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Dear Sir/ Madam

Subject: Consultation Paper - Fringe Benefits Tax (FBT) Reform – Living-away-from home benefits

CPA Australia represents the diverse interests of more than 139,000 members in 114 countries throughout the world. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders.

Against this background, CPA Australia welcomes the opportunity to comment on the issues raised in the abovementioned Consultation Paper.

If you have any queries in relation to any aspects of the attached submission, please contact Garry Addison, Senior Tax Counsel, on (03) 9606 9771 or via email at garry.addison@cpaaustralia.com.au.

Yours faithfully

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Attachment

Submission by CPA Australia - Re Consultation Paper - Fringe Benefits Tax (FBT) Reform – Living-away-from home benefits

The Treasurer's announcement (media release 148 of 29 November 2011) states that access to the tax exemption by temporary residents will be limited to those who maintain a residence for their own use in Australia, which they are living away from for work purposes.

This will result in rules for those merely travelling rather than living away from home and in the latter case, those who are resident, non-resident or a temporary resident. However, this is bound to result in confusion. This confusion will be compounded by the uncertainty around the meaning of temporary resident (section 995-1 of the Income Tax Assessment Act 1997), in particular because paragraph (c) of the definition prevents a person being a temporary resident if their spouse is an Australian resident (under the Social Security Act 1991), and it seems that when a friend will become a de facto spouse will not always be clear. The proposed change will therefore add to complexity and it builds on a foundation which is not firm.

The Treasurer's announcement goes on to say that the changes will ensure that a level playing field exists between temporary and permanent residents. Given there is currently no requirement that any worker, i.e. resident, non-resident or temporary resident, maintains a home which they live away from, if this requirement is imposed on temporary residents alone, it cannot be said that there will be a level playing field. Furthermore, on page 11 of the CP, it states that temporary residents cannot rent out or sublet the unit of accommodation they are living away from. This requirement has never been applied to residents, so it can hardly be said to level the playing field.

In the Summary on page ix of the CP, it states that salary is being characterised as exempt LAFHA benefits as a result of the interpretation of the LAFHA provisions by tax advisers and employers. This view materially mistakes the position. The actual position taken by tax advisers and employers has been well known by and accepted the ATO for many years. Furthermore, tax advisers have made numerous requests to the ATO for public statements to clarify the operation of these rules but such requests have largely been to no avail. In this light, it seems inappropriate to now cast the burden of the supposed need for reform solely on tax advisers and employers.

In the Background, on page1of the CP, it is stated that these concessions assist labour mobility within Australia. In our view, it should say that they assist labour mobility within and into Australia. If assisting labour mobility is a key policy objective then it is difficult to see why non-residents should not qualify for LAFHA concessions, except perhaps in light of the potential revenue implications of such a move. Perhaps a 'type of labour' test could be applied so that, for example, the labour mobility of sought after professionals (rather than say 'back packers' or others on working holidays) continues to be supported.

In part 1.1.1 of the CP, on page 1, it is stated that LAFHA is an allowance paid to compensate for the additional expenses incurred. In practice, this requirement has never been applied by the ATO and, if it was, it seems that a great many LAFHA benefits would not be exempt. Perhaps simply applying this requirement is sufficient to protect the revenue from erosion by people on working holidays in Australia.

On page 2 of the CP, reference is made to the statutory food component of $42 per week for adults and $21 per week for minors. Increasing these amounts would provide substantial protection for the revenue without the need for more contentious changes. Accordingly, the reference at page 10 of the CP to such a review is noted and supported.

On page 4 of the CP, reference is made to the long-standing difficulty in determining when a person is living away from his/her usual place of residence. The proposed amendments fail, in our view, to adequately address this threshold issue (for both residents and temporary residents).

We agree that returning LAFHA to the income tax system is a sensible change.

In part 2.1 of the CP it states that the proposed changes will apply from I July 2012 for both new and existing arrangements. Applying a fundamentally different taxing regime to existing arrangements is, in our view, bound to cause hardship in some cases and should be reconsidered.

The CP (for example, at pages 7 and 8) uses the term 'permanent resident' to mean, it seems, tax resident, whereas it would seem that a person could have permanent resident status but not be a tax resident. This matter appears to require some further clarification.

On page 8 of the CP, it is stated that employers of employees living away from home will continue to be entitled to the exemption for education expenses. Presumably, this refers to non-residents or temporary residents but the matter should be clarified. In addition, what is to be the (continued?) treatment of relocation costs for temporary residents?

On page 9 of the CP, it states that that the cost of shared accommodation must be shared for these purposes. It is unclear, however, how this will be done (eg. where employment might start on different dates, each party's remuneration might differ, both parties might not be full-time employees and only one employer might pay LAFHA, etc)?

The specific questions for consultation raised at page13 of the CP have been largely addressed above. In addition:

- Re Q3.4 – we are not currently in a position to comment on what the statutory food component should be;

- Re Q3.5 – the statutory food component should not be indexed annually as any annual change would be likely to be very small and simply add to the burden/compliance costs of dealing with numerous changes; and

- Re Q3.6 – the transitional rules should be the same for the community and other sectors, i.e. the new rules should not apply to contracts binding as of the date of the media release, until they are changed, or say 4 years from the date of the relevant media release.