PCG 2021/3 - Determining if allowances or benefits provided to an employee relate to travelling on work or living at a location - ATO compliance approach

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Practical Compliance Guideline

Determining if allowances or benefits provided to an employee relate to travelling on work or living at a location – ATO compliance approach

Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.

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What this Guideline is about

1. This Guideline outlines the ATO's compliance approach to determining if employees in certain circumstances are travelling on work[1] or living at a location away from their normal residence[2] (living at a location).[3] This Guideline should be read in conjunction with Taxation Ruling TR 2021/4 *Income tax and fringe benefits tax: employees: accommodation and food and drink expenses, travel allowances, and living-away-from-home allowances*.[4]

[1] Paragraphs 11 and 17 to 24 of TR 2021/4 contain information about when an employee is travelling on work.
[2] The term 'normal residence' is used for fringe benefits tax (FBT) purposes – see section 30 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and the definition in subsection 136(1) of the FBTAA. For the purposes of this Guideline, the term 'normal residence' is used interchangeably with the term 'home'.
[3] Paragraphs 39 to 79 of TR 2021/4 contain information about when an employee is living at a location.
[4] TR 2021/4 provides guidance on when an employee can deduct accommodation and food and drink expenses under section 8-1 of the *Income Tax Assessment Act 1997*, the FBT implications where an employee is reimbursed for accommodation and food and drink expenses or where the employer provides or pays for these expenses, and the criteria for determining whether an allowance is a travel allowance or a living-away-from-home allowance (LAFHA) benefit.

2. In order to determine the nature of an allowance paid, employers are required to consider all relevant circumstances to determine whether the employee is travelling on work or living at a location. The nature of an allowance is not to be determined by reference solely to its name or the period for which it is paid.[5] As such, there will be circumstances in which it may be difficult for an employer to conclude whether an employee is travelling on work or living at a location.

3. This Guideline is focused on providing practical guidance to assist in determining whether:

- an allowance paid by an employer to an employee is paid for
  - travelling on work, which will be a travel allowance that is assessable to an employee and will not incur FBT[6], or
  - living at a location which may be a LAFHA benefit[7], and
- amounts reimbursed or paid by an employer would have been deductible to the employee had they purchased the goods or services (that is, it would be otherwise deductible[8] under the FBTAA).[9]

4. Where an employer is eligible to rely on this Guideline, and does so, they are not required to determine definitively if an employee is living away from their normal residence or not. If an employer is outside the terms of the compliance approach in this Guideline, this should not be construed as meaning that the employee is living at a location. ATO officers will not approach this Guideline as imposing a 'bright line' to this effect – the matters set out in TR 2021/4 would need to be considered to reach a conclusion.

Background

5. Expenses for living at a location are usually not deductible.[10] However, expenses incurred on accommodation and food and drink are usually deductible, or otherwise deductible, where an employee is working away from home for short periods of time. In these situations, an employee is generally travelling on work.[11]

6. In many cases, short periods of travel can be consistent with an employee travelling on work in the course of their employment and incurring deductible expenses. In applying the views in TR 2021/4, the concept of 'reasonably short'[12] is used. In considering whether an employee's presence at a work location[13] is reasonably short, consideration needs to be given to the:

- time spent working away from home, and

[5] See paragraphs 121 to 130 of TR 2021/4.
[6] See paragraphs 124 to 126 of TR 2021/4.
[7] For the purposes of determining if Division 7 of the FBTAA applies. See paragraphs 121 to 123 and paragraphs 127 to 130 of TR 2021/4.
[8] The 'otherwise deductible' rule allows the employer to reduce the taxable value of fringe benefits by the amount for which the employee would be able to claim a once-only deduction. To the extent that an expense is otherwise deductible, the taxable value of the benefit is reduced, which reduces the employer's potential liability to FBT.
[9] For the purposes of sections 24, 44 or 52 of the FBTAA for expense, property and residual fringe benefits respectively. If the expense or residual benefit relates to food, drink or accommodation (and is not otherwise deductible), the benefit may be exempt or the taxable value may be reduced if the requirements in section 21, subsection 47(5) or section 63 of the FBTAA are satisfied.
[10] See paragraphs 21 and 39 to 79 of TR 2021/4.
[11] See paragraphs 11 and 17 to 24 of TR 2021/4.
[12] See paragraph 51 of TR 2021/4.
[13] For the purposes of this Guideline, a work location is the usual or normal place of work where an employee starts and finishes their work duties with a particular employer.

- pattern of visits to that location compared with visits to other locations.

