

Living Away From Home Allowance

In advising on the LAFHA, there are no **definitive** rules in determining an individual's eligibility, as each person's circumstances are taken into account on a case by case basis. From current legislation, tax rulings and case law, the following are areas that the Tax Office will look at when reviewing each case:

- Is the employment contract designating the employee to work away from home for a fixed or ongoing period? A contract away from home for only a fixed amount of time would indicate there is the intention to move back to your usual place of residence.
- How is the usual place of residence currently being kept? If the property is being looked after by relatives while you are away, this would again support your intention to move back to your usual place of residence. If it is being rented out, this may be looked at as a more permanent arrangement.
- Have you purchased a property in the new location or are you renting?
- Lifestyle of the employee in current location. Ie. Memberships to local clubs, drivers licence, changes to electoral roll, application for Medicare, permanent citizenship etc.
- Whether or not it is in the nature of your position to be relocated and if you had a choice in the relocation.

The Tax Office use the above information, and more, to make an informed decision as to whether it seems likely you will return to your usual place of residence (hence eligible for LAFHA) or whether your current location has effectively become your usual place of residence (not eligible). It is also important to note that should your circumstances change during the year with respect to any of the above issues, changing location, purchasing a property etc, this will also have an impact on your eligibility to receive the allowance.

The Tax Office have programs in place to review such arrangements with employers, and are currently actively doing so. This is because the LAFHA is effectively an income stream for which the Tax Office is not receiving any tax.

The ATO have advised of a program whereby letters are being sent to employers for the 2010 FBT year requesting the following information with respect to their employees:

- Name and tax file number
- Work location (postcode).
- Usual place of residence as declared on the employee's *Living away from home declaration*
- Details of their visa, if the employee's usual place of residence is overseas
- Employee's title and/or role in the organisation
- Amount of salary or wages paid to them in the full financial year
- Total value of living-away-from-home allowance the employer paid to the employee

To avoid a negative outcome in a possible audit, the employer could potentially seek a private ruling from the Tax Office to ensure your particular situation and circumstances would be deemed to be a genuine LAFHA.

If you have any questions or require any further information please feel free to contact your Client Manager and they will be happy to assist you.

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