TD 2013/4 - 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 fringe benefits tax year commencing on 1 April 2013

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

This document has changed over time. This is a consolidated version of the ruling which was published on *27 February 2013*

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 fringe benefits tax year commencing on 1 April 2013

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Ruling

1. This Determination sets out the amounts that 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 for the fringe benefits tax (FBT) year commencing on 1 April 2013.

2. Where the total of food and drink expenses for an employee (including eligible family members) 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
- substantiated in accordance with the requirements in subsection 31G(2).

3. 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 are substantiated by the employee. Where substantiation is required, all food and drink expenses must be substantiated before they can be treated as an exempt food component. Where food and drink expenses exceed the reasonable amount, and are not substantiated in full, the reasonable amount will be exempt, but the employer will be subject to FBT in respect of any excess paid to the employee over the reasonable amount.

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

Types of expenses

4. This Determination sets out reasonable amounts for food and drink for a LAFHA 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 food and drink, including meals in restaurants, hotels, clubs etc, fast food and takeaway food and alcoholic beverages.

Locations

5. Amounts are shown for the following locations:

- locations within Australia; and
- overseas locations.

Reasonable amount for food and drink – within Australia

6. Table 1 below sets out the weekly amounts the Commissioner considers to be reasonable food and drink amounts for a LAFHA paid to employees living away from home within Australia for the FBT year commencing on 1 April 2013.[1] These amounts are for the total of food or drink expenses and include any amounts that may have been allowed for home consumption.

Table 1: Amounts of reasonable food and drink – within Australia

	Per week
One adult	$233
Two adults	$350
Three adults	$467
One adult and one child	$292

[1] The amounts have been calculated by reference to the most recent Household Expenditure Survey (HES) conducted by the Australian Bureau of Statistics. In this case that is the 2009-10 HES. The 2009-10 HES figures have been indexed to take into account movements in the food sub-group of the Consumer Price Index since the survey was completed.

	Per week
Two adults and one child	$409
Two adults and two children	$468
Two adults and three children	$527
Three adults and one child	$526
Three adults and two children	$585
Four adults	$584

('Adults' for this purpose are persons who had attained the age of 12 years *before* the beginning of the FBT year).

7. In relation to larger family groups, the Commissioner accepts the reasonable food and drink amount based on the above figures plus:

- $117 for each additional adult; and
- $59 for each additional child.

Reasonable amounts for food and drink – overseas

8. The tables below set out the weekly amounts the Commissioner considers to be reasonable food and drink amounts for a LAFHA paid to employees living away from home outside Australia for the FBT year commencing 1 April 2013 to 31 March 2014. Table 2 sets out the cost group to which a county has been allocated. Table 3 sets out the reasonable amount for food and drink expenses for each cost group.

9. If the employee lives away from home in a country that is not shown in Table 2 the employee can use the amount for Cost Group 1 in Table 3.

Table 2: List of Countries

If a country is not listed in this table use the amount in Table 3 for Cost Group 1.

For the amounts that apply to each cost group see Table 3.

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

Country	Cost Group	Country	Cost Group
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

Country	Cost Group	Country	Cost Group
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 3: Amounts by cost groups

Cost Group	Food and drink for one adult
1	$137
2	$201
3	$246
4	$310
5	$419
6	$510

10. Where the employee is accompanied by other family members while overseas, the reasonable food and drink amount per week for the family is worked out by multiplying the amount shown in Table 3 by the relevant factor in Table 4 below.

Table 4: Factors to apply for family groups – overseas

Family group	Factor
Two adults	1.5
Three adults	2.0
One adult and one child	1.25
Two adults and one child	1.75
Two adults and two children	2
Two adults and three children	2.25
Three adults and one child	2.25
Three adults and two children	2.5
Four adults	2.5

11. In relation to larger family groups, the Commissioner accepts the reasonable food and drink amounts can be increased:

- for each additional adult by a further 50% of the relevant single adult rate in Table 3; and
- for each additional child by a further 25% of the relevant single adult rate in Table 3.

