TD 2013/4EC - Compendium

Ruling Compendium – TD 2013/4

This is a compendium of responses to the issues raised by external parties to draft 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 compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	Will the Commissioner permit, as under the former LAFH rules, the use of a log book for a reasonable period (for example 12 weeks) as evidence of a higher reasonable amount than that set out in the Determination, such that that an employee does not then have to maintain substantiation for all their expenditure for the entire year?	No. New section 31G does not allow for the use of a log book to be maintained for a 12 week period. Subsection 31G(2) requires documentary evidence of an expense or a declaration setting out information about the expense together with the employee retaining the documentary evidence.
2	Will taxpayers be able to apply to the Commissioner by way of a Private Binding Ruling or Class Ruling to confirm whether amounts other than those set out in the final Determination are reasonable in circumstances not addressed by the TD? Given the contention that the Commissioner should confirm a reasonable amount by way of Private Binding Ruling, the final Determination should contain guidance on what the	The reasonable amounts in the final Determination will be the only amounts that are considered reasonable by the Commissioner for these purposes. If the amount of allowance provided is higher than the reasonable amount set out in the final Determination then substantiation under section 31G will be required. Under subsection 359-35(3) of the *Tax Administration Act 1953*, the Commissioner can decline to make a private ruling on how the Commissioner would exercise a discretion where he has decided to exercise the power. The Commissioner's power to determine what is a reasonable amount under section 31G

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	Commissioner will take into consideration in assessing such applications; for example, market data for the location in question, maintenance of a log book, or the nature of the cooking facilities.	has been exercised and set out in the Taxation Determination.
3	Overall, the reasonable food amounts are unrepresentatively low for typical food expenditure in Australia. This is particularly so in the case of the lower salary bands. An inequitable result is produced by suggesting that there is such a disparity between salary bands and food consumption. The proposed food and drink component will disadvantage lower income employees. A rate that is lower than the 2010 average household expenditure on food and non-alcoholic beverages (from the Australian Bureau of Statistics Household Expenditure Survey) is not representative of the current costs of food and drink consumption while living away from home. They should be increased to a minimum of the Commissioner's reasonable amount (i.e. currently $250). Higher amounts should be allowed for higher cost groups where applicable.	Noted. The final Determination has taken a different approach to that set out in TD 2012/D8. For the rates within Australia the Commissioner has relied on the latest (2009-10) Household Expenditure Survey (HES) conducted by the Australian Bureau of Statistics (ABS) which takes into account the expenditure of households in urban and rural areas covering about 97% of the population. Accordingly, the reasonable rates that have been adopted for these purposes do not distinguish between remote and non-remote areas in Australia, nor different salary bands, as the rates are based on expenditure information collected throughout the whole of Australia. The HES food and drink expenditure (including alcoholic beverages) for households in the highest income quintile has been adopted. The Commissioner will also extend the transitional concession set out in TD 2012/D8 in cases where an employee and employer have an existing employment agreement in force as at the date of issue of the final Determination that specifies a rate in TD 2012/5 , and that employment agreement is not varied in a material way or renewed,
4	The three tier salary band system should be	Agreed. The three tiered salary band approach has not been

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	removed as it is (a) inequitable and (b) will result in a greater administrative burden for both the employee and the employer. The three-tier system will make it more difficult to substantiate, especially where employees in the same location have different salary levels.	included in the final Determination.
5	TD 2012/D8 provides guidance on how to calculate the reasonable amount when employees are accompanied by family members while in Australia, however not when employees are accompanied by family members when overseas.	Agreed. This has been corrected in the final Determination
6	The terms ‘salary’ and ‘annual salary’ are unclear. Questions arising include: - is ‘annual salary’ taxable employment income: does it include overtime, allowances, superannuation, benefits, bonuses, employee share scheme interests, salary sacrifice amounts, etc? - is ‘annual salary’ the salary that the employee actually receives, or is it the estimated annual salary, e.g. remuneration per the employment contract? Suggested solutions included: - The references be clarified to refer only to	These issues are acknowledged. However, as the 3 tier salary levels have not been included in the final Determination they are no longer relevant.

