Taxpayers AUSTRALIA INC
Superannuation AUSTRALIA
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Friday 3rd February, 2012

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
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Dear Sir,

Submission in relation to FBT reform

Thank you for the opportunity to provide comments in relation to the consultation paper which addresses proposed changes to the Fringe Benefits Tax laws as they relate to living away from home allowances.

We have attached our submission and would be pleased to provide any further comments or information you may require.

Yours faithfully

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Taxpayers Australia

Submission in relation to Fringe Benefits Tax reform

1. Questions for consultation

1.1 Consultation Issue 1

We believe the current proposal may:

a) Reintroduce an unreasonable burden on taxpayers to maintain documentary evidence to support deduction claims, and

b) Be unfair to employers and employees who have entered into binding contractual arrangements prior to the introduction of the new rules, where those new rules impose an additional cost on one party.

1.2 Consultation Issue 2

According to the consultation paper an allowance provided to an employee for living away from home (LAFH) in circumstances where there is no intention that the employee reconciles the allowance with actual accommodation and food costs will no longer constitute an exempt benefit for Fringe Benefit Tax (FBT) purposes but instead will fall for consideration under the income tax system.

Clarification is required as to the meaning of 'but there is no intention that the employee reconciles the allowance with actual accommodation and food costs'.

For example, if an employer pays an employee a $600 allowance where it is intended that actual accommodation and food costs will total $600 but they in fact costs $650, will the allowance fall for consideration under the FBT or income tax rules?

On the basis that this will impose an increased compliance burden on employees, TAI submit that a common sense approach should prevail, that is, that the Government should apply a deminimus approach to the rules.

TAI further submit that the Government must provide greater clarity as to the operation of the rules as follows:

- legislating the meaning of 'maintaining a home in Australia for own use',
- clarity of the associated substantiation rules is also required.

According to the consultation paper, for a temporary resident (TR) employee to qualify as maintaining a home for their own use in Australia, they may either own or rent a unit of accommodation which must be available for their use at any time and cannot be rented out or sub-let while they are LAFH. Temporary resident employees will be required to provide documentary evidence to their employers that they are maintaining a home for their use which could include lease agreements, mortgage documents and receipts for accommodation which show that the accommodation is available for the employee's use at the time for which the LAFH benefits are being paid.

For example however, where an employee is living in employer owned accommodation which is leased at market rates, would the absence of a formal lease agreement remove its exempt FBT status?

- clarity on the principles to be applied for determining:
    - when permanent residents and TR employees 'are required to live away from their home to perform their work
    - the distinction between travelling and LAFH benefits

In this regard, we note the following in relation to existing Tax Office guidance on the operation of the rules, MT 2030 Fringe Benefits Tax: living-away-from-home allowance benefits (MT 2030)

- Section 30 *Fringe Benefits Tax Assessment Act 1986* (FBT Act) specifies the elements of a LAFH allowance to be that:

  · it is in the nature of compensation for additional expenses incurred by the employee or additional expenses and other disadvantages suffered, and

  · that those additional expenses and other disadvantages are due to the employee being *required to live away from his or her usual place of residence* in order to perform the duties of his or her employment.

  Determining when an employee can be regarded as living away from their 'usual place of residence' has caused great uncertainty in the past which is likely to have contributed to widespread variation in the way that the rules have been interpreted. Tax Office guidance to date has done little to alleviate this uncertainty.

- that MT 2030 was released on 30 September 1986 and has not been updated since

  Therefore, greater clarity is needed by either legislating its meaning or through the provision of updated, comprehensive Tax Office guidance.

TAI further submit that the requirement for employees to substantiate food and accommodation expenditure represents a move back to itemised deductions signalling an increased compliance burden and cost for employees. In accordance with the philosophy of reducing compliance costs, a realistic threshold needs to be established up to which an employee will not be required to substantiate.

The consultation paper also fails to deal specifically with 'overseas employee' benefits such as home leave travel and child education costs both of which are predicated on the employee being treated as LAFH.

1.3 Consultation Issue 3

A further interaction which should be considered if the new rules are implemented is whether a liability on employers to make superannuation guarantee payments will arise where allowances represent assessable income of the employee.

1.4 Consultation Issue 4

In relation to Consultation Issue 4, TAI submit that the amount should be calculated in a manner that provides consistency and facilitates a lesser compliance burden for employees.

1.5 Consultation Issue 5

The imposition of annual indexation of the statutory food amount would create an unnecessary administrative burden on employers and employees. If indexation is contemplated a period of, say, five years would be an appropriate basis.

1.6 Consultation Issue 6

The changes will apply from 1 July 2012 for both new and existing arrangements. All benefits and allowances provided in respect of the period commencing 1 July 2012 will be subject to the new arrangements.

In relation to Consultation Issue 6, TAI submit that application of the rules to existing arrangements be deferred for a reasonable period of time so as to allow employers time to review existing salary packaging arrangements and renegotiate these arrangements where possible.

Many employers will have agreed to provide fixed LAFH benefits net of any taxes and will therefore need to absorb any such increase in taxes resulting from the proposed amendments. This may be significant for some employers and ultimately cause some financial hardship.