TR 2021/D1 - Income tax and fringe benefits tax: employees: accommodation and food and drink expenses, travel allowances, and living-away-from-home allowances

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Draft Taxation Ruling

Income tax and fringe benefits tax: employees:

- accommodation and food and drink expenses
- travel allowances, and
- living-away-from-home allowances

Relying on this draft Ruling

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Ruling applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Ruling turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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What this draft Ruling is about

1. This draft Ruling[1] explains:

   - when an employee[2] can deduct accommodation and food and drink expenses under section 8-1 of the *Income Tax Assessment Act 1997*

[1] All further references to 'this Ruling' refer to the Ruling as it will read when finalised. Note that this Ruling will not take effect until finalised.

[2] The meaning of 'employee' is explained in paragraphs 6 and 7 of Taxation Ruling TR 2005/16 *Income tax: Pay As You Go – withholding from payments to employees*:

> 6. The term 'employee' is not defined in the TAA 1953. For the purposes of withholding under section 12-35 the word 'employee' has its ordinary meaning.
> 7. Whether a person is an employee of another is a question of fact to be determined by examining the terms and circumstances of the contract between them having regard to the key indicators expressed in the relevant case law. Defining the contractual relationship is often a process of examining a number of factors and evaluating those factors within the context of the relationship between the parties. No one indicator of itself is determinative of that relationship. The totality of the relationship between the parties must be considered.'

(ITAA 1997)[3] when they are travelling on work, including where it is necessary to apportion[4]

- the fringe benefits tax (FBT) implications, including the application of the 'otherwise deductible rule'[5], where an employee is reimbursed for accommodation and food and drink expenses, or where the employer provides or pays for these expenses
- the criteria for determining whether an allowance is a travel allowance (as defined in subsection 900-30(3)) or a living-away-from-home allowance (LAFHA) benefit (see section 30 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)) and the differences between them.

2. Whether accommodation and food and drink expenses are deductible depends on the facts and circumstances of each case. This Ruling uses examples to show how to determine the deductibility of these expenses in a range of situations.

3. This Ruling should be read in conjunction with:

- Taxation Ruling TR 2020/1 *Income tax: employees: deductions for work expenses under section 8-1 of the Income Tax Assessment Act 1997* which provides the foundation of general deductibility principles for work expenses[6] under section 8-1
- draft Practical Compliance Guideline PCG 2021/D1 *Determining if allowances or benefits provided to an employee relate to travelling on work or living at a location – ATO compliance approach* which sets outs the ATO compliance approach to determining if allowances or benefits provided to an employee relate to travelling on work or living at a location
- Taxation Ruling TR 2021/1 *Income tax: when are deductions allowed for employees' transport expenses?* which provides guidance on when an employee can deduct transport expenses under section 8-1.

4. This Ruling does not address travel, accommodation and food and drink expenses relating to self-education or study. Refer to Taxation Ruling TR 98/9 *Income tax: deductibility of self-education expenses incurred by an employee or a person in business.*[7]

Previous ruling

5. Draft Taxation Ruling TR 2017/D6 *Income tax and fringe benefits tax: when are deductions allowed for employees' travel expenses?* has been withdrawn.

[3] All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.
[4] See paragraphs 12, 15 to 22 and 77 to 83 of this Ruling.
[5] 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.
[6] As defined in subsection 900-30(1).
[7] Refer to paragraphs 63 to 70, and 88 to 110, of TR 98/9.

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Ruling

Deductibility of accommodation and food and drink expenses – general principles

6. An employee can only deduct accommodation and food and drink expenses under section 8-1 to the extent that[8]:

- they incur the expense in gaining or producing their assessable income[9]
- the expense is not of a capital, private or domestic nature
- the expense is not incurred in gaining or producing exempt income or non-assessable non-exempt income, and
- a provision of the Act[10] does not prevent it from being deducted.[11]

7. If the expense an employee incurs on accommodation and food and drink meets the requirements of section 8-1, the applicable substantiation requirements[12] must also be satisfied for the employee to claim the expense as a deduction.[13]

8. The term 'incurred in gaining or producing assessable income' means incurred 'in the course of gaining or producing assessable income'.[14] For an expense to be incurred in gaining or producing assessable income it is both sufficient and necessary that the occasion of the expense should be found in whatever is productive of assessable income.[15]

9. When determining what is productive of an employee's assessable income, consideration should be given to the scope of the employee's income-producing activities.[16]

10. Accommodation and food and drink expenses are ordinarily private or domestic in nature[17] and are generally not deductible under section 8-1.[18] This includes the costs an

[8] See TR 2020/1 for a detailed discussion on when a work expense is deductible under section 8-1.
[9] This Ruling assumes that the income from the employment is assessable income of the employee.
[10] 'Act' in this context means the *Income Tax Assessment Act 1936* (ITAA 1936) and the ITAA 1997.
[11] This Ruling does not address expenses incurred in gaining or producing exempt income, non-assessable non-exempt income or provisions of the Act that prevent accommodation and food and drink expenses from being deducted.
[12] Division 900, in particular section 900-15.
[13] Refer to paragraphs 98 to 101 of this Ruling.
[14] *Commissioner of Taxation v Payne* [2001] HCA 3 (*Payne*).
[15] *Payne*; *Ronpibon Tin NL v Commissioner of Taxation* [1949] HCA 15 (*Ronpibon Tin*); *Commissioner of Taxation v Day* [2008] HCA 53 (*Day*). If no assessable income is produced, the occasion of the expense should be found in what would be expected to produce assessable income.
[16] Refer to paragraph 17 of this Ruling for further information on what to consider when determining the scope of an employee's income-producing activities.
[17] Hill J in *Commissioner of Taxation v Cooper R.J.* [1991] FCA 190 (*Cooper*) explained it as:
> Food and drink are ordinarily private matters, and the essential character of expenditure on food and drink will ordinarily be private rather than having the character of a working or business expense. However, the occasion of the outgoing may operate to give to expenditure on food and drink the essential character of a working expense in cases such as those illustrated of work related entertainment or expenditure incurred while away from home. No such circumstance, however, intervenes here.

See also paragraphs 46 and 47 of TR 2020/1 for more information on private and domestic expenses.
[18] *Cooper*; and *Commissioner of Taxation v Forsyth (Cth)* [1981] HCA 15 (*Forsyth*).

employee incurs to maintain their usual residence[19] and of consuming food and drink to go about their daily activities. For the purposes of this Ruling, such expenses will be referred to as living expenses.

11. However, where an employee travels and stays away from their usual residence overnight[20] in the course of performing their income-producing activities and incurs accommodation and food and drink expenses, these expenses will generally be deductible under section 8-1. [21] Conversely, a deduction cannot be claimed for food and drink expenses when the employee does not travel and stay away from their ordinary residence overnight. In *Fardell and Commissioner of Taxation* it was held[22]:

> … if the Applicant is entitled to a deduction for meals he can be so entitled only when on a trip which required him to sleep away from home. In the absence of such a requirement, the expenditure must necessarily be regarded as private in nature.

