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By Email: FBT@treasury.gov.au

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Dear Sir/Madam

SUBMISSION – FBT REFORM, LIVING-AWAY-FROM-HOME BENEFITS

Grant Thornton Australia Limited (Grant Thornton Australia) appreciates the opportunity to provide comments to Treasury on the Consultation Paper ‘FBT Reform, Living-away-from-home benefits’ dated 29 November 2011.

Our comments in the form of responses to the questions posed in the Consultation Paper are attached to this letter.

In general, Grant Thornton is in favour of the Treasurer’s proposal to return the tax treatment of living away from home allowances (“LAFHA”) to the income tax system. We believe this is the appropriate taxing regime for allowances.

We also support the Treasurer’s view that under the current living away from home (“LAFH”) regime, there are certain opportunities for taxpayers to take advantage of the LAFH system, in particular the FBT exemption, which are outside of the original intention of the legislation.

We believe any changes introduced should foster as much as possible a level playing field across and between both ordinary and temporary residents of Australia as well as non-residents. Having the LAFH reference point for temporary residents being a ‘maintained home’ in Australia removes an apparent ‘advantage’ of a temporary resident over an ordinary resident. However we believe removal or reduction of this relative ‘advantage’ for temporary residents needs be weighed against the general fact that the cost of attracting and retaining suitable employees from overseas will be relatively greater, and the current LAFH system is recognising this and supported employers for that.

With the current high price of living in Australia compared to many other countries, having a LAFH system which reduces current concessions for temporary and non-residents may result in substantial negative effects on businesses trying to attract and retain the best work force in Australia. Certain industries which require a greater number of international workers (due to specialisation or demand) will be adversely affected by these proposed changes (and in extreme cases businesses may be forced to move operations overseas).

Furthermore, we consider the proposed changes have aspects which could in fact go further than reducing any relative 'advantage' of the system for temporary residents and non-residents. In this regard, we believe restricting temporary residents to receiving concessionally treated LAFH benefits only if they 'maintain a home for their own use in Australia' could reduce the relative fairness of the LAFH system for them, since we understand an ordinary resident does not necessarily need to 'maintain a home for their own use' whilst LAFH ie the house could be temporarily rented out.

However, if policy changes of this type are the Government's intention, we suggest consideration be given to imposing limits or restrictions on the LAFH concessions as follows:

- Prescribing a time limit for ordinary residents, temporary residents, and non-residents eg 2 - 4 years, in which they can receive exempt LAFH benefits; or
- Removal of additional benefits for temporary residents, such as the education expenses concessions, usually not available for ordinary residents.

Should you have any queries in relations to these matters please contact me on 08 8372 6676.

Yours faithfully
GRANT THORNTON AUSTRALIA LIMITED



Geoff Lloyd
Partner – Taxation Services

Responses to Questions

1 *Are there any unintended consequences from the proposed reforms?*

- As discussed above, different treatments will still potentially apply between ordinary Australian residents, and temporary Australian residents and non-residents, in receiving LAFH benefits. Is this intended?
- With the current high price of living in Australia compared to many other countries, having a LAFH system which reduces current concessions for temporary and non-residents may result in substantial negative effects on businesses trying to attract and retain the best work force in Australia. Certain industries which require a greater number of international workers (due to specialisation or demand) will be adversely affected by these proposed changes (and in extreme cases businesses may be forced to move operations overseas).
- Under the proposed changes, temporary residents must maintain a home for their use in Australia in order to receive LAFH benefits. In addition, this home must be available 'at all times' and therefore it seems it cannot be occupied by tenants whilst LAFH. In comparison, we understand an ordinary Australian resident can receive an exempt LAFHA even when their house is not 'available at all times' due to a tenancy.
- Under the proposed changes, LAFHAs for accommodation costs could continue to be exempt from tax even if for 'extreme' amounts if the employee can substantiate the expenditure. We are unclear as to whether this is intended to be permitted or whether the introduction of a reasonable cap should be considered.
- Employees will face additional compliance costs in determining their costs incurred when they are 'living away from home.' The extent of costs incurred will need to be communicated to the employer in relation to variation of PAYG withholding, which potentially could be a different variation for each employee and so increase employer compliance costs.
- As a result of the rise in employment costs the proposed changes could cause, due to the inability to access LAFH concessions for temporary residents, certain businesses may be forced to move (part of) their operations offshore.
- Related LAFH concessions such as education expenses, transport, and storage and removal of household effects are dependent on whether an individual is living away from home. It is unclear in the consultation paper what the precise treatment of these benefits is to be under the proposed changes.
- As a result of certain LAFH benefits being taxed under the income tax regime and others becoming subject to the FBT regime, on-costs will rise such as payroll tax, superannuation and workcover.

