

2 February 2011

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600
By Email: FBT@treasury.gov.au

Dear Manager

Submission on the Consultation Paper – Fringe Benefits Tax Reform – Living Away From Home Benefits released on 29 November 2011

The Group of Eight Universities (Go8) welcome this opportunity to make a submission to Treasury in relation to the proposed reforms to the fringe benefits tax (FBT) treatment of the Living Away From Home Allowance (LAFHA), as announced by the Government on 29 November 2011 (Proposed Reforms).

The Go8 is a coalition of Australia's eight most research intensive universities, collectively employing approximately 44,000 people. The members of the Go8 are The Australian National University, The University of New South Wales, The University of Adelaide, The University of Queensland, The University of Melbourne, The University of Western Australia, Monash University and The University of Sydney.

As set out in the attached submission, we believe that the proposed reforms would have a significant impact on the Go8 as on the higher education sector more generally, and that these impacts may not be the intended consequences of the proposed reforms. In particular, The Group believes that the proposed reforms will have a detrimental impact on the ability of Australian universities to remain internationally competitive by attracting globally respected academics from other countries either to work (subclass 457 visa holders); or to visit Australia to conduct and collaborate on research and other scholarly activities (subclass 419 and 442 visa holders). This would significantly undermine the quality of research and education outcomes in Australia.

The proposed reforms would also have a significant impact on visiting academics and occupational trainees, these being two special categories of temporary resident that are specific to the higher education sector. It appears that the application of the proposed reforms to visiting academics and to occupational trainees (both non-remunerated appointments) may be unintended and that if the proposed reforms proceed, an exemption for these special categories may be warranted.

Similarly, we would request that the current FBT rebate be applied or an exemption be made for temporary residents working on fixed term contracts at Australian universities to ensure we continue to attract the finest academics in the global market. With Australia becoming an increasingly expensive place to live, the government needs to ensure that the Australian way of life remains affordable.

The Group of Eight would be pleased to discuss any aspect of this submission, with you. If this would be helpful, please do not hesitate to contact Dr Les Rymer, Policy Advisor, Go8 on (02) 6239 5488 or Les.Rymer@go8.edu.au or Nicole Gower, Senior HR Manager, University of New South Wales on (02) 9385 8726 or n.gower@unsw.edu.au.who will be able to make the necessary arrangements.

Kind regards



Michael Gallagher
Executive Director

GROUP OF EIGHT UNIVERSITIES SUBMISSION REGARDING FRINGE BENEFITS TAX REFORM – LIVING AWAY FROM HOME BENEFITS

1. Introduction

The Group of Eight Universities (**Go8**) is a coalition of Australia's eight most research intensive universities which together employ approximately 44,000 people. The members of the Go8 are: The Australian National University; The University of New South Wales; The University of Adelaide; The University of Queensland; The University of Melbourne; The University of Western Australia; Monash University; and The University of Sydney.

The Go8 exists to:

- enhance the contribution of its member universities to the nation's social, economic, cultural and environmental well-being and prosperity;
- extend the contribution of its member universities to the generation and preservation of the world's stock of knowledge;
- strengthen Australia's capacity to engage in and benefit from global developments, respond to global and local challenges; and
- expand opportunities for Australian students, regardless of background, to participate in higher education of world class.

The higher education sector is one of Australia's largest and most internationally prominent industries. The sector has been very successful in attracting international students to Australia to undertake studies and has significant research achievements across many disciplines. The international rankings achieved by Australian universities – and in particular the rankings of the Go8 member institutions – demonstrate the extent of this success. To achieve these outcomes, Australian universities are highly dependent upon their ability to attract top global talent.

The proposed reforms would have a significant impact on the Go8 and the higher education sector. Implementation of these proposals would result in Australian universities having a reduced ability to attract academics to work, visit and train in Australia. This would undermine the quality of research and education in Australia and the international competitiveness of Go8 member universities. Specifically:

- a. For Australian universities to develop knowledge successfully, provide world class education, and maintain competitiveness with other universities across the world, it is essential that they have the ability to attract and retain world class researchers and academics. It is essential to employ academics from overseas, to attract them to live and work in Australia for fixed periods, and to facilitate their visits to Australian universities for short periods as visiting academics.
- b. Australian universities already experience challenges to remain internationally competitive by attracting academics to live and work in Australia for fixed periods. The proposed reforms would severely exacerbate the difficulties that already exist, impede collaboration with academics across the world and reduce the transfer of knowledge to Australian academics and university students.
- c. Australian universities host unique categories of temporary residents, including visiting academics (e.g. subclass 419 visa holders) and occupational trainees (e.g. subclass 442 visa holders). These are unpaid appointments. However, it is customary for the hosting university to pay for living expenses and travel expenses associated with the

visit, which are currently exempt from FBT. If the proposed reforms proceed and FBT applies to the payment of such living expenses, this will reduce the scope for Australian universities to offer these appointments, and impact negatively on the acceptance of such offers, which will again reduce the transfer of knowledge to Australia and the quality of higher education in Australia.

