MT 2030 - Fringe benefits tax : living-away-from-home allowance benefits

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TAXATION RULING NO. MT 2030 (as amended 7/10/86)

FRINGE BENEFITS TAX : LIVING-AWAY-FROM-HOME ALLOWANCE BENEFITS

F.O.I. EMBARGO: May be released

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I 1209098	FRINGE BENEFITS TAX	FRINGE BENEFITS TAX ASSESSMENT ACT : S.30, S.31, S.136

OTHER RULINGS ON TOPIC

PREAMBLE Section 136 of the Fringe Benefits Tax Assessment Act 1986 (the Act) defines a living-away-from-home allowance benefit as a benefit referred to in section 30 of the Act. Section 30 sets out the circumstances in which an allowance paid by an employer to an employee will qualify as a living-away-from-home allowance.

2. A living-away-from-home allowance exists where it is reasonable to conclude from all the surrounding circumstances that some or all of the allowance is in the nature of compensation to the employee for additional expenses incurred, or additional expenses incurred and other disadvantages suffered, because the employee is required to live away from his or her usual place of residence in order to perform the duties of employment. Additional expenses do not include expenses for which the employee would be entitled to an income tax deduction.

3. The whole or such part of the allowance as satisfies these tests is a living-away-from-home allowance fringe benefit, the taxable value of which is calculated in accordance with the rules contained in section 31. The taxable value is so much of the allowance as qualifies as a living-away-from-home allowance fringe benefit reduced by either or both of two components being the "exempt accommodation component" and the "exempt food component". Both of these terms are defined in section 136 of the Act.

4. The exempt accommodation component is so much of the allowance as it is reasonable to conclude is in the nature of compensation for additional expenses on accommodation that the employee could reasonably be expected to incur.

5. The exempt food component is so much of the allowance as is reasonable compensation for additional expenses on food. It is arrived at by first ascertaining the "food component" of the allowance, as defined in section 136. The food component is so much of the allowance as is in the nature of compensation for

expenses the employee could reasonably be expected to incur on food and drink.

6. If the amount of the food component is set with the intention that it cover all food costs of the employee and (where applicable) his or her family, the exempt food component is the excess of that component over what the employee would normally expend on food if he or she were not living away from home. Those normal home food costs, referred to as the "statutory food amounts", are set in the Act at $42 per week for each adult and $21 per week for each child who is under 12 at the beginning of the relevant year of tax. Thus, if an employee with a wife and one child under 12 is receiving $130 a week to cover all food costs, the exempt food component is $130 reduced by $105, i.e., $25 of the allowance is exempt from fringe benefits tax.

7. If the food component of the allowance has been set to reflect only additional costs by reducing the allowance for home food costs, and the amount of the reduction on this account equals or exceeds the statutory food amounts, the amount of the net food component is the exempt food component.

8. If, however, the estimated home food costs taken into account in setting the allowance are less than the statutory food amounts, the food component reduced by the amount by which the statutory food amounts exceed the estimated home food costs is the exempt food component. For example, if the food component for a single person has been set at $100 after allowing for estimated home food costs of $30, the exempt food component would be $100 - ($42-30), i.e., $88.

9. The taxable value of a living-away-from-home allowance benefit may not be reduced on account of an exempt accommodation component or exempt food component unless the employee gives the employer a declaration, in a form approved by the Commissioner of Taxation, that sets out particulars of the employee's usual place of residence and actual place of residence for the period during which the living-away-from-home allowance was paid in the year of tax. The declaration is generally required by the date of lodgment of the employer's relevant fringe benefits tax return. However, for the purpose of quarterly instalment statements of fringe benefits tax for the quarters ending on 30 September and 31 December 1986 of the transitional year, the declaration is required by the date of lodgment of those statements due on 28 October 1986 and 28 January 1987 respectively.

10. This ruling contains guidelines for determining the circumstances in which an allowance paid to an employee is to be treated as a living-away-from-home allowance. It also indicates the conditions to be satisfied in order that an employee may give an employer a declaration of the kind required to establish that the employee was living away from his or her usual place of residence during the period when the allowance was paid. Finally, the ruling explains the principles that distinguish between a travelling allowance and a living-away-from-home

allowance.

RULING Usual place of residence

11. As mentioned, section 30 specifies that the elements of a living-away-from-home allowance paid by an employer to an employee are that -

- it is in the nature of compensation for additional expenses incurred by the employee or additional expenses and other disadvantages suffered; and

- those additional expenses and other disadvantages are due to the employee being required to live away from his or her usual place of residence in order to perform the duties of his or her employment.

"Place of residence" is defined in section 136. It means, in relation to a person, a place at which the person resides or a place at which the person has sleeping accommodation, whether on a permanent or temporary basis and whether or not on a shared basis.

