

Global Watch

International Assignment Services

1 June, 2012

Australia

Living-Away-From-Home reforms – Considerations for business

An International Assignment Services (IAS) Network Publication.

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

The Government has now released draft legislation in relation to the proposed reform of the Living-Away-From-Home (LAFH) rules. Submissions to Government on the draft legislation close on 29 May 2012. The final bill is then scheduled for introduction into the winter sitting of Parliament (during June 2012). The changes in the final bill will be effective from 1 July 2012.

The draft legislation confirms that temporary residents and foreign residents working in Australia will no longer be able to claim LAFH concessions from 1 July 2012 unless they maintain for their use and enjoyment a home in Australia from which they are living away from in order to work.

Employees that are neither temporary resident or non-resident taxpayers, may be able to continue to claim LAFH concessions until 30 June 2014 where the LAFH arrangement was in place prior to 7.30pm on 8 May 2012 and the employee continues to be LAFH.

Subject to the transitional rules, under the proposed LAFH reforms, from 1 July 2012, the LAFH concessions will only apply for a maximum period of 12 months for any particular work location and will only apply where the employee is living away from an Australian home.

Employers need to be aware of the impact on current employees, the potential increased cost to business and changes to administration and reporting obligations arising from the changes outlined in the draft legislation.



Who will qualify for LAFH concessions from 1 July 2012?

From 1 July 2012, in order to qualify for the LAFH concessions employees will still need to be “living away from home”, i.e. their employer must require them to live away from their usual place of residence in order to perform their employment duties. From 1 July 2012, the move must be an employer initiated move and not the employee moving location and subsequently finding employment and claiming they are LAFH.

In addition to the requirement that the employee be LAFH, the new rules impose two further restrictions to being able to qualify for LAFH concessions:

- a) The employee must maintain (for their use and enjoyment) an Australian home that they are living away from for work; and
- b) The food and accommodation expenses being claimed relate to all or part of the first 12 months that the employee is living away from that residence.

For employees who move to Australia from overseas, it is unlikely that they will be able to qualify for LAFH concessions as they are unlikely to maintain an Australian home that they are living away from for work.

Transitional rules

The proposed reforms will apply from 1 July 2012.

Transitional rules will apply to:

- (a) employees that are neither temporary residents or non-residents, and
- (b) employees that are temporary residents or non-residents that are living away from an Australian home

where LAFH allowances or reimbursements were provided under an “eligible employment arrangement” that was entered into before 7.30pm (Australian Eastern Standard Time) on 8 May 2012 - the time and date that the Government announced the updated proposed reforms.

Broadly, a temporary resident is a resident of Australia who is in Australia on a temporary visa and is not married to or in a de facto relationship with an Australian citizen or permanent resident. There are additional considerations for people who are New Zealand citizens.

An “eligible employment arrangement” is an arrangement under which the employer (or a connected entity of the employer) committed to provide the employee with a LAFH allowance or benefit.

Where the transitional rules apply, the current LAFH concessions are available until 30 June 2014 subject to the

employee continuing to be LAFH and there being no change to the eligible employment arrangement.

Care will therefore need to be taken before making any changes to employee contracts prior to 1 July 2014 where an employee continues to qualify for LAFH concessions under the transitional rules, e.g. extensions or renewals, as this may affect their ability to continue to qualify for the transitional rules from the time the change is made.

The transitional rules are unlikely to apply to temporary residents and non-residents. As a result, the proposed removal of the LAFH concessions for temporary residents and non-residents will apply from 1 July 2012 without any transitional arrangements.

Who will continue to qualify for LAFH concessions under the transitional rules and new rules is summarised in the table below.

	Non-residents and temporary Residents NOT living away from an Australian home	Any employee living away from an Australian home <small>(note 1)</small>	“Permanent resident” employees <small>(note 4)</small> NOT living away from an Australian home
Transitional rules apply?	✗	✓ <small>(note 2)</small>	✓ <small>(note 2)</small>
Qualify under new arrangements post 1 July 2012 / after transitional period?	✗	✓ capped at 12 months <small>(note 3)</small>	✗

Note 1 – Australian home must be available for use by employee. It cannot be rented out.

