preparing a resume, assisting them in writing up job applications and working with them to target specific companies/industries which may have a demand for their specific talents) to the employees to prepare them for the separation. XJEK considers the provision of these services essential to maintain the quality of performance of the remaining employees and facilitate the speedy transition of employees into new careers in order to minimize industrial and legal cost. The cost of these outplacement services will be exempt from fringe benefits tax to XJEK.

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: work-related counselling

Legislative Ref: FBTAA 58M; 136(1)

Case Ref:

ATO Ref: NO 92/5779-9

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