12. A place of residence of a person is thus the place where he or she resides or has some form of sleeping accommodation. The customary meaning of the word "reside" is to dwell permanently or for a considerable time, or have one's abode for a time. In turn "residence" means the place, especially the house, in which one resides; a dwelling place; or a dwelling.

13. Various decisions of Taxation Boards of Review relating to the former section 51A of the Income Tax Assessment Act 1936, which authorised deductions for employees being paid a living-away-from-home allowance, deals with whether a particular employee was living away from his "usual place of abode" in order to perform his duties as an employee. In seeking assistance from the decisions in applying relevant provisions of the Act, it is considered that the words "residence" and "abode" may be taken as being synonymous. Accordingly, the decisions are useful in establishing principles for determining whether or not an employee may be regarded as living away from his or her usual place of residence for fringe benefits tax purposes.

14. As the decisions illustrate, the question whether an employee is living away from his or her usual place of residence normally involves a choice between two places of residence, i.e., the place where the employee is living at the time or some other place. A person is regarded as living away from a usual place of residence if, but for having to change residence in order to work temporarily for his employer at another locality, the employee would have continued to live at the former place. It would be relevant in reaching that view that there is an intention or expectation of the employee returning to live at the former place of residence on cessation of work at the temporary job locality. This would be relevant even if the employee is living in temporary quarters close to a temporary

job site. Reference is made to the following decisions by way of illustration.

A Journalist transferred between capital cities

15. The facts of Board of Review Case 88 1 TBRD 353, were that the taxpayer had been compulsorily transferred in his work from one capital city to another, a transfer he was bound to accept under the terms of his employment. The taxpayer brought his family to live with him in the new city. The Board of Review found, on the facts, that he had changed his place of abode and was not living-away-from-home.

B Factory technician in a country town

16. The taxpayer in Case B47 2 TBRD 201, maintained a home in Perth where his wife lived for a period of 6 years while he worked in a town 130 miles away, staying in hotel accommodation and returning home each weekend and for holidays. The Board of Review found that his home in Perth was more permanent and was his "usual" place of abode.

C International airline pilot

17. An allowance paid to the taxpayer to enable him to maintain his standard of living while on a 2 year posting to London was accepted by the Board of Review in this case - 12 CTBR (NS) Case 106 - as a living-away-from-home allowance. The Board found persuasive in concluding that the taxpayer was living away from his usual place of abode that the overseas appointment was of fixed maximum duration, that he would ordinarily have continued to live at his Australian home but for the posting and that he expected to return there to live at the end of the posting.

D Construction worker : transitory lifestyle

18. In another case decided by a Board of Review, S.27 85 ATC 270, although the taxpayer was paid what was described on his group certificate as a living-away-from-home allowance, the Board found that he had no usual place of abode other than the flat, house or residence where he ate and slept in proximity to his work place. The construction site was near a country town 200 kilometres from a capital city. Because of what it found to be "the transitory nature of the taxpayer's lifestyle" - he had changed addresses 3 or 4 times to change jobs in the previous 8 or 9 years and had abandoned the flat he had lived in prior to his construction site employment - the Board did not accept that he was living away from his usual place of abode.

19. An underlying theme of the cases is a general presumption that a person's usual place of residence will be close to the place where he or she is permanently employed. Correspondingly, an employee who changes his or her place of residence because of a change in the location of a permanent job, whether by reason of a transfer with the same employer or a

change of employment, would not usually be living away from home on moving to a new place of residence close to the new job location. That would be the case notwithstanding that the new place of residence was a temporary one pending the obtaining of suitable long term accommodation.

20. Employees who move to a new locality to take up a position of limited duration with an intention to return to the old locality at the end of the appointment would generally be treated as living away from their usual place of residence. For example, a construction worker having to travel to a construction site to live and work would be in this category unless he had abandoned the former place of residence upon moving to the locality of the site. A case of the latter situation would be where the employee decided to permanently leave the former home, e.g., if a resident of Sydney, on obtaining a job for two years on a construction site in a remote part of Western Australia, decided to "sell up" in Sydney and move permanently to Western Australia to live.

21. Some employees may be unable to establish that they are living away from their usual place of residence because the transitory nature of their lifestyle means that their usual place of residence is wherever they happen to sleep at night. Employees who follow the job, say, from construction site to construction site and have no permanent place of residence would fit into this particular category.

22. Examples of employees on appointments of finite duration who will generally be living away from their usual place of residence are foreign nationals employed in Australia on a temporary basis and Australian residents (e.g., export consultants, diplomats, immigration officials, etc.) stationed in a foreign country for a time. Provided the appointment is for a limited period and the employee can be expected in the normal course to return to the same city or district of the home country to live, the employee may be treated as living away from his or her usual place of residence.

