

July 2012

Living away from home concessions - more changes

The changes to the living away from home tax concessions have been introduced into Federal Parliament, with more changes than previously announced. The most important change is a deferral of the start date for the amendments until 1 October 2012.

WHAT ARE THE LATEST CHANGES

In our May 2012 TaxFlash we outlined the proposed changes to the living away from home rules in the exposure draft legislation. Here is a link to that TaxFlash: <http://www.pkf.com.au/publications/Newsletters/TaxFlashMay2012LivingAwayFromHome.pdf>

The Bill introduced into Parliament on 28 June has some important changes compared to the exposure draft including the following:

- the start date for the changes has been postponed from 1 July 2012 until 1 October 2012;
- the taxable food component Living Away From Home Allowance (LAFHA) will be \$42 per week for adults and \$21 per week for children, instead of \$110 per week for adults and \$55 per week for children as per the exposure draft;
- the taxable LAFHA food component will not be taxed to the employee if they give a declaration to their employer, instead this part of the LAFHA will be taxed as a fringe benefit with Fringe Benefits Tax (FBT) payable by the employer; and
- it appears it will no longer be possible to eliminate FBT on the food component by only paying a net allowance to cover the additional food costs above the \$42 and \$21 ordinary food amounts.
- the transitional rule that postpones the start of these new rules, until 1 July 2014 for arrangements that were in place as at 8 May 2012, will only apply if the employment arrangement is not varied or renewed.

The bill has been referred to the House Standing Committee on Economics. Treasury is still consulting with professional advisers regarding these amendments and in these discussions we have expressed concern about various aspects of these new rules, in particular the inequitable treatment of temporary residents, as very few

will be able to use the transitional rules for existing arrangements.

SUMMARY OF THE NEW RULES

The new living away from home concession rules, as per the Bill before parliament are summarised below.

- Employees will be assessed on the LAFHA received excluding the ordinary food and drink component of the allowance.
- The ordinary food and drink component of the LAFHA will continue to be subject to FBT.
- Qualifying employees will be able to claim deductions for certain accommodation and food costs while living away from home.
- Deductions for the accommodation and food costs are not dependent on receiving a LAFHA.
- Certain deducted amounts will need to be substantiated.
- The concessions will only be available for the first 12 months the employee is living away from home.
- The employee will have to be maintaining the home they are living away from in Australia so it remains available for them i.e. not rented out.

Assessable income

Where the employee receives a LAFHA, the amount of the allowance received is included in the employee's assessable income. The LAFHA can cover all expenses that the employee may incur while they are living away from home, including food, drink, accommodation, and any other expenses.

However, if the employee gives the employer a 'deductible food and drink expense declaration', the amount representing the ordinary weekly food and drink expense will not be assessable but will be a fringe benefit and taxable to the employer for FBT. For a discussion on the amount of the ordinary food and drink expense see *Food and drink* below.

Allowable deductions

Employees who qualify as living away from home will be entitled to claim deductions for certain expenditure on food, drink and accommodation.

Accommodation

For accommodation, the employee can deduct the amount they incur for rent, leasing costs or hotel expenses to the extent those costs are reasonable.

To determine whether the expenses are reasonable, you would need to consider the personal and family circumstances of the individual, including the location of the accommodation, whether the accommodation is furnished, and whether the employee's family is living with them (these are similar to the guidelines that currently apply to reasonable FBT accommodation payments).

Food and drink

Qualifying employees will be entitled to claim a deduction for food and drink expenses incurred in relation to their own food and drink expenses, and those of their spouse and children (whether their family is living with or visiting them).

The deductible amount is determined as:

- the amount that is reasonable; and
- it exceeds the "ordinary food and drink expense" amounts, which will be \$42 per week for individuals over 12 years of age, and \$21 for children aged less than 12 years of age.

The Tax Office will be issuing guidelines on what is a reasonable amount for food and drink expenses.

The \$42 and \$21 per week ordinary food component is an important change compared to the exposure draft, which proposed figures of \$110 per week for adults and \$55 per week for children. This change will increase the available concession for qualifying employees.

For example, a single adult living away from home who incurs \$150 per week for food and drink, under the revised rules in the Bill, will be entitled to claim a

deduction for \$108 per week. Under the exposure draft rules, however, they would have only been entitled to a deduction of \$40 per week.

Substantiation

To claim the deductions, the employee must be able to substantiate the amounts incurred.

For accommodation, the employee can supply a lease agreement, credit card statements, or receipts for payments for accommodation.

For food and drink expenditure, employees will not be required to provide substantiation where the amount of the deduction claimed is below the amount to be specified by the Tax Office. Where the deduction claimed exceeds these amounts, the full amount of the deduction must be substantiated.