7. Where an employee maintains a continuous presence at a work location, their presence will be reasonably short if all of the criteria in paragraph 12 of this Guideline are met.

Who this Guideline applies to

8. All employers who provide benefits referred to in paragraph 3 of this Guideline to their employees (who do not work on a fly-in fly-out or drive-in drive-out basis) may rely on this Guideline. Fly-in fly-out and drive-in drive-out employees are specifically dealt with under the FBTAA.[14]

9. An employee works on a fly-in fly-out or drive-in drive-out basis when all of the following apply:

- On a regular and rotational basis, the employee works for a number of days and has a number of days off which are not the same days in consecutive weeks.
- The employee travels to their work location during their days on and returns to their home during their days off.
- It is customary in the industry in which the employee works for employees performing similar duties to work on a rotational basis and return home during their days off.
- It is unreasonable to expect the employee to travel to their work location from their home and back again on a daily basis, given the locations of the two places.
- It is reasonable to expect that the employee will resume living at their home when the employment duties no longer require them to live away from home.

10. If an employer chooses not to rely on this Guideline or does not meet the requirements in paragraph 12 of this Guideline; they will need to apply the relevant FBT provisions to determine if a FBT liability arises for the benefit provided (or if an exemption or concession applies) and ensure they substantiate (through obtaining relevant declarations or documentation) how they determined the taxable value of the benefit.

Date of effect

11. This Guideline applies both before and after its date of issue.

[14] Sections 31A and 31E of the FBTAA outline the requirements of a fly-in fly-out or drive-in drive-out employee. Chapter 11 of *Fringe benefits tax: A guide for employers* summarises these requirements.

Our compliance approach

12. The Commissioner will accept that an employee is travelling on work and will generally not apply compliance resources to determine if benefits referred to in paragraph 3 of this Guideline relate to expenses for living at a location when all of the following circumstances are satisfied:

The employer	The employee
• provides an allowance to an employee or pays or reimburses[15] accommodation and food and drink expenses for the employee • does not provide the reimbursement or payment as part of a salary-packaging arrangement and the employee is not given the option to elect to receive additional remuneration in lieu • includes the travel allowance on the employee's payment summary or income statement and withholds tax, where appropriate[16], and • obtains and retains the relevant documentation to substantiate the fact that all of these circumstances are met.[17]	• is away from their normal residence for work purposes[18] • does not work on a fly-in fly-out or drive-in drive-out[19] basis • is away at the same work location for no more than 21 calendar days at a time continuously • is away at the same work location for no more than 90 calendar days in total in an FBT year, and • must return to their normal residence as soon as practicable when their period away ends.[20]

13. The compliance approach in this Guideline sets a period of no more than 90 calendar days in total for travel to the same work location in an FBT year. Provided that this requirement is met, the Guideline allows an employee to have numerous short stints of travel of up to, and including, 21 calendar days continuously. The number of days away includes the day of departure from the employee's normal residence and the day of departure from the work location that the employee has travelled to.

[15] The difference between an allowance and a reimbursement is explained in Taxation Ruling TR 92/15 *Income tax and fringe benefits tax: the difference between an allowance and a reimbursement*. For the purposes of this Guideline, an employer is not required to determine the distinction.

[16] For example, where an employer pays an allowance for accommodation, food, drink and incidental expenses for domestic travel that is within the reasonable travel allowance rate, the substantiation exception may apply. Refer to Taxation Ruling TR 2004/6 *Income tax: substantiation exception for reasonable travel and overtime meal allowance expenses* for more information.

[17] An employer's normal business records would be able to substantiate the fact that all of these requirements are met. For example, pay records would show an allowance has been paid and if PAYG withholding has been deducted, and airline flight bookings and other records would show when an employee travelled to and from another work location.

[18] An employee is away from their normal residence for work purposes where their travel is in the course of performing their income producing activities. This Guideline does not apply if the employee is travelling for the purposes of education or study, or if the employee is only away from their home due to their own personal choice.

[19] Section 31E of the FBTAA outlines the requirements of a fly-in fly-out or drive-in drive-out employee.

[20] An employee may take a small amount of additional time to undertake mandatory quarantine due to the COVID–19 pandemic, or to travel or take recreational leave after the end of their period away and still return to their normal residence as soon as practicable.