23. The same applies in a case where an employee transfers to a new locality within Australia on an appointment of fixed duration provided the permanent job location does not change, e.g., under an arrangement where an employee transfers to a branch office of the employer in another State for a two or three year term on the basis of return to the permanent position at the end of that time. The employee would be regarded as living away from the usual place of residence provided he or she intends to return there at the end of the term transfer.

24. Subject to the qualifications indicated in earlier paragraphs, it would normally follow that employees in the following kinds of situations would, as specific examples, be regarded as living away from a usual place of residence:

- construction workers living in camps, barracks or huts;

- oil industry employees living on offshore oil rigs;

- marine industry employees living on board vessels; and

- trainee-employees (e.g., trainee teachers) living away from home in order to undergo training courses of extended duration. (Employees attending short-term staff training courses would generally be treated as travelling in the course of their employment, as explained in paragraphs 35-43.)

25. On the other hand, certain kinds of occupations have a career structure which brings with it the necessity to accept regular transfers from one location to another, e.g., police officers, school teachers, members of the defence force, bank employees, etc. Employees in these situations will generally not be treated as living away from home when they move on transfer to live in proximity to the current work place. That will be the case even if the employee owns a home elsewhere in which he or she eventually intends to reside.

Additional expenses on food and accommodation

26. The question has been asked whether, before an allowance paid to an employee may qualify as a living-away-from-home allowance, the employee must actually have incurred additional expenses on accommodation and food and drink, etc.

27. It is in the nature of an allowance that it will not ordinarily be a precise measure of actual expenses of the recipient. Rather, as mentioned in paragraph 2, a living-away-from-home allowance is an allowance in the nature of compensation for additional expenses incurred, or additional expenses incurred and other disadvantages suffered, by an employee through having to live away from his or her usual place of residence.

28. That is, an employer will pay an allowance - perhaps on the basis of a survey of accommodation and living costs at the employee's temporary work location - in order to compensate the employee for accommodation and additional living expenses that the employee might be expected to incur. The allowance may also contain a component to compensate for general disadvantages such as the employee having to put up with isolation, harsh climatic conditions, changed lifestyle etc. Where there are a number of employees, e.g., accommodation at or near a construction site, identical amounts are often paid to employees on the same wage scale without regard being paid to any individual employee's actual outlays.

29. Another question that has been raised is the extent to which it is necessary, before an employer may treat an allowance as a living-away-from-home allowance, to establish whether the employee does in fact have a residence at a place other than the locality at which the employee is temporarily residing.

30. The Act does not express a requirement, for a person to

qualify as having a "usual place of residence", that it be established that he or she actually have such a residence. If the employee is one of a class of employees, (e.g., diplomats posted overseas, foreign experts employed in Australia, construction workers at a remote construction site, etc.) who could reasonably be expected by the employer to satisfy the tests set out in paragraphs 11-25 of living away from the usual place of residence, and the allowance is paid to compensate for additional costs (as explained in paragraph 28) that the employees could be expected to incur through having to live away from home, the allowance will constitute a living-away-from-home allowance in terms of section 30.

31. As mentioned in paragraph 9, however, it is necessary in order that the taxable value of a living-away-from-home allowance may be reduced by the exempt accommodation component and the exempt food component, that the employer obtain from the employee a declaration, in an approved form, as to the particulars of the employee's usual place of residence and actual place of residence for the part of the fringe benefits tax year during which the living-away-from-home allowance was paid.

32. An approved format for the declaration is as follows:

I, ...declare that -

. during the period .....19....to .....19... I was required to live away from my usual place of residence in order to perform the duties of my employment and that during that period my usual place of residence was.....
.....
(state place where you usually live)

and the nature of that residence was.....
.....; and

. during the period the place at which I actually resided was .....
.....
(state all addresses at which you resided while away from home in the period stated above)

Signature .....
Date .....

33. While an employee eligible to make such a declaration would ordinarily be able to indicate that residential premises are being kept at the place where he or she usually resides, that may not always be the case. For example, for financial reasons an expatriate coming to Australia to work for a limited but substantial period may have terminated the lease on a house, flat or apartment where he or she lived in the home country intending to release it or lease another home on return. Similarly, a home could have been sold with the intention of acquiring another. Provided the tests set out in

paragraphs 11-25 are satisfied and the expatriate intends to return to the same city or district to live upon resuming residence in the home country, he or she would be entitled to declare that his or her usual place of residence is that city or district.

34. Similar principles would apply in relation to say an Australian resident temporarily employed abroad or an employee transferred for a fixed term from one State in Australia to another or from a city to a rural district, or vice versa.

Distinction between travelling and living-away-from-home allowances

35. Because they are subject to different taxation treatments, it is important that living-away-from-home allowances are distinguished from travelling allowances paid to employees. Living-away-from-home allowances are taxable fringe benefits in accordance with the rules explained in paragraphs 3-8, whereas travelling allowances form part of the employee's assessable income against which appropriate deductions may be allowed for the cost of meals, accommodation and incidental expenses incurred while the employee is travelling in the course of carrying out the duties of employment.

