

TD 94/14 - 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 94/14 - 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⚠ This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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, Case Y40 91 ATC 393, Case Y51 91 ATC 453.*)
3. Since an allowance of this type is not paid because the employee is required to live away from his or her usual place of residence, it 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, and may be subject to a reduction in the taxable value under section 31 of the FBTAA.

Commissioner of Taxation

27/1/94

FOI INDEX DETAIL: Reference No. I 1217011

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Related Determinations:

Related Rulings: MT 2030

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

Legislative Ref: FBTAA 30; FBTAA 136(1); ITAA 25(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

ATO Ref: FBT Cell 30/04A

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