

SALARY PACKAGING GUIDELINES AND CONDITIONS - LIVING AWAY FROM HOME ALLOWANCE (LAFHA)

Related Policy:

Remuneration and Employment Benefits Policy

Purpose

Detail the application process for Living Away From Home Allowance (LAFHA) and ensure that:

- LAFHA is provided by the University on a fair and equitable basis
- LAFHA is only paid to staff members who are living away from their usual place of residence, for a period of more than 21 days, in order to perform temporary duties of employment with the University
- Eligibility for LAFHA benefits is regularly reviewed during the staff member's period of temporary absence from their usual place of residence
- All staff members are advised and understand their obligations with respect to the provision of LAFHA benefits
- LAFHA is only paid in circumstances that will not result in any FBT liability to the University.

Scope

Living Away From Home Allowance (LAFHA) only applies to staff members who:

- are temporarily living away from their usual place of residence in order to carry out employment duties with the University; and
- meet both the University and ATO eligibility requirements;
- are employed on a fixed-term contract of 12 months or greater and staff appointed to a continuing position.

Exclusions

The following staff members are excluded from applying for a Living From Home Allowance:

- Casual staff members
- Staff members appointed on fixed-term contracts for a period of less than 12 months.

1. Background

A Living Away From Home Allowance (LAFHA) provides staff members with a concessional tax arrangement to compensate staff members for additional expenses and disadvantages experienced as a result of being required to temporarily live away from their usual place of residence in order to perform the duties of employment.

Where a Staff Member is considered Living Away From Home, certain benefits may be provided which are exempt from FBT and exempt from income tax in the hands of the Staff Member.

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2. Eligibility Criteria

The University will only consider a staff member to be living away from home and thus eligible for LAFHA where the following criteria are met:

- The staff member has taken up a temporary residence away from their usual place of residence in order to carry out duties at a new but temporary workplace;
- The staff member's assignment is of a fixed duration. Generally this is 2 years for a domestic assignment and up to 4 years for an international assignment;
- The staff member has the intention to return to their home location at the end of their assignment; and
- The staff member still maintains their residential ties. For instance, they will still own their family home.
- A staff member's usual place of residence generally means the place where he or she dwells permanently or for a considerable time.

3. Cessation of LAFHA

A staff member's entitlement to LAFHA benefits will cease if:

- In the case of domestic staff members, a period of 2 years has lapsed from the time the staff member last lived in their usually place of residence.
- In the case of overseas staff members, a period of 4 years has lapsed from the time the staff member last lived in their usual place of residence.
- The staff member does not submit the annual statutory declaration (*Living Away From Home Declaration Form*) to the Human Resources Branch.
- ATO requirements change to exclude continuation of LAFHA.
- The University becomes aware that the staff member's circumstances have changed that affects their LAFH status such as:
 - becoming permanently employed in their assignment location;
 - purchasing a house in their assignment location;
 - selling their family home at their home location; or
 - having a change of intention to remain in the assignment location.
 - DIAC granting Permanent Residency status.

4. LAFHA cannot be provided retrospectively

Under ATO guidelines, any payment by the University to compensate a staff member for expenditure incurred in the past, relating to them having to live away from home, will generally be considered a "reimbursement", rather than as an "allowance" which would qualify as a LAFHA.

5. Staff members on a Sponsored Visa – Temporary Business (Long Stay) - Standard Business Sponsorship (Subclass 457) Visa

Staff members entering Australia on a Temporary Business (Long Stay) - Subclass 457 visa are required at all times to meet or exceed the Temporary Skilled Migration Income Threshold (TSMIT) which may affect their ability to salary package LAFHA.

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The University may be in breach of its obligations under the subclass 457 visa sponsorship if the TSMIT is not met.

