TD 2012/D8 - Fringe benefits tax: reasonable amounts under section 31G of the Fringe Benefits Tax Assessment Act 1986 for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit, for the period from 1 April 2013 to 31 March 2014

This cover sheet is provided for information only. It does not form part of *TD 2012/D8 - Fringe benefits tax: reasonable amounts under section 31G of the Fringe Benefits Tax Assessment Act 1986 for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit, for the period from 1 April 2013 to 31 March 2014*

This document has been finalised by TD 2013/4.

There is a Compendium for this document: **TD 2013/4EC** .

Draft Taxation Determination

Fringe benefits tax: reasonable amounts under section 31G of the *Fringe Benefits Tax Assessment Act 1986* for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit, for the period from 1 April 2013 to 31 March 2014

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This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

You can rely on this publication (excluding appendixes) to provide you with protection from interest and penalties in the following way. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. This draft Determination sets out the amounts that the Commissioner of Taxation ('the Commissioner') considers reasonable under section 31G of the *Fringe Benefits Tax Assessment Act 1986* ('FBTAA') for food and drink expenses incurred by employees receiving a living-away-from-home allowance ('LAFHA') fringe benefit in the period 1 April 2013 to 31 March 2014. In addition, a transitional arrangement for the period ending on 31 March 2013 is set out at paragraph 19.

2. Where the total of food and drink expenses for eligible family members (including an employee) incurred by an employee in a period (up to a maximum of 12 months)[1] does not exceed the amount the Commissioner considers reasonable, those expenses do not have to be substantiated under section 31G of the FBTAA. Where an employee receives a LAFHA fringe benefit, for the employer to reduce the taxable value of the fringe benefit by the exempt food component, the expenses must be either:

- equal to or less than the amount the Commissioner considers reasonable under paragraph 31G(1)(b), or

[1] See section 31D of the FBTAA.

- substantiated in accordance with the requirements in subsection 31G(2).

3. If the total of an employee's food or drink expenses in the period exceeds the amount the Commissioner considers reasonable, the exempt food component is so much of the food and drink expenses (less the applicable statutory food total) as are substantiated by the employee.

Amounts for food and drink expenses for which substantiation is not required

Types of expenses

4. This draft Determination sets out reasonable amounts for food and drink for a one week period (seven days). Where the period is longer than a week, the total reasonable amount for the period is calculated by multiplying the weekly amount by the total number of weeks and part thereof. The weekly amounts for food and drink include breakfast, lunch and dinner. The figures cover amounts expended on all meals and drinks in restaurants, hotels and clubs, snacks and take-away food, including alcoholic beverages.

Locations

5. Amounts are shown for the following locations:

- locations within Australia; and
- specified overseas locations (selected countries).

Amount for the period 1 April 2013 to 31 March 2014[2]

6. The reasonable food and drink amount for locations within Australia per week for a single adult for which substantiation is not required, based on salary levels, is as follows:

Table 1: Locations within Australia		
Employee's annual salary – $104,870 or below	**Employee's annual salary – $104,871 – $186,520**	**Employee's annual salary – $186,521 and above**
$179	$212	$250

7. Where the employee is accompanied by other family members, the reasonable food and drink amount per week for the family is worked out by multiplying the amount shown in table 1 by the relevant factor in table 2 below. A person who is 12 years or older at the start of the relevant FBT year is treated as being an adult for the purposes of working out reasonable food and drink amounts:

[2] The amounts that will appear in the table in the final determination will be indexed at the CPI rate.

Table 2	
Family group	**Factor**
Two adults	1.6
Three adults	1.8
One adult and one child	1.3
Two adults and one child	1.7
Two adults and two children	1.8
Two adults and three children	2.1
Three adults and one child	2.1
Three adults and two children	2.4
Four adults	2.4

8. In relation to larger family groups, the reasonable food and drink amount:

- for each additional adult, is an additional 60% of the single adult rate, and
- for each additional child, is an additional 30% of the single adult rate.

Example 1: calculation of reasonable food and drink amount for a family group

9. Jasper, his wife and their two children (both under 12 years of age) relocate to Brisbane from Sydney for a period of 5 months (from 1 May 2013 to 30 September 2013; 21 weeks and 6 days) for Jasper to work on a project for his employer. Jasper receives a LAFHA from his employer. His salary for the 2013-14 year is $120,000.