12. Thus, for the purposes of this Ruling, an employee who stays away from their usual residence overnight in the course of performing their income-producing activities will be referred to as travelling on work.

Living expenses – not deductible

13. Living expenses are a prerequisite to gaining or producing an employee's assessable income and are not incurred in performing an employee's income-producing activities. Living expenses are also private or domestic in nature.[23] This means that even if these expenses were incurred in gaining or producing assessable income, they still would not be deductible due to the application of paragraph 8-1(2)(b).

14. While living expenses must be incurred before any assessable income can be derived, a loss or outgoing is not incurred in gaining or producing an employee's assessable income merely because it is necessary. This is particularly relevant to living expenses.[24] A person must eat and sleep somewhere, whether or not they engage in employment.[25]

Travelling on work – expenses deductible

15. To be deductible, the accommodation and food and drink expenses must have a sufficiently close connection to the performance of the employment duties and activities through which the employee earns income. It will not be enough to show some general link or causal connection between the expenditure and the production of income.[26]

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[19] The term 'ordinary residence' is used for income tax purposes – see the definition of travel allowance in subsection 900-30(3). 'Normal residence' is used for FBT purposes – see section 30 of the FBTAA and the definition in subsection 136(1) of the FBTAA. An 'ordinary residence' and a 'normal residence' can also be described as a 'usual residence' or an employee's home. These terms are interchangeable so for the purposes of this Ruling, the term 'usual residence' has been used to describe an employee's 'ordinary residence', 'normal residence', 'usual residence' and home. An employee's 'ordinary residence', 'normal residence', 'usual residence' or home is the place where they normally reside and is generally located close to where they are permanently employed.

[20] Staying away from home overnight includes an employee taking their major rest break away from home. This includes employees who don't necessarily sleep while working overnight.

[21] *The Roads and Traffic Authority of New South Wales v Commissioner of Taxation* [1993] FCA 445 (*Roads and Traffic*).

[22] [2011] AATA 725 at [45].

[23] *Cooper*; *Handley v Commissioner of Taxation (Cth)* [1981] HCA 16 (*Handley*), and *Forsyth*.

[24] *Commissioner of Taxation (Cth) v Green* [1950] HCA 20 (*Green*).

[25] *Ricketts v Colquhoun* [1926] AC 1; *Hancox v Commissioner of Taxation* [2013] FCA 735 (*Hancox*).

[26] *Roads and Traffic*.

16. The occasion of the outgoing on accommodation and food and drink must be found in the employee's income-producing activities, rather than in the personal circumstances of where the employee lives.[27]

17. The scope of an employee's income-producing activities is a question of fact and degree and is not confined to the day-to-day activities performed by the employee. It requires consideration of the employment contract along with:

- the duties to be observed, and
- the tasks to be performed[28],

by the employee (which may extend beyond what is contained in the employment contract).

18. If an employee is required by their employer, as an incident of their employment (that is, the duties of employment), to stay away from their usual residence overnight for relatively short periods of time, the employee will be travelling on work and the occasion of the outgoing on accommodation and food and drink will generally be found in the employee's income-producing activities.[29]

19. Conversely, where the accommodation and food and drink expenses are incurred because the employee's personal circumstances are such that they live far away from where they gain or produce their assessable income, the occasion of the outgoing will not be found in the employee's income-producing activities.[30]

20. Travelling on work does not describe the activities of employees who:

- are not required to sleep away from their usual residence overnight in the course of performing their income-producing activities[31], or
- choose to sleep near their workplace, rather than returning to their usual residence between their work shifts (see paragraphs 24 to 36 of this Ruling).

Example 1 – no requirement to sleep away overnight – living expenses – food and drink expenses not deductible

21. *Mal lives in Hobart and works for an engineering firm. On occasion, Mal flies to Melbourne for meetings with clients. When he is required to attend such a meeting, Mal catches an early flight to Melbourne and returns to Hobart later the same day. Mal's employer pays him an allowance to cover the cost of his food and drink while he is in Melbourne.*

22. *The allowance Mal receives must be included in his assessable income. The expenditure Mal incurs on food and drink is not incurred in the course of gaining or producing his assessable income. The expenses are living expenses. Accordingly, Mal is not entitled to a deduction for the cost of the food and drink he incurs while he is in Melbourne.*

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[27] See paragraphs 24 to 36 of this Ruling.
[28] *Day*.
[29] *Cooper*, per Hill J and *Roads and Traffic*.
[30] *Cooper*, per Hill J, and *Roads and Traffic*.
[31] *Cooper*, *Roads and Traffic,* and *Fardell and Commissioner of Taxation* [2011] AATA 725 (*Fardell*).

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Relevant factors – travelling on work versus living expenses

23. If any of the following factors apply, the employee will not be travelling on work and the accommodation and food and drink expenses incurred will be living expenses:

- the expenses are incurred because the employee's personal circumstances are such that they live far away from where they gain or produce their assessable income[32] (personal circumstances – see paragraphs 24 to 36 of this Ruling)
- the employee incurs the expenses because they are living at a location[33] (living at a location – see paragraphs 37 to 70 of this Ruling)
- the employee incurs the expenses as a result of relocating from their usual residence (relocation – see paragraphs 71 to 75 of this Ruling).

Personal circumstances

24. An employee cannot deduct accommodation and food and drink expenses they have incurred where, due to their personal circumstances, they live far away from where they gain or produce their assessable income.[34] These expenses are living expenses and are not deductible (see paragraphs 10, 13 and 14 of this Ruling).

25. In these circumstances, the expenses are incurred because the employee's personal circumstances are such that they keep their usual residence, rather than relocate. The occasion of the outgoing for accommodation and food and drink is not found in the employee's income-producing activities, meaning that these expenses are not incurred in the course of gaining or producing the employee's assessable income. They are private and domestic in nature.

26. This also applies where an employee regularly works at a particular location[35] for one or more days each week. A particular location where an employee works regularly is a regular place of work.

Example 2 – personal circumstances – living and working in different cities – accommodation and food and drink expenses not deductible

27. *Michelle lives in Brisbane with her family. Michelle accepts a job in Canberra. Early on a Monday morning, Michelle catches a flight to Canberra and on Friday afternoon she returns by plane to Brisbane. On Monday to Thursday nights, Michelle stays in a serviced apartment. Sometimes she buys groceries and cooks for herself and sometimes she eats out.*

28. *The occasion of the outgoings is not explained by Michelle's employment. Rather, it is explained by her personal circumstances of living in Brisbane while working in Canberra. The expenses Michelle incurs are private and domestic in nature.*

[32] *Federal Commissioner of Taxation v Charlton* 84 ATC 4415 (*Charlton*), *Commissioner of Taxation v Toms, A.J.* [1989] FCA 153 (*Toms*), *Hancox,* and *Ricketts v Colquhoun* [1926] AC 1.

