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Deferral of LAFHA Changes to 1 October 2012

Reforms to living away from home allowances ('LAFHA's) and related benefits which were set to take effect from 1 July 2012 have been deferred by the Federal Government until 1 October 2012. The announcement was made with the introduction of the amendment Bill into Parliament on 28 June 2012.

The Government has stated that it has deferred commencement of the changes to give employers and employees more time to prepare for the new arrangements.

With deferral to 1 October 2012, employers will be able to continue pre-existing arrangements to provided LAFHAs and benefits to employees living away from home and be taxed under the current rules. If structured correctly, most LAFHAs and related benefits can be provided tax free up to 30 September 2012 without having to satisfy the new tests such as whether a home is maintained elsewhere in Australia.

The changes, set to apply from 1 October 2012, are in substance the same as previously announced, as follows:

- LAFHAs will generally be taxed as income to the employee rather than as a fringe benefit. The only exception will be that the first \$42 per adult and \$21 per child of the LAFHA paid to compensate for food and drink expenses will be taxed as a fringe benefit rather than as income in the employee's hands. This exception is a new feature announced with the introduction of the Bill into Parliament.
- If an employer provides benefits such as food and accommodation rather than a LAFHA, these will continue to be taxed under the FBT Act.
- Employees will generally not be able to access living away from home benefits or allowances unless they maintain a house for their own use in Australia and then live away from that house for work.
- All reasonable expenses for accommodation will require substantiation in order to be claimed as deductible by the employee. However, food expenses paid up to reasonable limits set by the Commissioner will not require substantiation.
- The concessions will apply for a maximum period of 12 months for an individual employee at any work location.
- Transitional provisions will mean that arrangements involving permanent tax resident employees entered into before 7.30pm on 8 May 2012 will not be subject to the new requirements to maintain a home in Australia until 1 July 2014, or when they enter a new arrangement or vary an existing one. It is important to note that almost any change to or renewal of a pre-existing employment arrangement will constitute a variation and trigger commencement of the new provisions. A variation could include extending the period of the contract, changing the rates of salary or LAFHA payments under the contract, or changing working hours.
- For overseas (temporary and non-permanent resident) employees, the new provisions will generally apply from 1 October 2012 unless they maintained a home in Australia prior to 7.30pm on 8 May 2012 and then lived away from it.