For subclass 457 visa holders the TSMIT value refers to base salary and does not include any of the following:

- Living Away From Home Allowance;
- Superannuation Contributions;
- Accommodation or rental assistance, board, upkeep, meals or entertainment
- Incentives, bonuses or commission
- Shares or bonus shares
- Travel, holidays, health care /insurance
- Vehicles or vehicle allowances.
- Any other non-salary benefits.

In order for the University to consider salary packaging for a staff member on a subclass 457 visa, the staff member's salary (not including LAFHA) must remain above the Temporary Skilled Migration Income Threshold (TSMIT) of **\$49 330** per annum (This value is effective from 1 July 2011 and for further information and updates refer to DIAC website <http://www.immi.gov.au/skilled/temporary-skilled-migration-threshold.htm>)

Example: Annual Salary for Level B on 457 Visa:

Base Salary per annum before tax and excluding loadings and allowances	\$77,688
Temporary Skills Migration Income Threshold (TSMIT)	\$49,330
Maximum amount allowable for salary sacrifice arrangements in order to meet TSMIT requirements	\$28,358

Based on the above example the staff member would be able to enter into a salary packaging arrangement (including LAFHA) up to the value of \$28,358 per annum and still meet the TSMIT requirements (subject to the University's General Conditions on Salary Packaging (refer:<http://www.adelaide.edu.au/hr/conditions/salpack/cond.html>)).

6. Staff Member's responsibilities

Staff members in receipt of LAFHA benefits have an obligation to:

- Inform the Human Resources Branch (Employee Services team) where there is a change in:
 - Family status
 - Rental arrangements
 - Length of assignment
 - Residency or visa status
 - Staff member's intention to return to their declared usual place of residence
- Submit the annual declaration (LAFHA Declaration form) advising that staff member is living away from their usual place of residence.

7. The staff member should seek independent financial advice

It is important that staff members fully understand their obligations and potential risk when entering into a LAFHA salary packaging arrangement. The University applies diligence and care in offering staff the option of salary sacrificing LAFHA.

Staff members who apply to enter into a salary sacrifice arrangement for LAFHA bear the risk of any change in ATO LAFHA administration. If circumstances change and/or the ATO undertakes a review and as a result tax (including fringe benefits tax) is owing, then these taxes will be passed on to the individual staff member.

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These guidelines and conditions may change with or without notice, prospectively to comply with University Policy or either prospectively or retrospectively, to comply with ATO provision. Individual circumstances will determine whether salary packaging LAFHA will be financially advantageous to a staff member.

The University strongly recommends that staff seek independent financial advice regarding the legal and taxation requirement of the salary packaging and LAFHA prior to submitting their application to Human Resources.

8. LAFHA Components that may be claimed

8.1 LAFHA Accommodation Component

The accommodation component is an allowance that compensates the staff member for additional expenses that might reasonably be expected to be incurred in relation to a lease for accommodation.

It is the provision of a cash allowance to assist the employee in meeting the accommodation costs that are expected to rise from the employee having to temporarily relocate to take up the position. The University will only pay an allowance equivalent to the actual rental amount paid by the staff member to rent their accommodation (furnished or unfurnished). A copy of the rental agreement, substantiating the actual rental expenditure, must be provided prior to the commencement of any accommodation component.

8.2 LAFHA Food Component

The exempt food component is that part of the LAFHA that is reasonable compensation for expenditure on food and drink expected to be incurred by the staff member and any accompanying spouse and children because they are required to live away from home to perform their duties of employment.

The ATO specifies the amount of weekly food allowance which it considers reasonable, based upon family size. The "reasonable weekly allowance" amount is updated annually. The first \$42 per adult per week and \$21 per child under 12 years of age of food expenditure are deemed to be normal food costs.

The University will only compensate staff members for additional food costs due to living away from home (i.e. the difference between the ATO's 'reasonable' weekly allowance amount and the normal food costs applicable to the staff member's family size). Allowances paid within these limits are generally exempt from both FBT and income tax. For reasonable food component values set by the ATO refer to the ATO's website for [Reasonable Food Component for expatriate employees living away from home](#).

