

# TAX BULLETIN

*An update publication for our clients*

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## **Proposed changes to Living Away From Home Allowances and Related Benefits**

### **Federal Government Announcement**

As part of the tax measures announced on 29 November 2011 in its Mid-Year Economic and Fiscal Outlook, the Federal Government advised that it will introduce reforms to stop individuals 'exploiting' the tax concessions for living away from home ('LAFH') allowances and benefits. In making the announcement, the Government has released a consultation paper on the proposed reforms which are to apply from 1 July 2012. Please follow the link below for a copy of the consultation paper.

[http://www.treasury.gov.au/documents/2235/PDF/CP\\_FBT\\_LAFH\\_Benefits.pdf](http://www.treasury.gov.au/documents/2235/PDF/CP_FBT_LAFH_Benefits.pdf)

For most permanent Australian residents who are genuinely living away from home, the impact will be minimal with the exception that substantiation will be required for accommodation costs and food expenses in some cases.

However, the benefits and concessions available to foreign workers coming to Australia on temporary visas will be removed in all but very limited circumstances. This will include those who are working under pre-existing arrangements.

### **Summary of Proposed Changes**

- Rather than remain under the fringe benefits tax ('FBT') legislation, all LAFH allowances will be taxed to the individual employee as income. The employee will then be able to claim deductions for accommodation and food expenses if the relevant criteria are met. Any LAFH benefits provided will continue to be taxed under the FBT regime with the employer being liable.
- For permanent residents in Australia, the exemptions and concessions for LAFH allowances and benefits will continue to be available where they are genuinely living away from home.
- In order to access the LAFHA benefits and concessions, temporary resident employees (i.e. overseas workers coming to Australia on temporary work visas) will be required to maintain a home for their own use in Australia and then be living away from that Australian home for work purposes. All temporary residents who do not satisfy this requirement will not be able to access the exemptions and concessions currently available for LAFH allowances and benefits.
- All employees accessing the LAFH allowances and benefits will be required to substantiate their expenses.
- Subject to the outcomes of the consultation process, the changes will take effect from 1 July 2012. The changes will impact on all arrangements including those in place prior to this announcement.



## Key Impacts

For permanent residents in receipt of LAFH benefits or concessions for genuine reasons, the impact will be minimal with the exception that any allowance or benefit to compensate for accommodation costs will need to be substantiated through appropriate documentation. In relation to food costs, substantiation will only be required if the amount paid or reimbursed is in excess of the reasonable amount as determined and published by the Commissioner.

The requirement for temporary resident workers to maintain a home for their own use in Australia and then live away from that home is extremely onerous and unlikely to be met except in rare cases. In our experience, overseas workers only maintain an Australian home at the place that they are temporarily working at. As such LAFH allowances or benefits provided to such workers will now be taxed (either as income or fringe benefits) from 1 July 2012.

Under the proposal there will be no protection (grandfathering) for pre-existing arrangements. This means that pre-existing contracts and arrangements with foreign workers in Australia will need to be reviewed to determine the impact post 1 July 2012 and what if any, changes will need to be made. Negotiations with foreign workers due to arrive between now and 1 July 2012 must also factor in the proposals and their impact.

As a LAFH allowance will be treated as income in the hands of the employee, it will be their responsibility to declare it and substantiate any deductions. It is likely that the Commissioner will allow a variation to PAYG withholding for employers on the payment of such allowances where there are expected deductions. The exact form of that variation has not yet been indicated.

If LAFH benefits are provided rather than allowances paid, these will continue to be taxed as fringe benefits in most cases with the employer being liable (and ultimately responsible for maintaining appropriate substantiation).

The change in treatment of LAFH allowances and benefits may also impact on other oncosts including payroll tax, WorkCover and Superannuation Guarantee. The consultation paper is silent on this matter notwithstanding that for some employers it could have a significant impact on the base on which such oncosts are calculated.

## Comment

LAFH allowances and benefits have been a legitimate feature of the taxation regime in Australia for many years. Whilst we concede that there may have been some abuse of the system, in most cases they have been paid or provided in genuine circumstances and the changes seem to go too far.

Specifically, the effective removal of access to exemptions and concessions for most LAFH allowances and benefits for the majority of overseas workers is unfairly targeting this group particularly in cases where the concessions have been used to attract workers to Australia where there is a shortage of suitably skilled workers residing in Australia.



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We are aware of many cases where businesses have legitimately sourced workers from overseas and they will be significantly impacted by the reforms. In many cases, businesses could lose foreign workers if their net income falls or the businesses' costs could rise significantly in order to maintain workers' net income levels.

In our view, a more balanced approach would have been to tighten the rules and substantiation requirements for all workers regardless of their country of residence and possibly limit the amounts that could be claimed as a LAFH allowance or benefit.

We will seek to lobby the Government to reconsider the reforms, and whilst a crackdown in any abuse is warranted, the final outcome should provide consistency in the treatment of Australian residents and those workers coming to Australia on temporary work visas.

## Consultation

As the reforms are subject to consultation with stakeholders, we will keep you informed of any developments leading up to the proposed commencement date of 1 July 2012.

## Further Information

Please ask either your regular Pitcher Partners tax contact or any of the contacts in the Pitcher Partners firms below for further details on the issues raised in this Tax Bulletin:

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