



Removal of FBT concessions for foreign executives update

Government's latest revenue raising measures again target international businesses. "Living away from home" and related benefits to be denied concessional tax treatment for international employees; increased substantiation requirements for all others.

Background

November 2011 has seen several reports in the media about the changes the Government was considering to the tax concessions available to foreign executives as a result of them living away from home and working in Australia. The idea was initially

raised at the October Tax Forum, with comments foreign executives and workers were unfairly benefiting from the provision of these allowances at the taxpayer's expense (i.e. "rorting" the system). Senator Penny Wong further incited these rumours in a TV interview, on 27 November 2011.

In the mid-year Federal Budget review released on 29 November 2011, the Government has confirmed there will be changes to the provision of "living away from home allowances" (LAFHA) and other concessional tax benefits. Further details were contained in a Consultation Paper released quietly on the same day. The issues subject to consultation will be limited to the impact on remote areas and some community sectors. There will be no transitional arrangements for business.

Proposed changes

The changes will take effect from 1 July 2012, and will mainly affect "temporary residents" of Australia i.e. those living and working in Australia on a temporary basis, for instance an employee working in Australia on a 457 or similar temporary migration visa, although this

may extend to New Zealand residents who have not been granted permanent residency in Australia.

From that date, cash allowances paid for LAFH accommodation and food costs will be removed from the FBT regime, and will be included as assessable income in the hands of the employee. Non cash LAFH benefits remain within the FBT system.

Effect on Temporary residents

For most temporary residents, (i.e. those living and working in the same region), there will no longer be any support through the tax system to offset the additional costs of international assignments. They will not be entitled to claim deductions against cash allowances, and an employer will be subject in full to FBT on any non-cash LAFH benefits provided. This will increase the cost to the sponsoring employer, with previous international experience suggesting a sharp reduction in expatriate numbers in the lead up to July 2012. Concessional benefits will remain available for temporary residents who live and work in different regions (i.e. as for fly in fly out - see below).

Effect on permanent residents

There will be no effective change to the current concessional treatment for permanent residents who live away from their home for work purposes (e.g. fly in, fly out workers; assigned to another location within Australia). However, for the employees receiving a cash allowance to cover their food and/or accommodation costs as a result of LAFH will be required to report this as assessable income in their personal tax return. The employee would claim a tax deduction for the expenses incurred on food and accommodation above the statutory amount (which will be revised as part of the new legislation). Where the employer pays for the accommodation costs directly or reimburses the employee for the cost of accommodation, it will continue to be treated as a Fringe Benefit for FBT purposes, and will retain the current concessional FBT treatment.

Unaffected employees

Australian permanent residents working offshore and who remain tax residents of Australia should not be affected by these changes, other than the obligation to support the amount of any deduction claimed against the allowance paid to them under the new substantiation rules. Also, there is no intention to change the current FBT concessions available to employees receiving benefits as a result of living and working in a Remote area.

Nor will the record keeping concessions change where a travel and meal allowance is provided in the course of an employee travelling in the course of employment.

Affected benefits

It is intended that the changes will relate to the exempt food and accommodation components of the LAFHA, and the provision of rental accommodation being provided direct to the employee. At this point in time it is our understanding based on the Consultation Paper that there will be no change to other concessional benefits provided to employees who are relocating in the course of employment or other benefits provided to temporary residents such as the foreign executive's children's school/university fees.

Increased substantiation

Those who continue to qualify for concessional treatment, and receive a cash allowance in respect of LAFH, will be required to substantiate the accommodation and food costs above a statutory amount in their personal tax return.

Action

All employers currently providing LAFHA and related concessional benefits need to consider and cost these changes. An early step will be a review of the employment contracts of all potentially affected employees.

Without remedial action, loss of concessional tax treatment will lead to an increase in the employers FBT bill or may add a personal tax cost to the employees.

For employees affected by the changes, options for the employer to consider will include:

- Maintenance of status quo, resulting in increased employment costs;
- Seek to renegotiate remuneration arrangements to share the increased cost; and
- Early repatriation.

Employee communication

Given the anticipated high profile media attention this change is likely to attract, employers should consider early communication with affected employees, if only to acknowledge the matter is 'on the radar' and under review. A foreign parent company should also be alerted.

Should you wish to discuss the implications for your business, please contact your RSM Bird Cameron adviser.



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Contacts

Adelaide

Lvl 4, 191 Pulteney St
Adelaide SA 5000
T: +61 8 8232 3000

Canberra

Lvl 1, 103-105 Northbourne Ave
Canberra ACT 2612
T: +61 2 6247 5988

Melbourne

Lvl 8, Rialto South Tower
525 Collins St
Melbourne Vic 3000
T: +61 3 9286 1800

Perth

8 St Georges Terrace
Perth WA 6000
T: +61 8 9261 9100

Sydney

Lvl 12, 60 Castlereagh St
Sydney NSW 2000
T: +61 2 9233 8933