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	the salary component of an employee's total remuneration and that the thresholds be decreased; or - Salary could be defined as the amount of salary an employee would receive ignoring any salary sacrificing arrangements other than for compulsory superannuation contributions.	
7	Reasonable food amounts should be differentiated by location only, including different locations within Australia, based on the fact that certain areas (particularly regional and rural areas) have higher costs of living. At a minimum, consideration should be given to allowing higher reasonable amounts for FIFO and DIDO arrangements.	Noted. However, for the rates within Australia the Commissioner has relied on the latest (2009-10) Household Expenditure Survey (HES) conducted by the Australian Bureau of Statistics which takes into account the expenditure of households in urban and rural areas covering about 97% of the population. Accordingly, the reasonable rates that have been adopted for these purposes do not distinguish between remote and non-remote areas in Australia, nor different salary bands, as the rates are based on expenditure information collected throughout the whole of Australia.
8	The Commissioner assumes that all LAFH employees have access to kitchens and cooking facilities but this is not typically true of people on FIFO or DIDO rotations. The Commissioner should add another reasonable food amount for people on FIFO or DIDO rotations, aligned with the reasonable travelling amounts from TD 2012/17.	Noted: However, given the reliance solely on the Household Expenditure Survey (HES) conducted by the Australian Bureau of Statistics in the final Determination and noting the explanation at point 7 above, this is no longer an issue
9	There is a concern about the reliance by the	Noted. For the rates within Australia in the final Determination the

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	Commissioner on a single statistics provider. The proposed rates are based on the travel allowance rates, which are the product of data obtained from independent third parties. The salary levels and associated travel allowance rates are based on the APS salary bands. However, it would be inappropriate to disregard the Australian Bureau of Statistics' Household Expenditure Surveys.	Commissioner has relied on the latest (2009-10) Household Expenditure Survey (HES) conducted by the Australian Bureau of Statistics (ABS) which takes into account the expenditure of households in urban and rural areas covering about 97% of the population. For the rates for overseas destinations, it is noted that there is no comparable data available for overseas locations to that contained in the HES conducted by the ABS. However, the Commissioner publishes an annual 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 TD 2012/17. 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 and have been used as a basis for obtaining the figures used in the final Determination.
10	There will be a higher likelihood of onerous complexities with regard to substantiation, unless the company reduces its LAFHA rate to the lowest proposed rate.	Noted. The final Determination has adopted rates that are not based on a salary 3 tier approach. This will provide clarity and simplicity, and lessen compliance costs for an employer that may have arisen with the proposed methodology set out in TD 2012/D8.
11	There is an additional administrative burden on employers: – in relation to employees who come	Noted. In recognising some of the added compliance burden that may arise, the final Determination will extend the transitional concession set out in TD 2012/D8 in cases where an employee and employer have an existing employment agreement in force

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	under the transitional rules; – distinguishing between employees caught by the 12 month rule and FIFO and/or DIDO arrangements; and – tracking employees who pause the stipulated 12-month period for LAHFA purposes. In relation to domestic employees that are entitled to apply the transitional rules until 1 July 2014, for an employer to pay these employees their existing LAFHA food rates would exceed the proposed rates, resulting in additional compliance burdens for these employees and the company. This substantiation also requires the retention of documents for a five year period.	as at the date of issue of the final Determination that specifies a rate in TD 2012/5 , and that employment agreement is not varied in a material way or renewed,
12	Regardless of whether or not the three tier system is implemented, the reasonable food and drink component should be no less than the rates applied in previous years. Under TD 2012/D8, the proposed reasonable food and drink amounts for employees with salaries under $186,250 are considerably lower than those allocated in previous FBT years. There is no increase in the reasonable food amount between the 2012/2013 FBT year and the 2013/2014 FBT year. This is inconsistent	Noted. As a transitional measure for the FBT year commencing on 1 April 2013, where an employee and employer have an existing employment agreement in force as at the date of issue of the final Determination that specifies a rate in TD 2012/5 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.