[33] This Ruling refers to the phrase 'living at a location' to describe the situations where an employee is living at a location away from their usual residence. It is different to the phrase 'living away from home' used later in this Ruling which is defined in section 30 of the FBTAA.

[34] *Charlton*, *Toms*, and *Hancox.*

[35] See footnote 43 of this Ruling for what a 'regular place of work' is.

29. *Accordingly, Michelle is not entitled to a deduction for the amount she spends on renting the serviced apartment, the groceries she buys or the food and drink she purchases when she eats out.*[36]

Example 3 – personal circumstances – travel between two regular workplaces – accommodation and food and drink expenses not deductible

30. *Sue lives with her family in Sydney. Sue takes on a leadership role with a company that has offices all around Australia. The role is based in Melbourne. Sue's arrangement with her employer is that she must attend the Melbourne office at least three days per week, but at her discretion, she can work out of the Sydney office, at another office, or from home up to two days per week. Because Sue lives in Sydney, her personal circumstances allow her to work at the Sydney office two days per week for her convenience. Sue's duties do not require her to work in the Sydney office.*

31. *The occasion of Sue's travel to Melbourne and her accommodation and food and drink expenses are not explained by Sue's employment duties but rather her personal circumstances. Instead of relocating her usual residence to Melbourne, Sue's personal circumstances allow her to continue living in Sydney with her family as she has negotiated an arrangement whereby she can work from Sydney as a matter of convenience. Accordingly, the expenditure that Sue incurs on accommodation, food and drink when she travels to and stays in Melbourne is not deductible.*

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32. Where the occasion of the expenditure on accommodation and food and drink can be found in the employee's income-producing activities, rather than their personal circumstances, the employee will be travelling on work. Expenses incurred by an employee travelling on work will be incurred in gaining or producing the employee's assessable income and will be deductible.

33. As stated at paragraph 12 of this Ruling, where an employee travels and stays away from their usual residence overnight in the course of performing their income-producing activities, they will be travelling on work. Whether an employee travels and sleeps away from their usual residence overnight is a question of fact to be determined on a case by case basis.

34. The distance between the employee's usual residence / regular place of work and the location they are travelling to for work is just one factor to be considered when determining whether an employee travels and sleeps away overnight. Accordingly, the distances used in the examples in this Ruling are for illustrative purposes only.

***Example* 4 – travelling on work – work duties require frequent overnight travel – accommodation and food and drink expenses deductible**

35. *Len lives with his family in Perth and works as a sales manager for a company that has offices all around Australia and operates nationally. Under the terms of his employment agreement, Len's regular place of work is his employer's Perth office, but he is also responsible for the other three offices located in Western Australia. Each of those*

[36] If Michelle received an allowance from her employer for accommodation and food and drink expenses, it would not be a LAFHA under section 30 of the FBTAA. It is not Michelle's duties of employment that require her to live away from her usual residence, it is Michelle's personal circumstances such that she has accepted a job elsewhere.

other three offices are located at least 200 kilometres from where Len lives so Len travels and stays overnight the night before he visits them. Len visits the offices located outside Perth regularly for meetings, performance appraisals and to ensure the offices are meeting sales targets. He also travels to the head office in Melbourne once a month for meetings with sales managers from other regions. Len incurs expenditure on accommodation and food and drink when he visits the three offices located outside Perth and when he travels to Melbourne.

36. *In this case, as Len's employment duties require him to travel to different offices, the expenditure he incurs on accommodation and food and drink while he is travelling to those other offices is incurred in the course of performing his employment duties. The expenditure is not incurred as a consequence of Len's personal circumstance that he lives in Perth. The occasion of the travel and his expenditure on accommodation and food and drink is explained by his income-producing activities. Accordingly, Len is entitled to a deduction for his expenditure on accommodation and food and drink when he travels away from his usual residence overnight for work purposes.*[37]

Living at a location

37. Whether accommodation and food and drink expenses are incurred in gaining or producing assessable income is a question of fact.

38. An employee who incurs expenditure on accommodation and food and drink in the course of performing their income-producing activities, is likely to be travelling on work and the expenses will be deductible (see paragraphs 12 and 15 to 22 of this Ruling).

39. However, where an employee is living at a location away from their usual residence[38], their accommodation and food and drink expenses are living expenses and will not be deductible even if the employee is living at that location due to their employment (see paragraphs 10, 13 and 14 of this Ruling).

40. This is because, where the location at which the employee works has become their new regular place of work the accommodation and food and drink expenses are not an incident of their income-earning activity. Rather, the employee's personal circumstances are such that their usual residence is not located near their new workplace. Consequently, the employee is living at a location away from their usual residence and their accommodation and food and drink expenses will not be deductible.

41. The following factors would support a characterisation of an employee as living at a location away from their usual residence:

- there is a change in the employee's regular place of work[39]

[37] If Len receives an allowance from his employer to cover his accommodation and meals, he must declare the allowance as assessable income. Len must also obtain and keep substantiation records that meet the requirements in Division 900 unless he meets the exception from keeping substantiation records in section 900-50. Even if Len does meet the exception from substantiation, he will still need to be able to demonstrate that he incurred the expenses.

[38] See the factors at paragraph 41 of this Ruling.

[39] For example, in *Roads and Traffic*, Hill J states:

> An employee who had no private home and was employed indefinitely to work at a particular site and did in fact work for the whole of his employment at that site, might be said to have chosen to live at the site so that the cost of his accommodation there would be private.

Of note, whether an employee has, or does not have, a private home is of no weight for the purposes of this Ruling.

- the length of the overall period the employee will be away from their usual residence is a relatively long one[40]
- the nature of the accommodation is such that it becomes their usual residence[41]
- whether the employee is, or can be, accompanied by family or visited by family and friends.

42. An employer will generally provide accommodation and food and drink or pay the employee an allowance (see paragraphs 109 to 133 of this Ruling) to cover the additional living expenses the employee might reasonably be expected to incur where they are required to live at a location away from their usual residence to perform their duties.[42] An employer may also reimburse the employee for the expenditure they have incurred on accommodation and food and drink (see paragraphs 105 to 108 of this Ruling).

43. All the factors in paragraph 41 of this Ruling should be considered and no single factor is necessarily decisive. The weight given to each factor will vary depending on the individual circumstances (see Examples 5, 6 and 7 of this Ruling).

Change in regular place of work

44. Where there is a change in the employee's regular place of work[43] and the employee incurs accommodation and food and drink expenses to be closer to their new regular place of work, the employee will be living at that new location away from their usual residence (see Examples 5 and 7 of this Ruling). In these circumstances, the expenses incurred are living expenses and are not deductible (see paragraphs 10, 13 and 14 of this Ruling).