- d. The LAFHA as currently applied has enabled Australian universities to benefit from all sources of supply in attracting the best field from overseas to support quality outcomes and has helped Australia leverage its unique qualities and abilities to achieve significant impact in a global market. The proposed reforms would affect our ability to be competitive for global talent, especially in attracting applications from low tax jurisdictions
- e. If the proposed reforms are made, transitional arrangements would be necessary to ensure that employees currently working in Australia and receiving LAFHA could afford to remain in Australia. If not, there is a high risk, as demonstrated by the number of young academics who have already commented on the impact of the high Australian costs of living, that such employees will be forced to return to their home country prematurely, potentially abandoning research grants, teaching, student supervisory commitments or other critical work.

The Group of Eight believes that these impacts are unintended consequences of the proposed reforms and are contrary to the public interest. Australian universities are not profit making enterprises. They exist to deliver high quality education in Australia and to conduct research for the development of knowledge and the benefit of the community.

2. The importance of global mobility in academia

The primary goals of the Go8 include the generation and preservation of the world's stock of knowledge, and offering world class higher education. Inherent to the success of these goals is the ability to recruit top global talent in a given field of endeavour, to exchange knowledge and to collaborate with academics and universities globally, particularly where those academics have unique knowledge or skills not available in Australia.

Collaboration is currently achieved through various means, including (relevantly):

1. Temporary residents working on fixed term contracts at Australian universities, normally pursuant to a subclass 457 (temporary business) visa.
2. Temporary residents visiting Australian universities on unpaid appointments, normally pursuant to a subclass 419 (visiting academic) visa.
3. Occupational Trainees training at Australian universities on unpaid appointments, normally pursuant to a subclass 442 (occupational trainee) visa.

These appointments provide an invaluable opportunity to transfer knowledge to Australian academics and university students. The proposed reforms will significantly limit the attractiveness of working in Australia in comparison to other countries and will, accordingly, hamper the ability of Australia to attract global talent.

3. Impact regarding employees (subclass 457 visa holders)

Given the specialised nature of academic work, it is not uncommon for Australian universities to need a person with specialised knowledge or skills not available within Australia to work on a research grant or project. This is evident from the nominated categories of academic employees under the 457 visa scheme (including Lecturers, Research and Development Managers, Research Associates, Professors, Senior University Lecturers, Assistant or Associate Lecturer, Assistant or Associate Professor and Research Fellow). In particular, work on nationally funded competitive research grants (for example, funded through the Australian Research Council or the National Health and Medical Research Council) often requires specific and highly specialised skills, knowledge and experience where there is sometimes only a handful of people in the world who possess the necessary expertise to perform the work.

Even under the existing arrangements, Australian universities are frequently unable to compete with well endowed overseas universities to attract top academics from overseas to live and work in Australia. Academics having the necessary expertise and skill sets are often highly sought after and Australian universities compete with other universities across the world to secure their appointment.

There are several key factors, well known within the sector, which significantly impact the ability of Australian universities to compete with the global market. These are outlined below:

- a. Australia's remoteness –our geographic location (outside of either the European or North American hubs) means that many globally respected academics are not willing to move out of what they see as the leading hubs of research and academia. Whilst this is partially due to a perceived remoteness, the practical aspects include the high cost of travel to and from Australia (for conferences and such) and the time lag between Australia and the main centres in Europe and North America.
- b. High marginal tax rates –Australia's personal income tax rates are significantly higher than those of the countries, from which we try to attract academics and there is no compensating ability to mitigate the tax liability with recognised offsets. The provision of LAFH benefits goes some way to remediating this situation for academics, providing them with a more closely aligned net income to their home location
- c. Cost of living, particularly accommodation – the high cost of accommodation in Australia, particularly in Sydney, creates a significant issue for academics at all levels. It is generally acknowledged that Sydney is one of the highest cost centres for rental accommodation, with a tight market which imposes increased costs for staff members who are required to rent due to their inability to purchase property. Recent studies indicate other major cities in Australia are rapidly bridging the gap with Sydney and are amongst the highest cost living centres in world rankings. With the Australian economy less affected by the global financial crisis, and the strength of the Australian dollar, the disparity in cost of living between Australia and other countries has intensified in the past several years, thus making it more difficult to attract global talent.
- d. Modest salary rates – unlike corporate organisations and industry, universities are not for profit organisations and the salary scales for staff members, both academic and general are relatively modest in comparison to those available in the corporate sector. Academic staff salaries, for PhD qualified staff range from approximately \$78,000 to \$170,000 per annum. These rates are significantly lower for academics than their education would suggest and less than what they would be able to achieve within the broader labour market.