2 *What practical aspects of the proposed reforms need further consideration?*

- We note the definition of temporary resident for income tax purposes excludes the spouse of an Australian citizen. As a result, where a non-resident comes to Australia on a temporary employment contract and has an Australian spouse, the non-resident would not be temporary resident for tax purposes. Under the proposed changes, which focus on moving the reference point for a temporary resident to ‘maintaining a home in Australia’, would that non-resident (not being a temporary resident) still be able to access LAFH concessions in relation to living away from their overseas home? We believe this outcome could put such a non-resident at a relative advantage to temporary residents, and is not in line with the stated policy objective of removing unfair advantages currently experienced by some temporary and non-residents.
- Residents can readily switch between temporary and ordinary resident status. For example, spouse connections can result in a quick transition between temporary and ordinary resident status. In addition, knowing your exact status isn’t always easy to determine.
- Employees will face greater administration costs in determining their status under the LAFH regime, and if their situation can qualify their employer for available concessions.
- These changes may have considerable effects on the labour market in terms of mobility and staff retention. Certain positions/industries where specialisation is crucial (and where Australian residents cannot fulfil these employment demands) may be affected through a reduction in the skill set available. One option may be for the Government to look at key industries where international specialisation is a necessity (ie positions cannot be filled by ordinary residents) and offer LAFH relief for certain groups.
- How will transitional measures be introduced and what effect will these have on current employment and lease contracts, etc? The Government should consider grandfathering the treatment of existing agreements indefinitely or at least until the cessation of the visa period.

3 *Are there any interactions with other areas of the tax law that need to be addressed?*

- How will these changes interact with the Fly In Fly Out (FIFO) FBT exemptions? The FIFO exemptions are based on a concept of ‘usual place of residence,’ which currently is the same concept as used in determining if a person is LAFH. Under the proposed changes, the LAFH concept for temporary residents is now based on living away from a person’s ‘Australian home.’
- Clarification is needed on how New Zealand residents working in Australia will be affected under these new changes. New Zealand residents can enter Australia and remain temporary resident indefinitely. New Zealanders in Australia might now no longer be able to access the LAFH concessions that ordinary Australians are able to access where, as temporary residents, they will be subject to the requirement of having to ‘maintain a home in Australia for their own use at all times’ (ie we presume it cannot be rented out); whereas we understand an ordinary resident can rent out their permanent home and qualify as LAFH.

4 *As the statutory food amount is intended to reflect the ordinary costs incurred by an Australian in 2011, what should the statutory food amount be updated to?*

We believe the statutory food amount should be reflective of the typical cost of a basket of certain relevant goods.

5 *Should the statutory food amount be indexed annually to ensure it remains up to date?*

Yes, updated annually, in line with the CPI.

6 *What transitional arrangements would be appropriate for the community sector?*

The reforms proposed by the Government are going to have considerable effect on current employment and rental (accommodation) agreements where LAFH benefits are received. The majority of employment and rental agreements entered into will be difficult to break or change as a result of these proposed reforms. Therefore the Government should consider grandfathering indefinitely the tax treatment of all employment agreements currently in place prior to the announcement of these proposed reforms, in order to minimise any adverse effects from these changes.

If it is not possible for the Government to grandfather these current arrangements indefinitely, we propose a transitional period of:

- Remainder of current visa; and
- Remainder of current contract.