45. Conversely, where there is no change in the employee's regular place of work and the employee incurs accommodation and food and drink expenses when they temporarily attend and stay overnight at another location in the course of carrying out their income-producing activities, the employee will not be living at the location they visit and work at temporarily. In these circumstances the employee will be travelling on work. In other words, their regular place of work and usual residence is retained, and the employee returns to them after being away for a relatively short period of time to carry out their income-producing activities. When travelling on work, the place where the employee works does not become their regular place of work and the place where they stay does not become their usual residence (see Example 6 of this Ruling).

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[40] See Hill J in *Roads and Traffic*, where one of the factors used in determining that the relevant expenses incurred were deductible by the employee was that:

> … they are required, as an incident of their employment, by their employer and for the purposes of the employer to live close by their work site for relatively short periods of time.

Given that a short period of time was a factor Hill J used in making a decision that the relevant expenses were deductible, conversely the longer the period of time the employee is living at a location away from their usual residence means the more likely relevant expenses will not be deductible. Of note, in *Roads and Traffic*, Hill J was considering whether the amounts in question were deductible amounts such that the benefit in question was excluded from the category of LAFHA benefits under subsection 30(1) of the FBTAA.

[41] See footnote 39 of this Ruling.

[42] Where the employer provides such benefits or allowances the taxable value of them may be reduced to nil. For example, a LAFHA under section 30 of the FBTAA or the accommodation may be an exempt residual benefit under subsection 47(5) of the FBTAA.

[43] Most employees have a regular place of work, being a usual or normal place where the employee starts and finishes their work duties with a particular employer (see paragraph 26 of TR 2021/1).

46. Where an employee relocates their home, the employee is changing their usual residence and the expenses are not incurred in performing their income-producing activities (see paragraphs 71 to 75 of this Ruling).[44]

Length of period away

47. The 'length of period away' means the overall period of time the employee spends living at a particular location for work. Where an employee is living at one location for work for an extended period, that period is not broken by short trips they take from that location, for example travelling back to their usual residence on weekends or when travelling on work from that location (see Examples 5 and 6 of this Ruling).

48. Generally, the longer an employee spends away from their usual residence for work, the more likely the employee is living at the location.

49. In contrast, an employee generally will not be living at a location away from their usual residence where the overall period that they stay away from their usual residence in the course of performing their income-producing activities is reasonably short.

50. Just because an employee is away from their usual residence for an extended period does not necessarily mean that they are living at a location away from their usual residence. If the employment requires ongoing travel to multiple locations the employee may not be in any location long enough to be regarded as living at a location. This may be the case, for instance, with a performing artist on tour.

51. Conversely, there may be circumstances where an employee is living at a location away from their usual residence even though they stay away for a reasonably short period of time. For example, an employee who is required by their employer to work in a location which is distant from their usual residence/regular place of work for one year but, who, for personal reasons, only ends up working at that location for one month. If that employee rented out their usual residence in anticipation of being away for a year and rented a unit near the new work location, they would still be living away from their usual residence for that one-month period even though they did not stay for the entire year.

52. The Commissioner has provided information regarding his use of compliance resources in PCG 2021/D1. This draft Guideline outlines the Commissioner's proposed approach in determining whether an employee is travelling on work or living at a location.

53. There is no requirement to follow the guidance in PCG 2021/D1 but if it is not followed, then as per paragraph 43 of this Ruling, all the factors outlined in paragraph 41 of this Ruling must be considered and applied to the facts of an employee's individual circumstances to determine whether they are travelling on work or living at a location.

54. If an employee has no fixed usual residence (for example, they have a transitory lifestyle and regularly change employment), the employee will not be living at a location away from their usual residence.

Nature of the accommodation

55. The nature of an employee's accommodation is relevant but does not determine whether the employee is living at a location away from their usual residence.

56. An employee may live and make their home in any kind of accommodation.

[44] If an allowance is paid to an employee who relocates, it will not be a LAFHA under section 30 of the FBTAA (because they are not 'living away from home').

57. Generally, where an employee works away from home for a considerable period and, for that period, stays in accommodation generally used for longer-term accommodation (such as a house, unit or apartment, or caravan), this would support a view that they are living at a location away from their usual residence.

58. The use of short-term accommodation such as hotels and motels located close to the temporary work location, is generally an indication that the employee is travelling on work.

Accompanied by family or visited by family or friends

59. An employee who is living at a location away from their usual residence can generally be accompanied or visited by their family and friends. However, if an employee cannot be accompanied by family or visited by family and friends, this tends to indicate that the employer retains a degree of control over the employee outside their standard work day and which may contribute to an overall impression that the employee is travelling on work during this period.

60. An accompanied employee should not always be treated as living at a location away from their usual residence. They can be travelling on work (see Example 9 of this Ruling). It is more likely that an employee will be living away from their usual residence where they are, or can be (but they are not), accompanied by family or visited by family and friends (see Examples 5 and 7 of this Ruling).

Example 5 – living at a location away from usual residence

61. *Yumi works as a senior executive for an employer based in Brisbane. Her employer is setting up a new office in Townsville and assigns her to the new office for a period of four months in order to assist in setting it up. After spending four months working at the Townsville office, Yumi will return to her usual employment in the Brisbane office.*

62. *During the period she is in Townsville, Yumi will occasionally travel to other locations around Australia (including Brisbane) for one or two days to attend work meetings or meet with clients. Yumi will live in a two-bedroom apartment close to the office in Townsville and her family will remain in the family home in Brisbane. However, the apartment in Townsville is big enough to accommodate Yumi's family.*

63. *Yumi will be living in Townsville away from her usual residence for the four-month period due to:*

- *there being a change in Yumi's regular place of work from the Brisbane office to the Townsville office*
- *the extended period of time she is going to be in Townsville (an overall period of four months)*
- *the longer-term nature of the accommodation that she stays in while she is Townsville, and*
- *the fact that her family could have accompanied her if they had wanted to.*

64. *The expenses that Yumi incurs on accommodation and food and drink while she is in Townsville are living expenses and will not be deductible.*[45] *This would not change even if Yumi returned to Brisbane each weekend to be with her family. However, when Yumi*

[45] If Yumi is paid an allowance to cover the additional costs of her accommodation and food and drink while she is in Townsville it may be a LAFHA fringe benefit – refer to section 30 of the FBTAA.

travels from Townsville to other locations around Australia for work meetings or to meet with clients, she will be travelling on work and the amount she incurs on accommodation and food and drink will be deductible.