36. When an employee is travelling on business on behalf of an employer, expenses of travel are incidental to the proper carrying out of the employment function and do not have the character of being private or domestic expenses. As it was stated in Case No. B 84, 2 TBRD 390, " ... where the employment actually involves the duty of travelling and therefore staying away from home, the extra expenses of living at hotels, etc., together with costs of conveyance, etc., are deductible as, to that extent, they cease to be of a private or domestic nature."

37. Unlike living-away-from-home allowances, there is generally no change of employment location in relation to the payment of travelling allowances. While the expenses that they are intended to compensate for may be similar - meals and accommodation, etc., - the circumstances in which the allowances are paid are essentially different.

38. A living-away-from-home allowance is paid where the employee has moved and taken up temporary residence away from his or her usual place of residence so as to be able to carry out employment duties for a time at the new (but temporary) workplace. A travelling allowance, on the other hand, is paid because the employee is travelling in the course of performing his or her job. In the former case, there is a change of job location and an actual change of residence to a place at or near that location. In the latter, the employee does not change job locations but simply travels in order to carry out the requirements of the job.

39. Travelling allowances are often paid for comparatively short periods, exceptions being allowances paid where the

employment is inherently itinerant in nature or where travelling is a regular incident of the occupation, e.g., commercial travellers, travelling entertainers, etc. Academics studying on sabbatical leave have also been held to be travelling in the course of their employment rather than living away from home and thus could receive a travelling allowance over an extended period of time.

40. The nature of an allowance is not to be determined by reference solely to the period for which it is paid. As mentioned, a travelling allowance might be paid to a commercial traveller almost continuously throughout the year whereas another employee may receive a living-away-from-home allowance only for a month or so.

41. There will be circumstances, however, when an employee is away from his or her home base for a brief period in which it may be difficult to conclude whether the employee is living away from home or travelling. As a practical general rule, where the period away does not exceed 21 days the allowance will be treated as a travelling allowance rather than a living-away-from-home allowance. For longer periods, it will be necessary to determine the nature of the allowance with the guidance provided by this Ruling.

42. An employee travelling in the course of employment ordinarily would not be accompanied by his or her spouse and family. On the other hand, it is more common for the spouse and children of an employee who has temporarily changed job locations and is living away from the usual place of residence to have his or her family living at the new location.

43. That is not to say that an unaccompanied employee should always be treated as travelling and an accompanied one regarded as living away from home. While those factors might be indicative of the nature of the employee's absence, the tests for determining the purpose of an allowance are as previously explained. To illustrate the point, an employee who lives during the working week in the country town where his permanent job is located but who travels perhaps several hundred kilometres to live during weekends with his wife and children in the family home located in another town would be, during the week, living away from home. So, too, would a married public servant based in a capital city who is seconded for six months to carry out a special task interstate in circumstances where his family stays behind in the family home. It is not where the family is that determines the nature of the allowance but where the employee is in relation to the usual place of residence and whether, on the facts, the employee can be said to be travelling on the job or living away from home.

Non-cash living-away-from-home fringe benefits

44. Instead of paying a cash living-away-from-home allowance, employers may provide equivalent benefits in a non-cash form where an employee is living away from home.

45. For example, the employee's actual accommodation expenses may be reimbursed by the employer, or the employee and (where applicable) the employee's family may be permitted to occupy residential accommodation owned by the employer.

46. In such circumstances, section 21 of the Act would operate to exempt the reimbursement which would otherwise be an expense payment fringe benefit taxable in accordance with section 23, and sub-section 47(5) would operate to exempt the accommodation which would otherwise be a residual fringe benefit taxable in accordance with section 49 or 51.

47. The employer may also reimburse an employee's actual food costs or provide the employee and (where applicable) the employee's family with food. The reimbursement would constitute an expense payment fringe benefit while the provision of food would be a property fringe benefit. In either circumstance, however, section 63 applies to reduce the taxable value of both kinds of fringe benefit to the extent that they would exceed the statutory food amounts discussed in paragraph 6. For example, if an employee living away from home with his wife and one child, under 12, expended $150 per week on food and had that sum reimbursed by his employer, the taxable value of the resultant expense payment fringe benefit would be reduced by $45, being the difference between the reimbursement ($150) and the statutory food amounts ($42 + $42 + $21).

48. A pre-condition for the application of section 23, sub-section 47(5) and section 63 in the manner described above is that the employee gives to the employer a declaration of the kind specified in paragraph 32 by the date of lodgment of the employer's annual fringe benefits tax return or, where applicable, the date of lodgment of instalment statements for the transitional year quarters ending on 30 September and 31 December 1986.

COMMISSIONER OF TAXATION
30 September 1986