

Global Watch

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Australia

Proposed reforms to Living-Away-From-Home concessions

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This article is intended to highlight general issues and is not a comprehensive statement of the topic or the laws of that country.

In Brief

Reforms to the Living-Away-From-Home (LAFH) concessions will not only impact foreign nationals (at whom the reforms are aimed) but also domestic Australian employees and their employers.

Employers need to be aware of the potential increased cost to business and changes to administration and reporting obligations arising from LAFH arrangements involving domestic employees. These costs and changes may arise in relation to employees receiving allowances rather than reimbursements.

Domestic employees are those employees that are not temporary residents, for example Australian citizens or permanent residents.

The reforms are expected to apply from July 1, 2012. The final form of the

proposed reforms has yet to be announced by the Government.

Why can domestic Australian employees and their employers be impacted?

The Government's LAFH proposal seeks to reform the LAFH rules by first, moving the LAFH allowance rules back into the income tax regime and requiring employees to substantiate claims for deduction of accommodation and food costs in respect of the LAFH allowance; and secondly by removing the ability of temporary residents to access LAFH concessions UNLESS they are living away from an Australian home which they maintain while living away from home.

The tests for LAFH status are likely to remain the same. That is to say a person will be treated as "living-away-from-home" where, but for being required to live away from their usual place of residence in order to perform



duties of employment at another location, they would have continued to live at that usual place of residence. There must be an expectation that the person will return to live at that usual place of residence upon completion of the temporary work assignment.

While the Government has indicated that no “permanent resident” who is legitimately using the LAFH exemption for accommodation and food expenses will lose any entitlements, the proposed reforms are likely to give rise to increased cost for business and will change how employers report and administer LAFH allowances for eligible “Australian” employees.

The term “permanent resident” used by the Assistant Treasurer in the November 29, 2011 announcement is meant to refer to “Australians”, i.e. Australian citizens and permanent residents. But it can also mean foreign citizens and certain New Zealand citizens who fall outside the definition of “temporary resident” by virtue of a legal or de facto relationship with an Australian citizen or permanent resident.

Employers are likely to retain the responsibility for determining LAFH status and for the administration of LAFH arrangements so that allowances paid to employees that are LAFH are identified in the PAYG payment summaries sent by employers to the Australian Taxation Office (ATO) each year.

Specifically, in the context of the proposed reforms this means that:

- While it is likely that the responsibility for determining LAFH eligibility will remain with the employer, it is the employee who ultimately is responsible for claiming an allowable deduction on their

personal return for accommodation and food expenses incurred while temporarily living-away-from-home.

- As a LAFH allowance will no longer be able to be “salary sacrificed” (because all that happens is pre-existing salary is re-labelled as a LAFH allowance), employees and employers who agree upon an arrangement to salary sacrifice LAFH amounts will need to do so by reimbursing accommodation and food costs rather than paying an allowance.

- Where an employee is LAFH and is paid an allowance, a PAYG variation may be requested by the employee so that LAFH allowances are free of withholding tax (Pay-As-You-Go or PAYG). The process to implement this variation could be that the employee has to apply to the ATO and then the ATO informs the employer to vary the PAYG or the Commissioner of Taxation could declare in the Government Gazette that employers may “self-assess” a PAYG variation for LAFH allowances.

What issues do employers need to consider?

Employers providing LAFH benefits to domestic Australian employees will need to consider:

- Whether there will be additional costs to the business as a result of payroll tax and Superannuation Guarantee contributions having to be paid in relation to the LAFH Allowances once the proposed reforms are implemented.
- Updating the payroll coding systems so that PAYG will apply to the cash allowance from the relevant date.
- Considering what the policy and process will be in relation to requests from employees to vary the PAYG withholding amounts from LAFH allowances.

- Where employees request LAFH benefits for short term interstate or intrastate transfers, what will the employer's policy in relation to such requests be and, what procedures will be introduced to process temporary transfers?

- Updating payroll checklists so that payroll tax and the Superannuation Guarantee contributions will be paid in relation to LAFH Allowances post-June 30, 2012.

Should the proposed LAFH reforms become law, employer communications will also need to be issued for domestic Australian employees receiving LAFH Allowances so that these employees understand:

- How the proposed LAFH reforms will impact them.

- The substantiation requirements which will apply to their accommodation and food costs immediately after June 30, 2012.

- How LAFH Allowances will be treated for income tax purposes and what they need to report on their income tax returns.

- What the employer policy and process is in relation to PAYG variation requests for LAFH allowances.

The Bottom Line

Employers need to fully consider how the proposed LAFH reforms will impact their business and their domestic Australian employees.

These reforms are proposed to take effect from July 1, 2012; however the final form of the proposed reforms has yet to be announced by the Government.

Costs and changes will arise for employers in relation to employees receiving allowances rather than reimbursements.

The cost to business in relation to the changes should be considered now.

Changes in relation to an employer's LAFH policy and related policies and processes for domestic employees will also need to be considered now so that these policies and processes will be ready for implementation on July 1, 2012.

Failure of employers to act pro-actively in light of the proposed LAFH reforms may mean costs in terms of additional administrative burden and non-compliance with employer obligations.

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