Example 6 – travelling on work for three-week period – accommodation and food and drink expenses deductible

65. *Mario lives and works in Melbourne. He is employed by a large insurance company. Mario's regular place of work is his employer's office in the Melbourne CBD. One of Mario's duties is to train new staff. When his employer engages some new staff in its Warrnambool office (260 kilometres away), Mario is required to travel to Warrnambool to train the new staff on site for a three-week period. Mario stays in a motel near the Warrnambool office from Sunday to Thursday night for each of the three weeks he is giving the training and returns home on Friday evenings for the weekend.*

66. *Mario is not living in Warrnambool away from his usual residence for the three-week period he is giving the training because:*

- *the Melbourne CBD office remains Mario's regular place of work for the three-week period*
- *the length of the overall period that Mario is away from his usual residence is reasonably short*
- *Mario stays in short-term accommodation while he is working in Warrnambool.*

67. *The expenditure that Mario incurs on accommodation and food and drink during the period of the training is occasioned by Mario's income-producing activities. Mario is travelling on work and the expenditure he incurs on accommodation and food and drink while he is working at the Warrnambool office is deductible.*[46]

Example 7 – extended secondment to Australia – accommodation and food and drink expenses not deductible

68. *An Australian-based resident company which is part of a global business, sources employees with specialist skills from one of their overseas affiliates on a temporary basis. The selected overseas-based employees will stay in Australia for a period of between 90 to 120 days and will be required to work for the entire time in one location in Australia. They will:*

- *continue to be employees of their home country employer while seconded to the Australian-based company*
- *not bring their family with them*
- *stay in apartment-style accommodation while they are in Australia which will be arranged by the Australian employer.*

[46] If Mario receives an allowance from his employer, he must declare it as assessable income. Mario must also substantiate his claim in accordance with Division 900 unless the allowance he receives meets the requirements of subsection 900-30(3). If the allowance meets those requirements, he will be able to rely on the exception from substantiation – see Taxation Ruling TR 2004/6 *Income tax: substantiation exception for reasonable travel and overtime meal allowance expenses* for further information.

69. *In these circumstances, the employees are living away from their usual residence due to:*

- *there being a change in the employees' regular place of work from their home country to Australia*
- *the length of time the employees will be away from their usual residence in their home country*
- *the fact that they will be staying in apartment-style accommodation while they are working in Australia.*

70. *These factors combined indicate that the employees are living in Australia (and not overseas in their home country). Accordingly, their expenditure on accommodation and food and drink are living expenses. They are a prerequisite to earning their assessable income and are not incurred in the course of gaining or producing their assessable income. The employees are not entitled to a deduction for the accommodation and food and drink expenses they have incurred for the period they are working in Australia.*

Relocation

71. Where an employee has relocated for work, the cost of accommodation and food and drink will be living expenses (see paragraphs 10, 13 and 14 of this Ruling). This will be the case regardless of whether moving to the new location is required by the employer or the work.[47]

72. Whether an employee has relocated is a question of fact. Factors that indicate an employee has relocated, include:

- they are at the new location for an extended period
- their usual residence is no longer available for them to occupy because the employee has either sold it or because it has been leased or rented out long-term[48]
- they are accompanied by their family and the family's belongings have been transferred to the new location
- their children attend school at the new location
- their spouse or partner obtains employment at the new location
- they change their postal address and electoral role details to their new place of residence
- they establish ties to the local community, for example, by taking up membership at local sporting and recreational clubs at the new location.

[47] Where an employee is required to relocate to perform their work duties, and their employer reimburses or pays for certain expenses associated with that relocation, the employer may be exempt from FBT. However, this exemption does not extend to accommodation and food and drink. See sections 58AA, 58B, 58C and 58D of the FBTAA.

[48] If the employee has been living in a rented property, their usual residence will no longer be available to them when they either sublease it or end their lease for the property.

Example 8 – employee relocated – accommodation and food and drink expenses not deductible

73. *Rhia lives in Melbourne and works for an accounting company which has offices all over Australia and overseas. Given her particular skills, Rhia's employer transfers her to their office in Sydney for a period of two years. Rhia is paid an allowance to cover the cost of her move to Sydney. Rhia's family will accompany her to Sydney so she rents out the family home in Melbourne and rents a house for her and her family to live in while she is working in Sydney. Rhia's children are enrolled in school in Sydney and her spouse is also granted a transfer to his employer's office in Sydney.*

74. *Rhia has relocated to Sydney because:*

- *she is away for an extended length of time*
- *she is accompanied by her family*
- *her spouse is transferred and works at his employer's Sydney office*
- *her children attend school in Sydney, and*
- *she has rented out her usual residence in Melbourne.*

75. *Rhia must declare the allowance she has received as assessable income. She will not be entitled to claim a deduction for the cost of relocating or her accommodation and food and drink expenses while she is working in Sydney. The expenditure is not incurred in the course of gaining or producing her assessable income. The expenses are a prerequisite to her earning her assessable income. Accordingly, Rhia's accommodation and food and drink expenses are living expenses and are private or domestic in nature.*

Incidental expenses

76. In addition to accommodation and food and drink expenses, an employee who is travelling on work may incur expenses that are incidental to the travel (incidental expenses). Incidental expenses are minor, but necessary expenses associated with travelling on work. This might include a car parking fee, a bus ticket or a charge for using the phone or internet for work-related purposes. If an employee is travelling on work and incurs incidental expenses, those expenses will be deductible under section 8-1. If the accommodation and food and drink expenses an employee incurs while they are travelling on work must be apportioned (see paragraphs 77 to 83 of this Ruling), the incidental expenses relevant to the same travel should be apportioned on the same basis.[49]

Apportionment

77. If accommodation and food and drink expenses are only partly incurred in gaining or producing assessable income, apportionment is required. Only that portion of the expense that relates to the employee's income-producing activities is deductible.

[49] Incidental expenses must also be substantiated in the same way accommodation and food and drink expenses are, see paragraphs 98 to 101 of this Ruling.

78. Apportionment is also required to the extent that the expenses have a capital or private or domestic nature. In cases where there is no obvious method of apportionment, it is to be done on a 'fair and reasonable' basis.[50]

Example 9 – business and private travel – employee accompanied by spouse – apportionment of expenditure

79. *Therese is employed as the regional manager of a company that operates clothing stores. Her regular place of work is in Sydney. Each year the regional managers attend an internal five-day planning workshop held on the Gold Coast in Queensland. Therese would not have travelled to the Gold Coast but for her attendance at the workshop. Lunch is provided at the workshop each day and Therese's employer also provides dinner for all the regional managers one evening. When she travels to the Gold Coast for the workshop, Therese's husband will join her and they will stay an extra two days to have some leisure time together. While Therese is at the workshop, her husband will play golf and go to the beach.*

80. *The room Therese has booked is not influenced by her husband accompanying her and the cost of the room is the same whether one or two people stay in it. The cost of the room for the seven nights is $1,680.*

81. *Travel for the period of the workshop is an incident of Therese's employment and the expenditure she incurs on accommodation and food and drink is incurred in the course of performing her income-producing activities. Accordingly, Therese is travelling on work during that period and the accommodation expenses she incurs for the first five nights of her stay are deductible. The cost of the accommodation for the two nights after the workshop is a private expense and will not be deductible.*

82. *The full cost of the room for five nights will be deductible because Therese's choice of room and the cost of the room was not affected by her husband accompanying her. Therefore, Therese can claim a deduction of $1,200 (5/7 nights × $1,680) for the accommodation.*[51]

83. *Therese will not be entitled to a deduction in relation to the food and drink that are provided as part of the workshop (lunch each day and dinner on one evening) since she has not incurred the expenditure. However, she will be entitled to claim the cost of any other food and drink she incurs during the period of the workshop. If she eats out with her husband, only the cost of her meal will be deductible. Any food and drink Therese purchases on the last two days of her trip is not deductible because the expenses are private in nature.*

Accommodation expenses – additional property expenses

84. When an employee is travelling on work, they usually stay in short-term accommodation close to the location that they will be performing their income-producing

[50] *Ronpibon Tin*. Refer to paragraphs 37 to 40 of TR 2020/1 and paragraphs 63 to 70 of TR 98/9 for more information on apportionment.