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	with the reasonable food amounts for previous years which were increased annually.	
13	Employers may also be disadvantaged by the new reasonable food amounts if the employer decides to bear the additional FBT associated with maintaining the same reasonable food component.	Noted.
14	The final Determination should be released specifying the methodology used to calculate the reasonable food amounts but the actual reasonable food amounts should be released closer to 1 April 2013 as there has been no increase in the reasonable food amount now from the 2012/13 and 2013/14 FBT years and this will allow for any effects of inflation or other factors to be taken into consideration.	Noted. The methodology adopted in the final Determination has changed and relies, for example for reasonable rates within Australia, on the latest (2009-10) Household Expenditure Survey (HES) conducted by the Australian Bureau of Statistics. The HES figures have been indexed to take into account movements in the food sub-group of the Consumer Price Index since the survey was undertaken.
15	In the case of an employee LAFH overseas, where an employer will often need to pay salary and allowances in a foreign currency, it is not clear how the reasonable amount is determined in Australian dollars. In determining a reasonable amount for food and drink in an overseas location, employers should be able to assume a fixed exchange rate throughout an FBT year where a LAFHA is paid in a foreign currency.	Noted. The actual payment of a living-away-from-home allowance will determine the time at which the benefit has been provided to an employee. It is at that time when an employer should ascertain the amount paid in Australian dollars.
16	It is unclear whether the reasonable food amounts are inclusive or exclusive of the	Noted. This point has been further clarified in the final Determination so that it is understood that the reasonable

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	statutory food amounts. The final Determination should confirm the interaction of the reasonable food amount with the exempt food component. .	amounts are inclusive of the statutory food amounts.
17	The intention of the new legislation appears to be that the food component is able to be reduced by the amount of the reasonable food amount and only the excess would be subject to FBT (as per the previous legislation). The final Determination should confirm that, where an amount paid is in excess of the reasonable food amount and substantiation is not obtained, a reduction in taxable value remains available to the extent of the reasonable food component, adjusted by the applicable statutory food total as relevant.	Agreed. This has been clarified in the final Determination.
18	The LAFH concessions will be restricted mainly to FIFO/DIDO employees, as the eligibility for employers to access the LAFH concessions is limited to where the employees are ‘maintaining a home in Australia’.	Noted.
19	There are practical difficulties for an employer in complying with the substantiation requirements (especially keeping records for 5 years) where a FIFO/DIDO worker has left their employment.	Noted.
20	There are practical difficulties of substantiation in rural and regional areas where receipts may	Noted.

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	not be as readily available as in major cities.	
21	The Commissioner should include further examples in the final Determination to clarify how the taxable value of the LAFHA is calculated in certain circumstances and confirm his interpretation of the taxable amounts and substantiation requirements.	Noted. In view of the significant changes to the underlying methodology adopted in the final Determination further examples are not considered necessary. Also, this Determination is not intended to explain how the taxable value of the living-away-from-home fringe benefit is calculated and is limited to explaining what the reasonable amount is under section 31G.
22	The Commissioner's approach in TD 2012/D8 is not consistent with the methodology in MT 2030 and MT 2040, which have not been withdrawn and which deal with the same underlying concepts.	Noted. The methodology adopted in the final Determination has changed from that set out in TD 2012/D8 and relies, for example for reasonable rates within Australia, on the latest (2009-10) Household Expenditure Survey (HES) conducted by the Australian Bureau of Statistics. Given the changes to the underlying law, it is acknowledged that MT 2030 will need to be reviewed to determine whether it should be withdrawn. MT2040 while dealing with legislation that has now been reformed remains in place for previous FBT years.
24	It is unclear how the reasonable food component is calculated where there is a change in family circumstances, for example,. marriage, divorce, death of a spouse, and birth of a child.	Noted. This is a factual issue that would not be uncommon (either under the previous law or the new law). Where there is a change in circumstances the employer would be required to take those circumstances into account when determining whether the 'reasonable amount' has been exceeded or not. The Determination sets out reasonable rates based on a 7 day week while also stating that the reasonable amount is calculated by multiplying the weekly amount by the total number of weeks or part thereof.

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25	It is unclear whether the existing treatment afforded to children under the age of 12 at the beginning of the FBT year would remain.	Noted. The classification of a 'child' for these purposes has not altered. The reference to a 'child' and the specific meaning for these purposes was included at paragraph 7 of TD 2012/D8. The final Determination similarly will include a statement that an "Adult' for these purposes are persons who had attained the age of 12 years *before* the beginning of the FBT year.