Example 1 – allowance is not a LAFHA benefit

14. *Kate lives in Perth and is employed by engineering company Employer Co. Kate spends most of her time working at Employer Co's head office in Perth.*

15. *From time to time, Kate is also required to spend between one and three weeks (no more than 21 calendar days) working in various remote locations of Employer Co in Western Australia (WA). Kate will sometimes add a privately-funded weekend on to her trip. She returns to her home in Perth for periods of more than a week before her next trip.*

16. *When this occurs, Employer Co pays Kate an allowance which she spends on accommodation and food and drink while she is away. Kate is away for a period of no more than 90 calendar days in total in the same location in WA in the FBT year.*

17. *The allowance is included in Kate's assessable income and Kate may be entitled to a deduction for her accommodation and food and drink expenses.*

18. *Employer Co is able to rely on this Guideline as the requirements in paragraph 12 of this Guideline are met, that is, the Commissioner would accept that Kate is travelling on work. Employer Co is paying Kate a travel allowance and not a LAFHA, and Employer Co is not liable for FBT on the allowance paid.*

Example 2 – accommodation and food and drink expenses otherwise deductible

19. *Louise works in Brisbane and is employed by engineering company Employer Co.*

20. *Employer Co gives Louise a three-month assignment in a remote work location in WA to perform duties for Employer Co. As part of the agreement, Louise works during the three-month assignment for:*

- *three weeks in WA, returning to Brisbane for two weeks to perform duties in the Brisbane office*
- *another three weeks in WA in the same work location, returning to Brisbane to again perform duties in the Brisbane office, this time for a week, and*
- *another three weeks in WA in the same work location.*

21. *In effect, during the three-month assignment, Louise works in the same work location in WA for nine weeks and is home for three weeks in between. She is away for no more than 21 calendar days at a time continuously and is away for a period of no more than 90 calendar days in the same work location in total. Louise does not return to work again in the same work location in WA at the end of the three-month assignment.*

22. *Employer Co pays Louise's accommodation and food and drink expenses while she is in WA. The accommodation and food and drink expense amounts are not provided to Louise as part of a salary-packaging arrangement. Louise cannot claim the accommodation and food and drink expenses as a deduction in her tax return as they have been paid for by Employer Co.*

23. *Employer Co is able to rely on this Guideline as the requirements in paragraph 12 of this Guideline are met. The Commissioner would accept that Louise is travelling on work. Employer Co is not liable for FBT on the accommodation and food and drink expense payment benefits it provides as the otherwise deductible rule applies.*

Example 3 – employee away for consecutive trips to different work locations

24. *Ben lives in Melbourne and is employed by a law firm, ABC Co.*

25. *Ben is sent to Tasmania for 14 days to work on a litigation case. He then is sent to Canberra for 20 days to work on another litigation case. Ben does not return to his normal residence in Melbourne in between.*

26. *ABC Co is able to rely on this Guideline as the requirements in paragraph 12 of this Guideline are satisfied. While Ben is away from his normal residence for 34 days in total, he is not in any single work location for more than 21 calendar days, and he returns to his normal residence as soon as practicable after the period away.*

Example 4 – Guideline does not apply; character of allowance must be determined based on facts and circumstances

27. *Employer Co (referred to in Examples 1 and 2 of this Guideline) undertakes a four-month project near Adelaide. Jeremy, who is based in Melbourne, is appointed project manager.*

28. *Jeremy works from Adelaide for the duration of the project, and Employer Co pays him an allowance to cover his food and accommodation expenses while he is working in Adelaide. Employer Co also pays for Jeremy to return to Melbourne for the weekend at the end of every fortnight.*

29. *Employer Co is not able to rely on this Guideline as the requirements in paragraph 12 of this Guideline are not satisfied. While each of the continuous periods Jeremy is away are no more than 21 calendar days, the overall period he is away at the one work location is more than 90 calendar days in total for the FBT year. Accordingly, without more information, the Commissioner does not accept that Jeremy is travelling on work.*

30. *Employer Co will need to apply the relevant FBT provisions to determine if the allowance Jeremy receives is a LAFHA benefit. Employer Co may, based on full consideration of the facts and circumstances of Jeremy's travel (by analysing the factors in paragraph 43 of TR 2021/4), determine that he is travelling on work.*

Commissioner of Taxation
11 August 2021

References

Previous draft:

PCG 2021/D1

Related Rulings/Determinations:

TR 92/15; TR 2004/6; TR 2021/4

Legislative references:

- ITAA 1997 8-1
- FBTAA 1986 Div 7
- FBTAA 1986 21
- FBTAA 1986 24
- FBTAA 1986 30
- FBTAA 1986 31A
- FBTAA 1986 31E
- FBTAA 1986 44
- FBTAA 1986 47(5)
- FBTAA 1986 52
- FBTAA 1986 63
- FBTAA 1986 136(1)

Other references:

Fringe benefits tax: A guide for employers

ATO references

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