[51] If Therese receives an allowance from her employer, she must declare it as assessable income. Therese must also substantiate her claim in accordance with Division 900 unless the allowance she receives meets the requirements of subsection 900-30(3). If the allowance meets those requirements, she will be able to rely on the exception from substantiation – see TR 2004/6. However, she may still be required to show how she calculated her deduction, including her basis for apportionment.

activities, either alone or shared with others. This may include a hotel, motel, serviced apartment, caravan or other commercial accommodation.

85. Employees who travel frequently to the same location may choose to rent or buy a property rather than stay in a hotel or other commercial accommodation when travelling on work.

86. Whether an employee can claim a deduction for expenses associated with such a property, and to what extent, depends on the ordinary principles of deductibility under section 8-1 (see paragraphs 6 to 12 of this Ruling).

87. A deduction is allowable for expenses incurred in financing, holding and maintaining an additional property which an employee purchases or rents if it is occupied by them as accommodation in the course of travelling on work, except to the extent the expenses are capital, private or domestic in nature.[52]

88. Additional property expenses that may be claimed include lease payments, rent, interest on borrowings to acquire the property, rates, land tax, property insurance and general maintenance of the building and grounds. A deduction is also allowable for the decline in value (depreciation) of depreciating assets (such as furniture and household equipment) used in connection with the property.[53]

89. However, if an employee's expenses in relation to the property are disproportionate to what the employee would have paid for suitable commercial accommodation for the period of travel, a deduction is not allowable to the extent that the expenses are incurred in the pursuit of another object unrelated to the earning of an employee's assessable income.[54]

90. Additional property expenses must also be apportioned where the property is used for private purposes, for example if the employee and their family use it for holidays, as well as for the employee's use while travelling on work.

91. No deduction will be allowed for additional property expenses if the travel undertaken by the employee is a consequence of the employee's personal circumstances, including their choice about where to live[55] (see paragraphs 24 to 36 of this Ruling).

Example 10 – travelling on work – additional property expenses deductible

92. *Anwar is employed as an engineer. He lives with his spouse in their apartment in Adelaide near his regular place of work. As part of his role, Anwar has been assigned to work on a project in Mount Gambier (497 kilometres from Adelaide) which is expected to last for nine months. During the same nine-month period, all of Anwar's other projects are located in Adelaide. Based on other large projects he has worked on, Anwar determines that he will generally have to travel to Mount Gambier twice a month for around three nights at a time. Anwar will receive a travel allowance from his employer to cover his accommodation and food and drink expenses when he travels to Mount Gambier. Due to the frequency of his travel and his preference not to stay in a hotel, Anwar decides to rent a fully furnished unit in Mount Gambier to stay in when he travels there.*

[52] See paragraphs 15 to 22 of this Ruling, paragraphs 37 to 40 of TR 2020/1, and paragraph 329 of Taxation Ruling TR 1999/10 *Income tax and fringe benefits tax: Members of Parliament – allowances, reimbursements, donations and gifts, benefits, deductions and recoupments* for more information on apportionment.
[53] See Division 40 and the ATO's *Guide to depreciating assets 2020*.
[54] *Fletcher v Commissioner of Taxation (Cth)* [1991] HCA 42.
[55] *Charlton*; *Toms*.

93. *During the nine-month period, Anwar stayed in the rented Mount Gambier property for 65 nights. When he was not there, the unit was left vacant. The rent on the unit was $210 per week so Anwar's additional property expenses for the nine-month period amount to $7,560 ($210 × 36 weeks).*

94. *Anwar determines that the weekly rent on the fully furnished unit over the nine-month period of the project is less than the amount he would have spent if he had stayed in a hotel in Mount Gambier near the project site for 65 nights during that same period.*

95. *During the period of the project, Anwar's regular place of work remained in Adelaide and he continued living at his usual residence with his spouse. Although the project was for a period of nine months, Anwar was only away overnight from his usual residence for short periods of time, that is three nights at most each fortnight (total of 65 nights). Based on these factors, Anwar was travelling on work when he travelled to Mount Gambier. The expenditure Anwar incurred on accommodation and food and drink while he was working in Mount Gambier was incurred in the course of gaining or producing his assessable income as the occasion of the outgoings is his income-producing activities.*

96. *The cost of renting the unit is not disproportionate to the cost Anwar would have incurred if he had stayed in commercial accommodation. Therefore, Anwar will be entitled to claim a deduction of $7,560 (the amount he incurred) for accommodation expenses and the amount he spent on food and drink for the periods he was in Mount Gambier.*

97. *Anwar must declare the allowance he receives from his employer for accommodation and food and drink as assessable income in his tax return.*[56]

Substantiation for deductions claimed for accommodation and food and drink expenses under section 8-1

98. Accommodation and food and drink expenses incurred by an employee who is travelling on work are work expenses.[57] Accordingly, these expenses[58], which are deductible under section 8-1, can only be deducted if the employee can substantiate them by:

- getting written evidence[59]
- keeping travel records where that travel involves an employee being away from their ordinary residence[60] for six or more nights in a row[61], and
- retaining the written evidence and travel records for five years.[62]

Exceptions from substantiation – reasonable amounts

99. There are some exceptions from the requirement to substantiate accommodation and food and drink expenses and the requirement to provide travel records for employees

[56] Anwar must also substantiate his deduction claim in accordance with Division 900 unless the allowance he receives meets the requirements of subsection 900-30(3) and section 900-50. If the exception applies, he will be able to rely on the exception from substantiation – see TR 2004/6 for further information.
[57] Defined in subsection 900-30(1).
[58] This includes incidental expenses, see paragraph 76 of this Ruling.
[59] See subsection 900-15(1).
[60] See footnote 19 of this Ruling – 'ordinary residence' is used for income tax purposes.
[61] Section 900-20.
[62] Section 900-25.

travelling on work.[63] These exceptions only apply when the employee receives a travel allowance.[64] A travel allowance is paid, or is to be paid by the employer, to cover losses or outgoings that the employee incurs when travelling away from their ordinary residence when undertaken in the course of their duties as an employee:

- for accommodation, or
- for food or drink, or
- that are incidental to the travel (incidental expenses).

