



### AUSTRALIA'S LIVING AWAY FROM HOME ALLOWANCE

We are often asked about the Living Away From Home Allowance that is available under the tax system in Australia. So what is it? Who can claim it? And how is it taxed?

In general terms the LAFHA is an allowance paid by an employer to an employee to compensate him or her (and his or her family) for the additional costs or the inconvenience of living away from home so that he or she can perform duties relating to the employment.

There are typically three elements to a LAFHA: accommodation, food, and hardship. From the perspective of the employee **none of these elements are assessable as income**. However, an employer must have regard to the Fringe Benefits Tax legislation, which is likely to impact on the employer's readiness to make a LAFHA available - remember that FBT is payable by employers and not by employees.

- No FBT is payable on the accommodation element.
- FBT is payable on the first \$42 per adult per week, and \$21 per child per week.
- FBT is payable on the whole of the hardship component.

The perhaps inevitable question flowing from this is why an employer doesn't simply "remunerate" employees living away from home with large food components. The answer is that there is a risk that such payments will not stand up to scrutiny upon a FBT audit by the Australian Taxation Office - with the result that the excessive components will be deemed to be part of the hardship component on which FBT is payable in full. Most prudent employers will therefore not want to take on the risk of excessive food components.

A further issue of no small importance is the need for the employee to be required to live away from his or her usual place of residence before the tax-effective LAFHA can be paid. The ATO's Tax Ruling MT 2030 discusses this in more detail, and following our own discussions with the ATO we can advise that the following conditions must be satisfied before a LAFHA can be paid:

- The employee must be required to live away from his or her usual place of residence to perform the duties of that employment.
- Where an employee has a choice of more than one residence he or she will be considered to be living away from his or her usual place of residence if there is an expectation or intention on the part of the employee to return to live at the former place of residence on the cessation of work at the temporary job location.
- Where a person is working in Australia on a temporary basis (say under a 457 long-term temporary visa) a LAFHA may be available **for the whole period of the visa** (ie 4 years) so long as the placement in Australia was obtained before arrival in Australia, and so long as there is an expectation on the part of the employee to return to a home outside Australia at the end of the period or work in Australia.
- It is not possible to obtain a blanket LAFHA for work generally in Australia from an employer where employment is obtained after arrival in Australia. In this scenario the move to Australia has not arisen as a requirement of the employment. Rather, the employment in Australia has arisen from the individual's own choice to spend a period of time in Australia. However, see also the final point below.

- A LAFHA may also be available where a person holding Australian permanent residency or citizenship is living outside Australia and obtains work for a fixed period in Australia with the intention of returning to his or home outside Australia at the end of that period. However, in this circumstance the ATO will presume an intention to reside permanently in Australia and therefore the onus will fall on the taxpayer to demonstrate the entitlement to the allowance. In such circumstances it would be prudent to seek a Private Ruling from the ATO.
- In circumstances where an employee who normally lives in, say, Sydney, is required to work in, say, Melbourne, a LAFHA would be available irrespective of their visa or citizenship status.

Note also that the ATO has published a Draft Tax Determination, TD 2000/D5, which although not having the full status of a Tax Ruling, highlights the fact that the ATO considers that a person in Australia with a Working Holiday Maker Visa is not eligible for a LAFHA, on the basis that work in Australia is supplemental to the main purpose of the visa, which is for a holiday. The reason for this is that the ATO considers that there is not a sufficient "causal relationship between the incurring of any additional expenses and the requirement for the individual living away from home to undertake that employment" - note the word "requirement" again.

Ultimately, it is up to an employer to offer a LAFHA. However, it can clearly form a valuable part of an overall remuneration package, and as such its availability should be explored fully if you are going to be working in Australia.

*The contents of this factsheet are necessarily a general overview of a very detailed subject. The situation may change as tax legislation can alter quickly and we therefore strongly recommend that you take professional advice about your personal circumstances before placing any reliance on the contents of this factsheet.*

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