10. Jasper does not need to substantiate his family's food and drink expenses during the 5 month period if his total expenses do not exceed $8,350 ($382 per week multiplied by 21 $^{6}/_{7}$ weeks). The weekly amount of $382 is calculated by taking the rate from table 1 ($212) and multiplying that by a factor of 1.8 (factor for 2 adults and 2 children from table 2).

11. If Jasper's family's total food and drink expenses for the period exceed $8,350, Jasper will have to substantiate all of the expenses incurred.

Reasonable amounts for food and drink – overseas amounts

12. The reasonable amounts for food and drink while living overseas are shown in Appendix 2, Schedule 1 to this draft Determination.[3] Table 1 of Schedule 1 sets out the cost group to which a country has been allocated. Table 2 of Schedule 1 sets out the reasonable amount for food and drink expenses for each cost group for specified employee salary ranges.

13. If the employee lives away from home in a country that is not shown in Table 1 of Schedule 1, the employee can use the amount for Cost Group 1 in Table 2 for the relevant salary range.

[3] The amounts that will appear in the table in the final determination will be indexed at the CPI rate

Example 2: calculation of reasonable amounts for food and drink – overseas

14. Maria is seconded from Australia to Germany by her employer for 25 weeks, starting work there on 1 April 2013. Maria's annual salary is $191,000 and she receives a LAFHA from her employer for the period of the secondment.

15. Maria does not need to substantiate her food and drink expenses if the total expenses do not exceed $12,975 [$519 per week multiplied by 25 weeks (Schedule 1, Table 1 lists Germany as being in Cost Group 5, and using Table 2, the reasonable amount for food and drink for a person with a salary of $191,000 per year is $519 per week)].

16. If Maria's total food and drink expenses for the period exceed $12,975, Maria will have to substantiate all of the expenses incurred.

Date of effect

17. When the final Determination is issued, it will apply only to the FBT year beginning on 1 April 2013, and not to any later FBT year.

18. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

19. As a transitional measure, for the period from the commencement of section 31G to the end of the 2012-13 FBT year, the rates specified in Taxation Determination TD 2012/5[4] will be accepted for all employees as reasonable amounts under paragraph 31G(1)(b) of the FBTAA for food and drink expenses incurred by an employee receiving a LAFHA fringe benefit.

Commissioner of Taxation
28 September 2012

[4] Taxation Determination TD 2012/5 *Fringe benefits tax: for the purposes of Division 7 of Part III of the Fringe Benefits Tax Assessment Act 1986, what amount represents a reasonable food component of a living away from home allowance for expatriate employees for the fringe benefits tax year commencing on 1 April 2012?*

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.

Background

20. From 1 October 2012, the concessional tax treatment of LAFH allowances and benefits will be limited to those employees (other than those working on a fly-in fly-out or drive-in drive-out basis) for a maximum period of 12 months[5] who:

(a) maintain a home in Australia (at which they usually reside) for their immediate use and enjoyment at all times while they are living away from that home for their work;[6] and

(b) have provided their employer with a declaration about living away from home.[7]

21. Special rules apply to employees who are working on a fly-in fly-out or drive-in drive-out basis.[8] These employees do not have to maintain a home in Australia for their own use for the concessional treatment to apply in relation to the fringe benefits and the concessional treatment is not limited to a period of 12 months. These employees still have to substantiate expenses incurred on accommodation, and food or drink (beyond the Commissioner's reasonable amount), and provide the employer with a declaration relating to living away from home.

22. The taxable value of a LAFHA fringe benefit provided to an employee is calculated as the amount of the fringe benefit reduced by:

- any exempt accommodation component;[9] and
- any exempt food component.[10]

23. For the purposes of any exempt food component, substantiation requirements may need to be met by the employee. If the total of an employee's food or drink expenses exceeds the amount the Commissioner considers reasonable, the substantiation provisions under section 31G of the FBTAA will apply. The exempt food component will be so much of the food and drink expenses (less the applicable statutory food total) that is substantiated by the employee. This draft Determination provides advice specifying the food and drink amounts the Commissioner considers reasonable from 1 April 2013.

24. When setting reasonable amounts the Commissioner does **not** determine the amount of an allowance that an employee receives or an employer pays their employees. The amount of an allowance is a matter to be determined between the employer and the employee, having appropriate regard to industrial laws or requirements.