Note 2 – Provided the arrangement was in place before 7:30pm on 8 May 2012 and the individual continues to be considered LAFH.

Note 3 – This can exclude periods where the employee goes back to their Australian home (e.g. annual leave for a month).

Note 4 – “Permanent resident” refers to employees who are not temporary residents or non-residents.

What the reforms won't affect

For 'fly-in fly out' arrangements the 12 month time limit will not apply.

The reforms will also not affect the tax treatment of travel and meal allowances which are provided to employees who have to travel away from their usual place of work for short periods (generally up to 21 days).

Home leave flights and education cost concessions will not be affected by the proposed reforms as currently drafted. Employees will, however, still need to satisfy the current requirement that they are required to live away from their usual place of residence in order to perform their employment duties in order to qualify for these concessions.

Allowance versus reimbursement

From 1 July 2012 food and accommodation allowances paid to employees will be subject to income tax (instead of Fringe Benefits Tax - FBT), with employees then claiming a corresponding deduction where they qualify for LAFH concessions.

Where employers continue to provide LAFH benefits via a reimbursement method these will still be included in the company's FBT return with a reduction in the taxable value where the employee meets the requirements of the LAFH concession.

Employers will therefore need to consider whether it is more cost effective and administratively efficient to pay any LAFH benefits via a cash allowance or reimbursement method.

The below table summarises the potential increased costs and administration employers will need to consider in deciding to pay an allowance or reimbursement.

	Allowance	Reimbursement
PAYG withholding / FBT	Subject to PAYG withholding (can be varied). Employee can then claim deduction on their personal income tax return if they qualify for LAFH concessions.	Subject to FBT. Value for FBT purposes may be reduced where the employee qualifies for LAFH concessions. Declarations will be needed from employees.
Subject to Superannuation Guarantee?	✓	✗
Subject to payroll tax?	✓	✗ (assuming FBT value nil)

Any foreign tax obligations and employee marginal tax rates should also be considered in determining whether to pay a LAFH amount via an allowance or as a reimbursement.

Employers are likely to retain the responsibility for determining LAFH status either in order to be able to vary PAYG withholding on allowances or in order to reduce the taxable value of benefits being reported for FBT purposes.

The Bottom Line

Temporary residents and non-residents are unlikely to qualify for the transitional rules and so the proposed reforms will apply from 1 July 2012.

The transitional rules are likely only to apply to employees that are not temporary residents or non-residents where they had LAFH arrangement in place with their employer prior to 7.30pm on 8 May 2012. .

Employers will need to review current employees receiving LAFH benefits and

If employees are paid an LAFH allowance it is not currently clear whether the allowance must be separately identified and reported on an Australian Payment Summary in order for a LAFH deduction to be claimed by the employee.

Next steps

The Government will now consult with tax experts and employers on the technical detail of the legislation to implement the proposed changes. Submissions were due by 29 May 2012.

determine whether they will continue to qualify under the transitional rules. The new rules will apply for any new arrangements from 1 July 2012

Decisions will then need to be made as to what the company's policy will be regarding employees who no longer qualify for LAFH concessions and the cost to the company of the removal of the concessions in light of broader business impacts (e.g. potentially losing that employee and the cost of having to hire and train someone new and attracting the same talent level).

For more information, please do not hesitate to contact:

<i>Tony Halcrow</i>	<i>+61 2 8266 7279</i>	<i>anthony.halcrow@au.pwc.com</i>
<i>Jim Lijeski</i>	<i>+61 2 8266 8298</i>	<i>jim.lijeski@au.pwc.com</i>
<i>Shane Smailes</i>	<i>+61 3 8603 6097</i>	<i>shane.smailes@au.pwc.com</i>
<i>Alana Haiduk</i>	<i>+61 7 3257 8703</i>	<i>alana.haiduk@au.pwc.com</i>
<i>Maria Ravese</i>	<i>+61 8 8218 7494</i>	<i>maria.a.ravese@au.pwc.com</i>
<i>Lisa Hando</i>	<i>+61 8 9238 5116</i>	<i>lisa.hando@au.pwc.com</i>

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

SOLICITATION

© 2012 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers LLP, a Delaware limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.