Example 1: calculation of reasonable amounts for food and drink – within Australia

12. *Jasper, his wife and their two children (both under 12 years of age) temporarily move 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.*

13. *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 $10,230 ($468 per week multiplied by 21 $^{6}/_{7}$ weeks).*

14. *If Jasper's family's total food and drink expenses for the period exceed $10,230, Jasper will have to substantiate all of the expenses incurred, or his employer will be liable to FBT on the amount of LAFHA paid to Jasper that is in excess of $10,230.*

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

15. *Maria is seconded from Australia to Germany by her employer for 25 weeks, starting work there on 1 April 2013. Maria agrees to temporarily move with her husband and child. Maria receives a LAFHA from her employer for the period of the secondment.*

16. *Maria does not need to substantiate her food and drink expenses if the total expenses do not exceed $18,350 [$734 per week multiplied by 25 weeks (Table 2 lists Germany as being in Cost Group 5, and using Table 3, the reasonable amount for food and drink is $419 per week. A factor of 1.75 for 2 adults and 1 child is applied to this rate as per Table 4)].*

17. *If Maria's total food and drink expenses for the period exceed $18,350, Maria will have to substantiate all of the expenses incurred, or her employer will be liable to FBT on the amount of LAFHA paid to Maria that is in excess of $18,350.*

Date of effect

18. This Determination applies to the FBT year commencing on 1 April 2013. 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 FBT year commencing on 1 April 2013, where an employee and employer have an existing employment agreement[2] in force as at 27 February 2013 that specifies a rate in Taxation Determination TD 2012/5,[3] and that employment agreement is not varied in a material way or renewed, the rates in TD 2012/5 will continue to be accepted by the Commissioner 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.[4]

Commissioner of Taxation
27 February 2013

[2] An employment agreement includes an employment contract, enterprise agreement, award, workplace determination, Australian workplace agreement, and collective agreement. This also includes a new employee who becomes subject to an pre-existing agreement, award, or determination which applies to an employer.

[3] 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?*. Taxation Determination 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* applied the rates in TD 2012/5 to the 2012-13 FBT year as a transitional measure.

[4] The Explanatory Memorandum to Taxation Laws Amendment (2012 Measures No. 4) Bill 2012 stated at paragraph 1.67:

> For the purposes of the transitional rules, an annual salary review is not a material variation to an employment arrangement. Changes to an employment arrangement to reflect other annual adjustments, such as the food component of a LAFHA, do not constitute a material variation. In the case of promotions, it will be a matter of fact depending on the circumstances in each case. For example, if an employee is promoted and the underlying terms of their employment arrangement do not change, there has not been a material variation in the employment arrangement. However, if there are fundamental differences to the employment arrangement arising from the promotion, the employment arrangement has been the subject of a material variation.

Appendix 1 – Explanation

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

Background

20. From 1 October 2012, the concessional tax treatment of LAFH allowances and benefits will apply for a maximum period of 12 months[5], to those employees who:

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

21. An exception to the rule in paragraph 20 above applies 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. Where the LAFHA exceeds the amount the Commissioner considers reasonable, 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, or the employer will be liable to FBT on the amount of LAFHA paid in excess of the reasonable amount.

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 for which a LAFHA is received 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 are substantiated by the employee. Where substantiation is required, all food and drink expenses must be substantiated before they can be treated as an exempt food component. Where food and drink expenses exceed the reasonable amount, and are not substantiated in full, the reasonable amount will be exempt, but the employer will be subject to FBT in respect of any excess paid to the employee over the reasonable amount.

24. This Determination specifies the food and drink amounts the Commissioner considers reasonable for the FBT year commencing on 1 April 2013. These amounts are for the total of food or drink expenses and include any amounts that may have been allowed for home consumption.

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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 FBTAA.
[10] See section 31H of the FBTAA.

25. In setting these 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. The Commissioner determines a reasonable amount for food and drink expenses for which substantiation of expenses is not required.

Factors considered in setting the reasonable amounts – within Australia

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

Location

27. For the rates within Australia (as set out in Table 1) the Household Expenditure Survey (HES) conducted by the Australian Bureau of Statistics (ABS) takes into account the expenditure of households in urban and rural areas covering about 97% of the population.

28. Accordingly, the reasonable rates that have been adopted for these purposes do not distinguish between remote and non-remote areas in Australia as the rates are based on expenditure information collected throughout the whole of Australia.

Household expenditure survey

29. In determining the reasonable amounts for food and drink for substantiation purposes for employees living away from home in Australia, reference was made to the publicly available 2009-10 HES. Included in the HES were weekly amounts expended on food and drink, including meals in restaurants, hotels, clubs, etcetera, fast food and takeaway food and alcoholic beverages for households falling within different income quintiles.

30. The HES food and drink expenditure (including alcoholic beverages) for households in the highest income quintile has been adopted.[11] The HES amounts have been indexed to take into account movements in the food sub-group of the Consumer Price Index (CPI) since the survey was completed, to determine the reasonable amounts for food and drink for FBT substantiation purposes.[12]

31. In setting the reasonable amounts for food and drink for substantiation purposes for employees living away from home within Australia, the Commissioner has adopted a single amount for all such employees irrespective of their individual income. The highest household income quintile has been adopted for this purpose as employees in receipt of a living-away-from-home allowance will often incur higher food and drink costs.

