


TD 93/D276 - Fringe benefits tax: does the payment of a 'location allowance' to an employee by an employer constitute the provision of a 'living-away-from-home allowance benefit' under section 30 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA)?

 This cover sheet is provided for information only. It does not form part of *TD 93/D276 - Fringe benefits tax: does the payment of a 'location allowance' to an employee by an employer constitute the provision of a 'living-away-from-home allowance benefit' under section 30 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA)?*

This document has been finalised by TD 94/144.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Fringe benefits tax: does the payment of a "location allowance" to an employee by an employer constitute the provision of a "living-away-from-home allowance benefit" under section 30 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)?

1. No. For an allowance to fall within section 30 of the FBTAA it must have been paid because the employee was required to live away from his or her usual place of residence.
2. 'Location allowances' are customarily paid to attract employees to live in, or continue to live in, a particular (usually remote) location. In most cases the allowances are paid to all employees of the employer at that location, regardless of whether or not the employees have a place of residence somewhere else. Further, the allowances are calculated without reference to any additional expenses which could be expected to be incurred as a result of living at that location. (See *Case X41 90 ATC 347*; 21 ATR 3337; *Case Y40 91 ATC 393*; 22 ATR 3351; *Case Y51 91 ATC 453*; 22 ATR 3412.)
3. Since allowances of this type are not paid because the employee is required to live away from his or her usual place of residence, they cannot be a living-away-from-home allowance under section 30 of the FBTAA. In such a case, the allowance is assessable to the employee under subsection 25(1) of the *Income Tax Assessment Act 1936* (ITAA).

Examples

1. *Tom is employed by Miner Ltd in a developing town in the North of Australia. Miner Ltd pays all employees an allowance of \$100 per week because of the remoteness of the town and the lack of amenities available. As the allowance was not paid because of any requirement that Tom be living away from a usual place of residence, the allowance would be assessable to Tom under the ITAA.*
2. *Sally works in the same town as Tom and under the terms of an industrial award receives an allowance of \$100 per week from her employer. The allowance is called a "Location Allowance" in the award. The award states that the allowance is paid only where an employee has to live away from home in order to do the job, and is intended to cover the additional costs of accommodation and other living expenses above what it would have cost the employee if he or she had not been living away from home. It is not paid to employees whose permanent home is in the town. The allowance would satisfy the conditions of section 30 of the FBTAA.*

FOI INDEX DETAIL: Reference No.

Related Determinations: TD93/D275

Related Rulings: MT2030

Subject Ref: allowances; fringe benefits; living-away-from-home allowances

Legislative Ref: FBTA 30; FBTA 136(1); ITAA 25(1); ITAA 221A(1)

Case Ref: Case X41, 90 ATC 347, 21 ATR 3337; Case Y40, 91 ATC 393, 22 ATR 3351; Case Y51, 91 ATC 453, 22 ATR 3412

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