The rates are the same for domestic staff members and international staff members.

Example for single person: Based on the rates effective 1 April 2011 to 31 March 2012, the LAFHA Food Component payment for a single person is \$191 per week (\$233 reasonable weekly allowance less \$42 deemed to be normal food costs). No FBT would be payable in this scenario.

Example for 2 adults and 3 children: Based on the rates effective 1 April 2011 to 31 March 2012, the LAFHA Food Component payment for a family of two adults and two children is \$341 per week (\$488 reasonable weekly allowance less \$147 deemed to be normal food costs [$\$42 \times 2 + \21×3]). No FBT would be payable in this scenario.

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9. Administration Fee

An administration fee of \$10 pre-tax will be made via payroll each fortnight for the period that the salary sacrificing arrangement is in place. The University reserves the right to vary the level of the fee with appropriate notice to the staff member.

10. Application Procedure

10.1 The staff member applying for LAFHA must:

Read and adhere to the guidelines, conditions and eligibility criteria contained in this document.

Complete and sign the following documentation:

- LAFHA Questionnaire - Living Away From Home Status
- LAFHA - Salary Packaging Application Form

Attach a copy of:

- the Rental Property Lease Agreement substantiating the actual rental expenditure
- forward the completed documentation to Human Resources Branch for the attention of:
Employee Services
Level 13
115 Grenfell Street
The University of Adelaide SA 5005.

10.2 The Human Resources Branch will assess the application and if approved will process the payment in the next available fortnight.

10.3 Prior to 30 April each year in respect of the 12-month period ending on the previous 31 March the Human Resources Branch will request the staff member to complete a Living Away From Home Declaration Form (LAFHA Declaration).

11. Explanation of Effective and Ineffective Salary Sacrifice Arrangements

An "effective salary sacrifice arrangement" is one under which a staff member agrees to receive part of his or her total remuneration as benefits before the staff member has earned the entitlement to receive that amount as salary or wages.

The ATO has confirmed that the following are the taxation consequences of an effective salary sacrifice arrangement (see Taxation ruling TR 2001/10):

- The benefits provided to the staff member in lieu of salary will be considered as fringe benefits or exempt fringe benefits. Where the benefits provided are fringe benefits, the provision of the benefit will be taxable to the employer in accordance with rules in *the Fringe Benefits Tax Assessment Act 1986*;
- Fringe benefits received by a staff member in lieu of salary are not assessable to the staff member pursuant to section 23L of the Income Tax Assessment Act 1936; and
- The employer has no PAYG withholding obligations in relation to the benefits.

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An "ineffective salary sacrifice arrangement" is one under which a staff member directs that an entitlement to receive salary or wages that has been earned already be paid in a form other than salary or wages. By contrast, where the salary packaging arrangement is an "ineffective salary sacrifice arrangement", the tax consequences are as follows:

- The value of the benefits received are considered to have the nature of salary and wage income and will be assessable to the staff member (i.e. the FBT provisions will not have effect); and
- The employer will have PAYG withholding obligations in relation to the benefits.

Tax savings will only arise to a staff member when they are paid a LAFHA under a salary packaging arrangement where it is paid pursuant to an effective salary sacrifice arrangement. This is because the value of the LAFHA will be a fringe benefit with a nil taxable value and not constitute salary or wages income to the staff member.

As such, when a staff member is paid a LAFHA by the University pursuant to a salary packaging arrangement, the LAFHA will only be paid in lieu of salary and wages that the staff member would otherwise be entitled to, before they have earned those salary and wages. The University will **not** pay a staff member a LAFHA in lieu of salary or wages that they already have earned an entitlement to receive i.e. LAFHA will not be paid retrospectively.

12. Example – Personal taxation impact on a staff member receiving a LAFHA in accordance with an effective salary sacrifice arrangement.

