
The Parliament of the Commonwealth of Australia

Advisory Report on the Tax Laws Amendment (2012 Measures No. 4) Bill 2012

House of Representatives
Standing Committee on Economics

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Canberra

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Chair's foreword

This report focuses on Schedule 1 of the Tax Laws Amendment (2012 Measures No. 4) Bill 2012 (the Schedule and the Bill) which relates to changes to the taxation treatment of living-away-from-home (LAFH) allowances and benefits. The amendments seek to address concerns that the current concessions are being misused, resulting in a significant and growing cost to revenue.

The committee supports the Schedule's intent to compensate employees for the additional expenses associated with living away from home at the request of their employer. However, the committee believes that the LAFH allowances and benefits were not designed to provide a wage subsidy for workers in certain industries and as a general principle if employees are not incurring extra costs as a result of a temporary relocation, they should not receive the tax concession.

To limit the exploitation of the tax concession, the committee supports the introduction of tightened eligibility criteria with regards to the 12 month limit per location and the maintenance of a 'usual place of residence' within Australia. The committee noted industry's concern that the 12 month limit will not provide coverage for the duration of all projects. However, the tax concessions for LAFH allowances are intended to be temporary and are not designed to support workers who have essentially moved residence to gain or retain employment. The committee recognises the unique nature of remote construction sites and supports the decision to exempt fly-in fly-out (FIFO) and drive-in drive-out (DIDO) workers from the 12 month limit. It is recommended that DIDO workers who use their own transport to access their place of work should also be exempt from the time limit. Furthermore it is recommended that the definition of FIFO and DIDO workers be expanded to include workers who do not meet the test of maintaining a usual place of residence within Australia. The committee has also sought clarification on the circumstances in which the 12 month time limit will be paused.

The committee is also supportive of the proposed stipulation that an employee must be maintaining a primary residence. However, it should be noted that the committee believes that the definition of an employee's 'usual place of residence' and 'ownership interest' must be broadly interpreted and clearly articulated.

To access the tax concession, all accommodation expenses will need to be substantiated while food and drink expenses will only need to be substantiated if they exceed the amount prescribed by the Commissioner of Taxation. The committee has recommended that Treasury investigate whether there are any substantive impediments to allowing partners or spouses to incur deductible expenses on behalf of an employee where all other eligibility requirements are met.

While the intention of the Schedule was to bring the majority of a LAFH allowance under the income tax arrangements, 'ordinary weekly food and drink expenses' are still treated under the fringe benefit regime by the employer along with LAFH benefits (i.e. reimbursement or the direct provision of accommodation and food and drink). The committee strongly supports the single taxation treatment of a LAFH allowance and believes that it may be prudent for it to continue to be treated under the fringe benefits regime.

The reforms will generally apply from 1 October 2012. However, there are transitional provisions for employees who entered into employment arrangements prior to 8 May 2012. Temporary-residents who are not maintaining a primary residence in Australia will not be eligible for the transitional provisions. The committee has had to rely on the guidance of Treasury and its advice that the Schedule and the ensuing transitional provisions are compatible with Australia's human rights obligations and do not breach any double taxation agreements. Submitters were concerned that if a contract is altered ('material variation') then the transitional arrangements could be negated. The committee has sought clarification as to what constitutes a 'material variation' as a matter of urgency.

I would like to thank the organisations and individuals who assisted the committee during the inquiry through submissions or participating in the hearings in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Julie Owens MP
Chair



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Membership of the Committee

Chair	Ms Julie Owens MP
Deputy Chair	Mr Steven Ciobo MP
Members	Mr Scott Buchholz MP Mr Stephen Jones MP Dr Andrew Leigh MP Ms Kelly O'Dwyer MP Mr Craig Thomson MP
Supplementary member	Mr Scott Morrison MP

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Ms Zoë Smith
Inquiry Staff	Ms Siobhan Coughlan Dr Phillip Hilton
Administrative Officer	Ms Natasha Petrović



Terms of reference

On 28 June 2012 the Selection Committee requested the Standing Committee on Economics to inquire into and report on the Tax Laws Amendment (2012 Measures No. 4) Bill 2012.

Under Standing Order 222(e), reports of the Selection Committee are treated as having been adopted by the House when they are presented.



List of abbreviations

FBT	Fringe benefits tax
FBTA Act	<i>Fringe Benefits Tax Assessment Act 1986</i>
ITA Act	<i>Income Tax Assessment Act 1997</i>
LAFHA or LAFH allowances and benefits	Living-away-from-home allowances and benefits
The Bill	Tax Laws Amendment (2012 Measures No. 4) Bill 2012
The Schedule	Schedule 1 of the Tax Laws Amendment (2012 Measures No. 4) Bill 2012



Recommendations

2 Analysis of the Bill

Recommendation 1

The committee recommends that the Department of the Treasury provide a clear definition as to what constitutes an 'ownership interest' and the satisfactory retention of an employee's usual place of residence. The committee believes that the definition of 'ownership interest' should take into account the varied living arrangements that effectively constitute a person's 'primary residence'.

Recommendation 2

The committee supports the introduction of the tightened eligibility criteria for the tax concession for living-away-from-home allowances and benefits as proposed in Schedule 1 of the Tax Laws Amendment (2012 Measures No. 4) Bill 2012 which ensures that a 12 month limit applies per location and the maintenance of a 'usual place of residence'.

Recommendation 3

The committee recommends that the treatment of drive-in drive-out workers who use their own vehicles be brought into line with drive-in drive-out workers who use employer provided transport. In effect all drive-in drive-out workers should be exempt from the 12 month time limit proposed in Schedule 1 of the Tax Laws Amendment (2012 Measures No. 4) Bill 2012.

Recommendation 4

The committee recommends that the definition of fly-in fly-out (FIFO) workers and drive-in-drive-out (DIDO) workers should include FIFO and DIDO workers who do not meet the test of maintaining a usual place of residence within Australia, such as those who live with family members during off cycles or whose usual place of residence is in a country other than Australia.

Recommendation 5

The committee recommends that the Department of the Treasury clarifies the circumstances in which the 12 month time limit will be paused, with a view to providing the greatest level of simplicity and certainty while also achieving the policy intent of the time limit.

Recommendation 6

The Department of the Treasury should investigate whether there are any substantive impediments to allowing partners or spouses to incur deductible expenses on behalf of an employee where all other eligibility requirements are met.

Recommendation 7

The committee recommends that living-away-from-home allowances be treated within one taxation system.

The committee supports retaining the taxation treatment of living-away-from-home allowances wholly within the fringe benefits tax system.

Recommendation 8

The committee recommends that prior to the implementation of any changes to living-away-from-home allowances and benefits the Government must provide clear and concise documentation outlining the new compliance obligations for employers and employees.

Recommendation 9

The committee recommends that the Government provide as a matter of urgency a clear and inclusive definition of what constitutes a 'material variation' to a contract, as it relates to Schedule 1 of the Tax Laws Amendment (2012 Measure No. 4) Bill 2012.