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[5] See section 31D of the FBTAA.
[6] See section 31C of the FBTAA.
[7] See section 31F of the FBTAA.
[8] See sections 31E and 31A of the FBTAA.
[9] See subsection 136(1) definition 'exempt accommodation component' of the FTBAA.
[10] See section 31H of the FBTAA.

Factors considered in setting the reasonable amounts

25. In considering the approach used to set the reasonable amounts of food and drink expenses for substantiation purposes, a number of factors have been taken into account.

Location

26. Food prices may vary significantly from country to country depending on factors such as population, climate, transport and proximity to produce and larger population centres. In the interests of simplicity, the rates proposed for all Australian locations do not distinguish between different parts of Australia but are based on the average data for capital cities.

Distinction between costs of travelling overnight and living-away-from-home

27. The Commissioner publishes an annual taxation determination which sets out reasonable accommodation, food and drink, and incidental expenses for employees whose travel for work necessitates overnight stays away from home ('reasonable travel allowance amounts'). The most recent determination, which sets amounts for the 2012-13 income year, is Taxation Determination TD 2012/17.[11]

28. The amounts set out in TD 2012/17 are the product of data obtained from independent third parties, and are worked out based on the salary ranges of employees and for a wide variety of locations, including overseas.

29. Employees who travel away overnight for work, as distinct from those who live away from home, ordinarily stay in short-term accommodation which usually has no kitchen or other self-catering facilities. Therefore, they tend to eat out.

30. In comparison, those who live away from home generally find longer term accommodation in which to live (albeit temporarily). Such accommodation ordinarily has kitchen and cooking facilities which enable the employee to cater for himself or herself as they would at their usual place of residence, as well as eating out periodically depending on affordability and access to cafés, restaurants, hotels and fast food outlets.

Previously published rates for expatriate employees

31. The Commissioner previously published annually the 'reasonable food component of a living away from home allowance for expatriate employees' in taxation determinations, which were based on the methodology set out in Miscellaneous Taxation Ruling MT 2040.[12] These were considered in examining potential methods that could be used to calculate reasonable amounts for food and drink.

32. Those taxation determinations were based on amounts from Household expenditure surveys conducted by the Australian Bureau of Statistics. The amounts were indexed annually to take into account movements in the food sub-group of the Consumer Price Index since the relevant survey was completed.

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[11] Taxation Determination TD 2012/17 *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2012-13 income year?*

[12] Miscellaneous Taxation Ruling MT 2040 *Fringe benefits tax: living-away-from-home allowance benefits: reasonable food component for expatriate employees*

33. The Household expenditure surveys show variations in the amounts spent by households on food and drink depending on household income.

34. It is considered both these factors are important and should be taken into account in setting reasonable amounts for food and drink for substantiation purposes.

35. Using publicly available sources, it was considered an appropriate and reasonable approach to:

STEP 1: Work out the percentage that an employee would be expected to spend on food and drink per week while living-away-from-home as a proportion of what they would be expected to spend if they were travelling overnight for work.

This is calculated by dividing (a) by (b)

(a) the reasonable food component of a living away from home allowance for expatriate employees (Taxation Determination TD 2012/5), which represents amounts expected to be spent on food and drink by households on the highest decile (as set out in the latest 2009-10 ABS household expenditure survey), indexed to take into account movements in the food sub-group of the Consumer Price Index since the survey was completed,

(b) reasonable travel allowance amount published in Taxation Determination TD 2012/17, which represents amounts expected to be spent on food and drink by employees who have salaries equivalent to the highest decile and who travel away overnight for work.

STEP 2: Multiply the percentage worked out at **STEP 1** (rounded up to the nearest whole number) by the food and drink amounts set out for employees in the reasonable travel allowance amounts taxation determination for the year, for the various locations and the salary levels shown.

36. The percentage arrived at by applying the approach described in Step 1 was 26%. To validate this percentage, the same process for the 2008-09 to 2010-11 years was undertaken. For each year the percentage arrived at was 26%, except for one year in which it was 25%. Accordingly the rate of 26% is considered appropriate. This was applied against the reasonable travel allowance amounts to establish the reasonable food and drink amounts in Table 1 at paragraph 6.

Appendix 2

SCHEDULE 1

Table 1: Table of Countries

If a country is not listed in Table 1 use the amount in Table 2 for Cost Group 1.