12.1 Case Study:

- John Smith has been recruited from the United Kingdom (UK) to work for the University of Adelaide for a period of 4 years as a Senior Lecturer. He is a UK national.
- He will relocate to Adelaide, Australia for the duration of the assignment. After the end of the 4 year period he intends to return to his home in the UK.
- John will enter Australia on a temporary 457 visa. He will not apply for permanent residency.
- John's wife and young child (age 3) will relocate with him from the UK for the entire 4 year period.
- Upon arrival in Australia, John rents an apartment for himself and his family to stay in that is close to where he will be required to perform his employment duties. The monthly rental he has agreed to pay is \$400.00 per week.
- John is offered a total remuneration package of \$95,163 per annum plus 17% superannuation per annum (\$16,178 p.a.)
- After receiving a LAFHA application, the University determines that during his employment he will be "living away from home" and agrees to allow him to enter into a salary packaging arrangement for a Living Away From Home Allowance (LAFHA).
- In accordance with the guidelines and conditions, the University determines that the LAFHA to be paid to John Smith will be \$714 per week (or \$37,128 per annum) consisting of:
 - Reasonable accommodation component: \$400 per week (supported by rental lease agreement)
 - Reasonable food component: \$314 per week (Food Component for two adults and one child of \$419, less Statutory Food Amount of \$105 = \$314)

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12.2 Indicative Tax Savings

For the 2011/2012 income year, John Smith is approximately \$13,260 per annum better off after tax by receiving the LAFHA in lieu of salary pursuant to an effective salary sacrifice arrangement.

John Smith Annual Remuneration	A: Non-Packaged	B: Packaged
Total Remuneration	\$111,340.71	\$111,340.71
• Cash Salary	\$95,163.00	\$95,163.00
• Superannuation Employer contribution of 17%	\$16,177.71	\$16,177.71
• LAFHA deduction	Nil	(\$37,128.00)
Taxable Salary	\$95,163.00	\$58,035.00
Less Tax withheld	(\$25,012.00)	(\$11,752.00)
Salary After Tax	\$70,151.00	\$46,283.00
LAFHA Payment	Nil	\$37,128.00
Total Net Pay after (including LAFHA)	\$70,151.00	\$84,411.00

Note: B less A = \$13,260.00 per annum

12.3 Explanation of Tax Savings

Under this salary packaging arrangement, John Smith foregoes an entitlement to salary to receive a LAFHA of \$37,128.00 per annum. The payment of a LAFHA is a fringe benefit. John does not pay income tax on the receipt of the LAFHA and it is not subject to PAYG withholding. The tax saving of \$13,260 per annum is the additional amount of tax that John Smith would have paid had the \$37,128 been added to his salary instead of receiving this amount as a LAFHA in lieu of salary.

As the LAFHA consists only of the "exempt accommodation component" and the "exempt food component", the payment of the LAFHA does not result in the payment of any FBT by the University.

13. Definitions

ATO means the Australian Taxation Office which is the Government's principal revenue collection agency.

Child means a staff member's child by birth, adopted child, step child or ex-nuptial child.

DIAC means the Department of Immigration and Citizenship

Domestic staff member means a new appointee or existing staff member relocating entirely within Australia to perform duties of employment with the University.

International staff member means a new appointee or existing staff member relocating from overseas to perform duties of employment with the University.

Fringe Benefits Tax (FBT) means the tax payable by employers in respect of benefits provided to employees that are not in the nature of salary or wages. It is imposed at the highest marginal rate of personal income tax. FBT legislation classes the provision of certain benefits as "exempt benefits" or benefits having a "nil taxable value", FBT does not apply to such benefits and the benefit is not subject to Australian income tax.

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Spouse includes another person (whether of the same or opposite sex): who you were in a relationship with that was registered under a prescribed State or Territory law, or who, although not legally married to you, lived with you on a genuine domestic basis in a relationship as a couple.

Staff member means a person employed by the University.

TSMIT means Temporary Skilled Migration Income Threshold set by DIAC for a subclass 457 visa holder.

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