100. If the employee meets the criteria for relying on the exception from substantiation, the exception will only apply to the expenses the travel allowance is paid to cover. For example, an employer may pay for an employee's accommodation directly and then pay their employee a travel allowance to cover food and drink expenses the employee will incur while travelling on work**.** In these circumstances, the exception from substantiation may only apply to the food and drink expenses incurred by the employee, noting that the exception does not apply to overseas accommodation.[65]

101. The exception from substantiation for travel allowance expenses[66] allows an employee to claim a deduction for expenses they have incurred up to the amount the Commissioner considers reasonable (reasonable amount)[67] without having to provide written evidence[68] and, in some circumstances, travel records.[69] If an exception from substantiation applies, it does not mean that an employee can automatically deduct the reasonable amount for accommodation and food and drink expenses. In order to be able to claim a deduction under section 8-1, the employee must:

- have incurred the expense (such that it was not incurred by somebody else), and
- demonstrate they incurred the expense when they were travelling on work.

Reimbursements, direct payments and allowances by employer

102. There may be a fringe benefit and therefore FBT implications for an employer where the employer:

- reimburses an employee's accommodation or food and drink expenses, or
- incurs expenditure on accommodation or food and drink in respect of an employee.

103. Depending on the benefits provided to the employee, it may be an expense payment fringe benefit, property fringe benefit, a board fringe benefit, a residual fringe benefit or a LAFHA fringe benefit.

[63] See sections 900-50, 900-55 and 900-65 and TR 2004/6 for more information on the exceptions from substantiation.
[64] As defined in subsection 900-30(3).
[65] For further information on the substantiation exception refer to TR 2004/6 and the Commissioner's annual Taxation Determination setting out the reasonable travel allowance expense amounts for each income year (for example, Taxation Determination TD 2020/5 *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2020–21 income year?*).
[66] Travel allowance expenses is defined in subsection 900-30(2).
[67] Subsection 900-50(2).
[68] Subsection 900-115(2) sets out what a document must set out to be written evidence.
[69] Section 900-150 sets out how to keep travel records.

104. Further, an allowance paid by an employer to cover the costs of an employee's accommodation and food and drink may be a travel allowance or a LAFHA (see paragraphs 109 to 133 of this Ruling).

Reimbursements and direct payments

105. The FBT consequences for the employer depend on the taxable value of the fringe benefit. The taxable value of a fringe benefit under the FBTAA can be reduced, potentially to nil, if the 'otherwise deductible' rule applies. Pagone J. in *John Holland*[70] states that this rule requires:

> ... a conclusion to be reached about whether the hypothetical expenditure of money would have been allowable as a deduction to the employee if the employee had incurred that expenditure. … [It] requires the making of the assumption that the expenditure actually incurred by the employer had been incurred by the employee.

106. If the employee would not be able to claim a deduction (under section 8-1) for the hypothetical expenditure, the employer will not be able to use the 'otherwise deductible' rule to reduce the value of the fringe benefit.

107. Accommodation and food and drink expenses incurred by an employee that are subsequently reimbursed by their employer cannot be claimed as a deduction by the employee under section 8-1.[71]

108. Where the reimbursement or direct payment of an employee's accommodation and food and drink by their employer gives rise to a fringe benefit, the amount paid is non-assessable non-exempt income in the hands of the employee.[72]

Travel allowances and LAFHAs

109. When an allowance is paid by an employer to cover accommodation and food and drink expenses, it is necessary to determine whether that allowance is a travel allowance[73] or a LAFHA[74] as they are subject to different taxation treatment.

110. Specifically, a:

- travel allowance is included in an employee's assessable income under the ITAA 1997[75], whereas
- LAFHA is a fringe benefit which is non-assessable non-exempt income in the hands of the employee[76] and may give rise to FBT which is paid by the employer.

111. The name of an allowance does not determine the nature of that allowance. In order to determine whether an allowance is a travel allowance or a LAFHA, it is necessary to consider the purpose for which the allowance is paid.[77]

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[70] *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 at [55].
[71] Section 51AH of the ITAA 1936.
[72] Section 23L of the ITAA 1936.
[73] As defined in subsection 900-30(3).
[74] As defined in subsection 30(1) of the FBTAA.
[75] Refer to paragraph 12 of TR 2004/6 for guidance on when a travel allowance does not need to be declared as assessable income.
[76] That is, the LAFHA is not included in the employee's assessable income. See subsection 6-15(3) and subsection 23L(1) of the ITAA 1936.
[77] In most cases it will be necessary to consider the industrial instrument under which the allowance is paid.

Travel allowances

112. A travel allowance is an allowance an employer pays (or is to pay) to an employee to cover losses or outgoings that:

- an employee incurred for travel away from their ordinary residence[78], either within or outside Australia, that they undertake in the course of their duties as an employee, and
- are incurred for accommodation or for food or drink expenses, or expenses that are incidental to the travel.[79]

113. A travel allowance is assessable income.[80] However, there are some circumstances where the amount of the travel allowance does not have to be reported in an employee's income tax return as assessable income.[81]

114. The receipt of a travel allowance, which is included in an employees' assessable income, does not give rise to an entitlement to claim a deduction for accommodation and food and drink expenses.[82] The nature of the expense and its connection to the employee's income-producing activities determines whether it is deductible (see paragraphs 6 to 12 and 15 to 22 of this Ruling).

LAFHA

115. An allowance will be a LAFHA benefit[83] where it would be concluded that some or all of the allowance is, in the nature of compensation to the employee, for:

- additional expenses (not being deductible expenses) incurred by the employee, or
- additional expenses (not being deductible expenses) incurred by the employee and other additional disadvantages to which the employee is subject,

because the employee is required to live away from his or her normal residence[84] in order to perform duties of employment. As a LAHFA is a fringe benefit, it is non-assessable non-exempt income in the hands of an employee.[85]

116. For the purposes of section 30 of the FBTAA, an employee's normal residence is[86]:

- their usual residence if the employee's usual place of residence is in Australia, or
- either
  - the employee's usual overseas place of residence if they do not have a place in Australia where they usually reside, or

[78] See footnote 19 of this Ruling – 'ordinary residence' is used for income tax purposes.
[79] Subsection 900-30(3). See also sections 900-50 and 900-55.
[80] Section 15-2.
[81] See paragraph 12 of TR 2004/6 for information on when a travel allowance does not have to be included as assessable income and Pay as you go withholding variation (registration ID F2015L01047).
[82] *Case R22* 84 ATC 212.
[83] Subsection 30(1) of the FBTAA.
[84] See footnote 19 of this Ruling – 'normal residence' is used in subsection 30(1) of the FBTAA.
[85] See footnote 76 of this Ruling.
[86] 'Normal residence' is defined in subsection 136(1) of the FBTAA.

- the place in Australia where the employee usually resides when they are in Australia (see Example 7 of this Ruling).[87]

117. If an allowance is only paid for the disadvantages to which the employee is subject, it will not be a LAFHA.[88] This means it will be assessable income in the hands of the employee who receives it.

