

Living away from home has its benefits

More and more employees moving overseas or interstate for work are getting significant tax benefits using the "living away from home" allowance. Employers are also increasingly using the benefit to attract the skilled workers they need for their business.

However, the rules governing its use are confusing and the Australian Taxation Office and government are proving slow to clarify them.

The allowance is paid by an employer to workers to compensate them for additional expenses such as accommodation, food and creature comforts while living away from home for work.

Workers are not required to include the allowance in their assessable income. Instead, companies are required to pay fringe benefits tax on the parts of the allowance that are not tax-free.

Broadly, the allowance is tax-free, provided that it is for reasonable cost of accommodation and food expenses. Employers cannot simply include everything on the allowance, but it is useful as far as it goes.

For example, if an employee receives income of \$115,000 in 2008 but no allowance, he will pay tax of \$33,100, receiving a net amount of \$81,900.

If the employee receives income of \$95,000 and an allowance of \$20,000 for reasonable accommodation costs, he will pay tax of \$25,100, receiving a net amount of \$89,900. His tax is cut by \$8,000, at no great inconvenience or extra cost to the company.

The global shortage of skilled workers has led to an increasing number of bosses investigating how they can use the allowance to retain or attract workers or to plug holes in staff shortages across their international offices.



The skills shortage has led to an increasing number of employers using the living away from home allowance to retain or attract workers.

Photo: MICHAEL CLAYTON-JONES

But despite a deluge of requests about how the allowance works and the prospect of significant tax benefits, uncertainty reigns about the coverage and tax treatment of the allowance, experts say.

West Australian tax partner at PKF Mark Pollock says he has seen a dramatic increase in the use of the allowance over the past 12 months because of the boom in the mining, oil and gas industries in the state.

"Uncertainty about how the rules work comes as we are seeing a record number of expatriates in Australia on 457 visas, in addition to the interstate transfer of workers because of the mining boom," he says.

"This is a clear case of the ATO ruling being hopelessly outdated and contradictory to subsequent case law, leaving employees and employers with very little protection when problems arise."

Deacons tax lawyer Andrew

The bottom line

- Employee paid \$115,000. Pays tax of \$33,100. **Net benefit: \$81,900.**
- Employee paid \$95,000, plus a living away from home allowance of \$20,000 for reasonable accommodation costs. Pays tax of \$25,100 on the salary, and no tax on the allowance. **Net benefit: \$89,900.**
- The employee's tax bill is reduced by \$8,000 at no extra cost to the company.

Spalding says the allowance has become an increasingly effective tool to attract and retain staff while allowing them valuable experience both interstate and overseas.

"In the current tight employment market, savvy employers are aware of the need to offer tax-effective remuneration packages to attract and retain staff," he says.

However, bosses still face a significant risk of an ATO audit if they provide the allowance in uncertain circumstances.

The ATO administers the allowance rules on a vague and sometimes contradictory tax ruling issued in 1986.

Despite assurances to review the allowance, the ATO and government are yet to deliver any changes, leaving employers and employees at risk of significant penalties if they get it wrong.

Pollock says he is advising a man

who bought a home in WA where he worked, but maintains his family home in Queensland and travels there once a year.

"Under the ATO ruling, we are unable to definitively say whether or not he is living away from home because he spends most of his time in WA, with houses and family members in both Queensland and WA," Pollock says.

Another example from the last ATO crackdown was when Atwood Oceanics Australia, an international offshore drilling company, was hit in 1989 with a \$385,560 tax bill for wrongful payments made to workers living aboard ships during periods of drilling.

Pollock urges the ATO to address the inadequacies in the system "to foster an environment of stability and fairness for both Australian and expatriate employees as well as their employers".