For an explanation of Cost Groups see Table 2: Amounts by cost groups.

Country	Cost Group	Country	Cost Group
Albania	1	Libya	3
Algeria	4	Lithuania	3
Angola	6	Luxembourg	5
Antigua and Barbuda	4	Macedonia	1
Argentina	1	Malawi	2
Austria	5	Malaysia	3
Azerbaijan	4	Mali	4
Bahamas	5	Malta	4
Bahrain	3	Mauritius	3
Bangladesh	2	Mexico	1
Barbados	5	Monaco	6
Belgium	5	Morocco	3
Bermuda	5	Mozambique	1
Bolivia	1	Myanmar	3
Bosnia	2	Namibia	3
Brazil	5	Nepal	2
Brunei	2	Netherlands	5
Bulgaria	3	New Caledonia	5
Burkina Faso	3	New Zealand	4
Cambodia	1	Nicaragua	1
Cameroon	4	Nigeria	4
Canada	4	Norway	6
Chile	2	Oman	5
China (includes Macau & Hong Kong)	4	Pakistan	1
Colombia	4	Panama	2
Congo Democratic Republic	3	Papua New Guinea	4
Cook Islands	4	Paraguay	1
Costa Rica	1	Peru	3
Cote D'Ivoire	5	Philippines	3
Croatia	4	Poland	4
Cuba	2	Portugal	4
Cyprus	4	Puerto Rico	3

Czech Republic	4	Qatar	4
Denmark	6	Romania	3
Dominican Republic	3	Russia	5
East Timor	2	Rwanda	2
Ecuador	2	Saint Lucia	3
Egypt	2	Saint Vincent	2
El Salvador	1	Samoa	4
Eritrea	1	Saudi Arabia	2
Estonia	4	Senegal	3
Ethiopia	1	Serbia	2
Fiji	2	Sierra Leone	2
Finland	5	Singapore	5
France	5	Slovakia	4
Gabon	5	Slovenia	3
Gambia	2	Solomon Islands	2
Georgia	2	South Africa	2
Germany	5	Spain	4
Ghana	3	Sri Lanka	1
Gibraltar	4	Sudan	2
Greece	4	Surinam	2
Guatemala	2	Sweden	5
Guyana	2	Switzerland	6
Hungary	3	Syria	3
Iceland	5	Taiwan	3
India	3	Tanzania	2
Indonesia	3	Thailand	3
Iran	2	Tonga	3
Irish Republic	5	Trinidad and Tobago	4
Israel	5	Tunisia	2
Italy	5	Turkey	4
Jamaica	3	Uganda	1
Japan	5	Ukraine	3
Jordan	4	United Arab Emirates	4
Kazakhstan	3	United Kingdom	5
Kenya	3	United States of America	4
Korea Republic	5	Uruguay	2
Kuwait	4	Vanuatu	4
Laos	1	Venezuela	5
Latvia	4	Vietnam	1
Lebanon	4	Zambia	3

Table 2: Amounts by cost groups

Cost Group	Salary $104,870 and below	Salary $104,871 to $186,520	Salary $186,521 and above
	Food and drink	Food and drink	Food and drink
1	$100	$137	$173
2	$155	$200	$255
3	$200	$246	$309
4	$237	$309	$373
5	$337	$419	$519
6	$400	$510	$601

Note: these amounts are determined by the Commissioner solely as the amounts that will be accepted for the exception from the requirement to obtain written evidence for substantiation purposes.

Appendix 3 – Your comments

37. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

38. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- be published on the ATO website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	**26 October 2012**
Contact officer:	**Steve Mulcahy**
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References

Previous draft:

Not previously issued

Related Rulings/Determinations:

MT 2040; TD 2012/17; TD 2012/5; TR 2006/10

Subject references:

- FBT food component
- food and drink
- living-away-from-home allowance fringe benefits
- living-away-from-home food fringe benefits
- substantiation

Legislative references:

- FBTAA 1986 Part III Div 7
- FBTAA 1986 31A
- FBTAA 1986 31C
- FBTAA 1986 31D
- FBTAA 1986 31E
- FBTAA 1986 31F
- FBTAA 1986 31G
- FBTAA 1986 31G(1)(b)
- FBTAA 1986 31G(2)
- FBTAA 1986 31H
- FBTAA 1986 136(1)

ATO references
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