118. The expenses of living away from home are living expenses which are not deductible (see paragraphs 10, 13 and 14 of this Ruling).[89]

Difference between a travel allowance and a LAFHA

119. The main difference between a travel allowance and a LAFHA is that a:

- travel allowance can only be paid to cover deductible accommodation and food and drink expenses and incidental expenses incurred by an employee when they are travelling on work
- LAFHA is paid to provide compensation to an employee for the additional living expenses incurred by an employee because their duties of employment require them live at location away from their usual residence.

120. Not every allowance that is paid by an employer to cover an employee's living expenses will be a LAFHA. In order to be a LAFHA, the allowance must meet the criteria in paragraphs 115 to 118 of this Ruling. Depending on the circumstances, the amount paid by the employer may also be another type of fringe benefit.

121. A LAFHA may also be paid partly as compensation for additional living expenses incurred by the employee and partly for other additional disadvantages to which the employee is subject, for example, disadvantages associated with isolation or the lack of normal amenities of a town or city dwelling[90], because the employee's duties require them to live away from where they usually reside.

122. Accordingly, to determine whether an allowance is a travel allowance or a LAFHA, it is first necessary to determine what expenditure the allowance is designed to cover or compensate the employee for and whether those expenses are deductible under section 8-1.

Example 11 – travel allowance paid to employee

123. *Roy is employed by a construction company that works on large projects all around Australia. He lives in a house in Sydney with his family and his position is located there. Roy generally works on projects in Sydney but on occasion, his employer assigns him to work on projects interstate or in regional parts of New South Wales.*

124. *During the 2019–20 income year, Roy worked on six different projects of varying lengths of time. All the projects except for one were located in or around Sydney. The other project his employer sent him to work on was in Berry, New South Wales (157 kilometres from Roy's usual residence in Sydney). Roy worked on that project from 20 January 2020 to 7 February 2020.*

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[87] Subsection 136(1) of the FBTAA and Chapter 11 of Fringe benefits tax – a guide for employers.
[88] *Atwood Oceanics Australia Pty Ltd v Commissioner of Taxation* [1989] FCA 481 (*Atwood Oceanics*).
[89] If the employer provides accommodation rather than paying an allowance, it may be an exempt residual benefit under subsection 47(5) of the FBTAA.
[90] *Atwood Oceanics*.

125. *Under the Enterprise Bargaining Agreement under which Roy is employed, his employer is obliged to pay him an allowance to cover the cost of accommodation and food and drink when he travels and works on a project that is located more than 150 kilometres from Roy's usual residence as it is not considered possible for an employee to return home each night in those circumstances.*

126. *The night before he is due to start work on the project, Roy travels to Berry. Each Friday night, Roy returns home for the weekend and each Sunday night, travels back to Berry. During the week, Roy stays in a motel near the worksite and purchases all his meals.*

127. *Roy is not living at Berry away from his usual residence in Sydney while working on the project. This is due to the:*

- *length of the project and the fact that the overall period of time Roy is away from his usual residence is reasonably short*
- *location of Roy's regular place of work in Sydney does not change*
- *short-term nature of the accommodation in which he stays while working in Berry.*

128. *The expenditure Roy incurs on accommodation and food and drink is not occasioned by Roy's personal circumstances because he lives in Sydney. Roy's travel to Berry is required to carry out his duties of employment. As such, Roy is travelling on work. The expenditure Roy incurs on his motel accommodation and food and drink while he is working in Berry is deductible. As the allowance Roy receives is to cover deductible accommodation and food and drink expenses incurred by him while he is travelling on work, the allowance Roy's employer pays him for this period is a travel allowance.*

Example 12 – LAFHA paid to employee

129. *Rowan lives in Adelaide with his family and is employed at the Olympic Dam mine as an electrician on a fly-in fly-out basis. The Olympic Dam mine is located 570 kilometres from Rowan's home in Adelaide. He is employed to work at the Olympic Dam mine on an 18-month contract. He works four weeks on and two weeks off. Under the terms of his employment agreement, Rowan has the option of being provided with board and lodging or being paid an allowance of $350 per week to cover those costs.*

130. *Rowan chooses to be paid an allowance as he prefers to stay in rented accommodation with a co-worker. The two-bedroom unit which he shares with his co-worker is in Roxby Downs, located around 10 kilometres from their worksite. The rent on the unit is $200 per week so Rowan and his co-worker each pay $100 per week. Even though Rowan has to pay rent for the two weeks he is not occupying the unit, his allowance covers this additional rent expense and the expenditure he generally incurs on food and drink and rent during the four-week period he is working.*

131. *The expenses that Rowan has incurred on accommodation and food and drink while he is in Roxby Downs are living expenses and are not deductible.*

132. *The occasion of the expenditure is Rowan's personal circumstances such that he lives in Adelaide and works at the Olympic Dam mine. The allowance the employer pays him is to cover his non-deductible additional expenses because he is required to live away from his normal residence in order to perform duties of employment. The allowance is a LAFHA and not a travel allowance.*

133. Instead of working out whether the allowances paid to Roy in Example 11 of this Ruling and Rowan in Example 12 of this Ruling are for travelling or living away from home, and whether their expenses would be deductible, their employers could rely on the compliance approach in PCG 2021/D1 to determine whether the allowance they pay their employees is a travel allowance or a LAFHA based on the number of nights they are away.

Date of effect

134. When the final Ruling is issued, it is proposed to apply both before and after its date of issue. However, the Ruling 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 Ruling (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

135. To the extent that there is any conflict between the final Ruling and the previous draft Ruling TR 2017/D6, the Commissioner would have regard to the earlier draft in deciding whether to apply compliance resources in relation to the income year to which the earlier draft applies.

Commissioner of Taxation
17 February 2021

Appendix – Your comments

136. You are invited to comment on this draft Ruling, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

137. A compendium of comments is prepared when finalising this Ruling, and an edited version (with names and identifying information removed) is published to the Legal database on ato.gov.au. Please advise if you do not want your comments included in the edited version of the compendium.

Due date: **19 March 2021**

Contact officer details have been removed following publication of the final ruling.

Status: **draft only – for comment**

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

PCG 2021/D1; TR 98/9; TR 1999/10; TR 2004/6; TR 2005/16; TR 2006/10; TR 2020/1; TR 2020/5; TR 2021/1

Previous Rulings/Determinations:

TR 2017/D6

Legislative references:

- ITAA 1936 23L
- ITAA 1936 23L(1)
- ITAA 1936 51AH
- ITAA 1997 6-15(3)
- ITAA 1997 8-1
- ITAA 1997 8-1(2)(b)
- ITAA 1997 15-2
- ITAA 1997 Div 40
- ITAA 1997 Div 900
- ITAA 1997 900-15
- ITAA 1997 900-15(1)
- ITAA 1997 900-20
- ITAA 1997 900-25
- ITAA 1997 900-30(1)
- ITAA 1997 900-30(2)
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