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## GES NewsFlash

# Australia — Living away from home (LAFH) update – amending bill

August 29, 2012

### Summary

On 21 August 2012, Tax Laws Amendment (2012 Measures No. 4) Bill 2012 (the "bill") was reintroduced into the House of Representatives. Several amendments were made to the original bill in response to recommendations made by the House of Representatives Standing Committee on Economics.

The amendments are set out below:

### Taxation of LAFH benefits

One of the key amendments included in the bill is that LAFH allowances will now be taxed entirely within the fringe benefits tax (FBT) system, rather than the income tax system (or a combination of both). This change simplifies the administration and treatment of LAFH allowances.

Where eligible for the LAFH concession, the taxable value of LAFH allowance fringe benefits can be reduced by the employer by:

- The amount of the employee's actual accommodation expenditure incurred in relation to LAFH that is substantiated
- The amount incurred by the employee for food or beverage costs in relation to LAFH less a statutory amount (if applicable)

Under the previous amendments, employees who were not eligible for the LAFH concessions would have been subject to income tax on any LAFH cash allowances. This was a favorable position for employees who were not on the top marginal rate of tax, as it would have been possible to structure LAFH benefits to be provided by way of cash (taxable at the employee's marginal rate of tax) rather than pay FBT on the

LAFH benefit based on an FBT rate of 46.5%.

## **Fly-in fly-out (FIFO) or drive-in drive-out (DIDO) arrangements**

Under the new amendments, an employee who is working on a FIFO or DIDO basis will not be required to maintain a home in Australia and the 12-month limit on concessional tax treatment will not apply.

An employee will be considered to be working on a FIFO or DIDO basis where the following conditions are satisfied:

- On a regular and rotational basis, the employee works for a number of days and has a number of days off that which are not the same days in consecutive weeks (such as a standard five-day working week and weekend)
- The employee returns to their normal residence during their days off (noting that the normal residence does not need to be in Australia)
- It is customary in the industry in which the employee works for employees performing similar duties to work on a rotational basis and return to their normal residence during their days off
- It is unreasonable to expect the employee to travel to and from work and the normal residence on a daily basis given the location of their work and their normal residence
- It is reasonable to expect that the employee will resume living at their normal residence when the employment duties no longer require them to live away from home.

These employees will be required to provide their employer with a LAFH declaration (in a form approved by the Commissioner) and must substantiate expenses incurred on accommodations, food, and beverages (beyond the reasonable amount determined by the Commissioner of Taxation).

## **12-month time limit**

The amendments detail the circumstances in which the 12-month time limit will pause. Under the proposed LAFH provisions, an employee may only claim a deduction for accommodation or food expenses for the first 12 months that the employer requires them to live away from their usual place of residence.

The 12-month period may be paused in a number of circumstances; for example, where the employee takes leave. However, where there is a pause, the full amount of any fringe benefits provided during that period is the taxable value (i.e., there is no reduction in taxable value during that period).

## **Material variations to employment contract**

Under the proposed transitional rules, if there is a material variation or renewal of an employment contract between 1 October 2012, and 1 July 2013, the new rules will apply from the date of the change or renewal. The amendments clarify what constitutes a 'material variation' in relation to eligible employment contracts.

A material variation will arise where there are fundamental changes to the employment arrangement. However, an annual salary review or promotion (which does not result in a change to the underlying terms of the employment contract) should not constitute a material variation.

### **Deloitte's view**

There is a mixed sentiment regarding the treatment of LAFH allowances solely under the FBT regime. In the case of employees who are not on the top marginal rate of tax, the treatment of LAFH allowances under the FBT regime will result in an increased overall cost to the employer. Furthermore, to the extent an employee is liable to foreign taxes on the LAFH allowances, there will be an inability to claim foreign income tax offset relief in respect of FBT paid on the LAFH allowances.

The amendments applicable to employees who are working on a FIFO or DIDO basis are welcomed as the new amendments effectively remove the requirement for these employees to maintain a home in Australia. The amendments will result in many FIFO or DIDO employees now being eligible for the LAFH concessions, particularly where the employees do not have an ownership interest in a home in Australia or whose 'home' is in a country other than Australia.

The clarification of "materiality" for the purposes of variations to employment contracts ensures that a normal salary or other minor increases do not affect an employee's eligibility to access the transitional treatment.

Employers may need to consider the review of the structure and provision of benefits and allowances to be provided to employees to align them with the amended legislation.

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If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals at our Deloitte offices as follows:

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