Qualifying employees

To qualify for this taxation treatment, the employee must comply with the following:

- they must be required by their employer to live away from their usual place of residence in Australia to perform the duties of their employment;
- their usual place of residence in Australia, in which they (or their spouse) have an ownership interest continues to be available for their immediate use and enjoyment at all times while they are living away from it;
- the ownership interest in the residence is either freehold ownership or leasehold of the property;
- they cannot rent the property out while they are living away from home, although where the employee has a boarder or tenant staying with them before the move, that boarder or tenant can remain in the property when the employee is living away from the property;
- an employee who normally lives at home with their parents (where the employee does not have an ownership interest in the property) will not qualify as living away from home if they are required by their employer to live somewhere else for their work;
- it is reasonable to expect that they will return to their usual place of residence upon completion of the job;
- the expense on accommodation and/or food and drink is for the employee and their spouse or children; and

- the expense relates to the first 12 months that their employer requires them to live away from their usual place of residence in Australia for their employment; or they are provided with fly-in-fly-out transport benefits.

Fringe Benefits Tax

The key change affecting FBT in the Bill compared to the earlier announcements and drafts is the treatment of ordinary food and drink component of the LAFHA.

Ordinary food and drink component

The total "ordinary food and drink expense" amounts paid to an employee as part of the food and drink component of their LAFHA will be subject to FBT where the employee provides a 'deductible food and drink expense declaration' to the employer. If the employee does not provide the declaration, the food and drink component of the allowance will be assessable income for the employee.

The FBT taxable food and drink component amount is \$42 per week for individuals over 12 years of age, and \$21 for children aged less than 12 years of age.

This represents a change from the original proposal, and partially reinstates the FBT taxable component of the LAFHA food component that has been part of the FBT legislation.

However, the way the Bill has been drafted appears to represent a change from the way in which the current LAFHA provisions apply. Under the current provisions, it is possible to structure an employee's allowance to not pay the assessable \$42 and \$21 amounts, and thus reduce the employer's FBT exposure.

It appears however, that this opportunity may not be available based on the current form of the Bill. The amending provision seems to automatically assess the \$42 and \$21 amounts, without scope to structure the allowance to omit these amounts from the payment.

We are currently confirming whether this is the case, and whether this amendment is intended by the Government.

Note, where the employee cannot satisfy the conditions necessary to claim a deduction for their food and drink expenses, the ordinary food and drink expense is not subject to FBT. Instead, it will be assessable income for the employee.

Other living away from home benefits

These FBT amendments mainly apply to LAFHAs. However, the treatment of other living away from home fringe benefits is also altered by excluding the full or partial exemptions for these benefits.

Instead, the valuation of these benefits can be reduced by the otherwise deductible rule, which will reduce the value of the benefits where the employee would have been entitled to a tax deduction if they had incurred the unreimbursed expenses. Deductibility is determined according to the living away from home deductibility provisions in these amendments.

These types of living away from home benefits include:

- expense payment fringe benefits for accommodation, food and drink;
- property fringe benefits for food and drink; and
- residual benefits such as the direct provision of living away from home accommodation.

The 12 month time limit

The employee is only entitled to claim a deduction for expenditure for accommodation, food and drink for the first 12 months when they are required to live away from their usual place of residence.

The 12 month period commences on the first day on which the employee commences to live away from home. Where the employee temporarily returns home (including for a holiday), the 12 month period is suspended, and the clock resumes when the employee recommences to live away from their usual place of residence.

During periods of temporary suspension, the employee will not be entitled to claim a deduction for their food expenses, but they will continue to be entitled to deduct their accommodation expenses.

There are special rules where the employee moves locations or commences with a new but related employer.

The 12 month period does not apply to employees who are provided with fly-in-fly out transport benefits.

PAYG arrangements

Employers who pay assessable allowances will be required to withhold PAYG withholding amounts except where the Tax Office has issued an approved variation. Presumably class variations will be issued in due course,

similar to those that apply for all other forms of deductible allowance paid to employees.

Transitional amendments

The transitional arrangements that were announced in the 2012 Budget for residents and temporary residents will apply as announced with a few variations.

Under the transitional rules, provided the living away from home arrangement was in existence as at 8 May 2012 and the individual was eligible for the living away from home concessions under the old rules, the start date for the amendments will be extended to 1 July 2014 (as amended by the mid-year economic outlook announced in November 2011).

Varied or renewed employment arrangements

The transitional rule will cease, however, if the employment arrangement is varied or renewed. The Explanatory Memorandum (EM) to the Bill indicates this will only apply if there is a material change to the employment arrangement.

However, the examples of a material change in the EM include change of salary or change in working hours. This could prove to be quite restrictive as it may mean the employee will lose the benefit of the transitional rule if

they receive a wage rise, or an increase or decrease in working hours before 1 July 2014.

Transitional 12 month rule

If the employee is living away from home as at 1 October 2012 and qualifies for the living away from concessions, the 12 month rule is amended so that the 12 month period is treated as starting on 1 October 2012. This means eligible employees will be able to satisfy the 12 month rule until 1 October 2013 even though the living away from home arrangement started before 1 October 2012 i.e. a period of more than 12 months.

Practically this transitional rule will only apply to arrangements entered into after 8 May 2012 as arrangements entered into before this date are likely to qualify for the transitional extension of the start date until 1 July 2014.

Temporary residents

Temporary residents will not have the benefit of the transitional rules unless they were maintaining a home in Australia and were required by their employer to live away from that home in order to work. This means most temporary residents will have to apply the new rules from 1 October 2012.

Should you require assistance or additional information, please contact your PKF Tax Adviser

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