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[11] See Australian Bureau of Statistics, *2009-10 Household Expenditure Survey 6530.0*, Canberra, 2011; page 32. Table: Gross Income Quintile, Household expenditure, column: *Highest*, Broad expenditure groups: *Food and non-alcoholic beverages*, and *Alcoholic beverages* ($328 + $61 = $389). The average number of persons in a household in the highest income quintile is 3.4. That amount (as indexed by the CPI) has been adopted and used as the starting point for calculating the rate for one adult to which factors have been applied to calculate rates for larger family groups in Table 1.

[12] See the *ABS Consumer Price Index 6401.0 Dec Qtr 2012*.The amount of $389 has been indexed to $407.

32. In Miscellaneous Taxation Ruling MT 2040[13] the highest household income *decile* was chosen from the HES. However, this figure is not publicly available and therefore, in the interests of a transparent methodology, the Commissioner has adopted the highest publicly available figure (being the highest *quintile* of the HES). While this has resulted in a decrease in the reasonable amount for the FBT year commencing 1 April 2013 compared to that stated in TD 2012/D8 (subject to the transitional arrangement set out in paragraph 19), with indexation this amount would be expected to increase in future FBT years.

33. In MT 2040 the factor to be applied to:

(a) a household of two adults and one child was 1.8 of the one adult rate;

(b) a household of two adults was 1.6 of the one adult rate; and

(c) each additional child under 12 years of age was 0.5 of the additional adult rate.

34. In the interests of consistency those factors have been modified and applied to establish the relationships in Table 1 and Table 4. The factors adopted (subject to rounding) are:

(a) a household of two adults and one child is 1.75 of the one adult rate;

(b) a household of two adults is 1.5 of the one adult rate; and

(c) each child under 12 years of age is 0.5 of the additional adult rate.

35. As a result, the same rates and increments apply consistently to calculate the rate for each lesser or additional adult and child within Australia and overseas. The indexed amount derived from the HES has been divided by 1.75 to determine the rate for a single adult, and the factors have then been applied to the single adult rate to determine the amounts for larger family groups set out in Table 1.

Reasonable amounts for food and drink – overseas

36. Food prices may vary significantly from country to country and within countries depending on factors such as population, climate, transport and proximity to produce and larger population centres. There is no comparable data available for overseas locations to that contained in the HES conducted by the ABS.

37. However, 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.[14]

38. 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.

[13] Miscellaneous Taxation Ruling MT 2040 *Fringe benefits tax: living-away-from-home allowance benefits: reasonable food component for expatriate employees*.
[14] Taxation Determination TD 2012/17; *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2012-13 income year?*

39. For the rates that have been adopted for reasonable food and drink expenditure for a single adult while living away from home in an overseas location as set out in Table 3, reference was made to the material published in TD 2012/17. The table of countries and cost groupings set out in Table 2 were also taken from TD 2012/17. Further, consideration was given to the previous annual Taxation Determinations series issued by the Commissioner which set out reasonable food components for expatriate employees coming to Australia. Those previous annual Taxation Determinations were based upon the methodology set out in MT 2040.

40. In calculating the reasonable overseas rates it was considered an appropriate and reasonable approach to:

> 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 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 HES, indexed to take into account movements in the food sub-group of the Consumer Price Index since the survey was completed,
>
> (b) the reasonable travel allowance amount published in 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.

41. The percentage arrived at by applying the above approach was 26%. To validate this percentage, the same process for the 2008-09 to 2010-11 years was undertaken. For 2 of the years the percentage arrived at was 26%, and for one year it was 25%. Accordingly the rate of 26% was considered appropriate.

42. To arrive at the overseas reasonable rates in the different cost groups set out in Table 3, the rate of 26% was then applied to the rate for meals (not including incidentals) as shown in Table 2, mid-range salary grouping, of TD 2012/17 and multiplied by 7 to get the weekly amount. The factors at Table 4 are applied to the appropriate single adult rate shown in Table 3 where the employee is accompanied by other family members while overseas.

43. In setting the reasonable amounts for food and drink for substantiation purposes for employees living away from home in an overseas location, the Commissioner has adopted a single amount for all such employees irrespective of their individual income. The mid-range salary grouping from Table 2 of TD 2012/17 has been adopted for this purpose as it can be accepted that employees in receipt of a living-away-from-home allowance will often incur higher food and drink costs but will not always be in receipt of salary above $186,521.

References

Previous draft:

TD 2012/D8

Related Rulings/Determinations:

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

Subject references:

- FBT food component
- food & 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)

Other references:

- Explanatory Memorandum to Taxation Laws Amendment (2012 Measures No.4) Bill 2012

ATO references

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