e. Disparity with corporate and public sector relocation support – it is extremely uncommon for overseas academics who are employed by Australian universities to receive the relocation support offered to internationally relocating executives or employees from the corporate environment. University support for relocation to Australia can range from zero (not even a flight) to a maximum of \$30,000 for a Professor with 30 years experience. In many cases the support provided by the university does not meet the actual costs of relocating family and personal possessions, much less providing any kind of ‘general funds’ for the additional costs incurred to relocating and settlement in a new country.

f. Competition with industry – Universities are not the only employers competing for the top talent researchers. Industry employers, such as health professionals, pharmaceutical, mining, engineering, finance and other corporate employers seek to attract and retain top research talent. These employers are in a position to offer salaries far exceeding the salary which can be offered by a university. Universities compete with these employers without the benefit of being able to offer long term employment commitments or significant salary increases.

g. Employment determined by funding – due to the fact that much of the research funding comes from external sources, universities can have a limited ability to offer long term employment for overseas academics, particularly at the beginning of their career. This means that many overseas academics are living in Australia for only short periods, often between one and three years. They need to rent and are not in a position to set up longer term accommodation arrangements.

h. Accommodation costs incurred by academics are reasonable – due to the relatively modest salaries offered by universities, the accommodation costs incurred by academics are commensurately modest (although high compared to what they might pay in other countries) and do not fall into the commonly perceived “expatriate” range. In general, most of the accommodation costs incurred by academics in Sydney range between \$300 and \$800 per week – for singles to families of four people. Further, the accommodation is generally found close to the university, as the academic and family embrace the local community and area they are living in. This cost basis is not unreasonable and certainly does not fall into the “expatriate” lifestyle.

The current arrangements for LAFHA Benefits provide some improvement to Australia’s ability to be internationally competitive in this market. If these benefits were reduced or removed, as proposed, this would make it even more difficult for Australian universities to compete for talent, which would ultimately have a direct impact upon their global rankings.

4. Impact regarding visiting academics (subclass 419 visa holders)

FBT is a tax on the employer. We note that FBT may not be applicable for visiting academics (and occupational trainees) as the university is not their employer. However, to ensure that there are no adverse implications for the reimbursement of expenses to these visitors, we have commented on possible adverse consequences to the university sector were this to occur.

A visiting academic is a person employed by an overseas university (the home university), who visits an Australian university (the host university) to collaborate on research or for other scholarly purposes. These appointments are unpaid by the host university, as the academic normally conducts the visit within the scope of their employment with the home university and continues to receive salary payments from their home university for the duration of the visit. These visits also occur through academic sabbaticals (a common

feature of academic employment) which are when an academic is released from their normal workload (in particular teaching and administrative duties) to conduct intensive research. In addition to the benefits to Australian universities with respect to collaboration, exchange of knowledge and guest lectures, there are also administrative imperatives for visiting academic programmes. This is because some university courses require accreditation by international agencies and the criteria for accreditation include active international visitor programmes.

The Department of Immigration and Citizenship (DIAC) has a special category of visa (Subclass 419) specifically for visiting academics. This visa allows visiting academics to visit Australia on a temporary basis for the purpose of participating in a research project or collaboration. A condition of the visa (Condition 8103) is that the individual must not be paid any form of salary or remuneration. The 'employer' (the host university) is permitted to make a contribution towards living or travel expenses associated with the visit. However, DIAC has limited the value of living assistance which can be provided to visitors by the employer. The maximum contribution to living expenses for each subclass 419 visa holder is approximately \$29,000 (at August 2011). Such expenses may be paid as an allowance or as a reimbursement of expenses.

Under current FBT legislation, these payments in relation to travel and living expenses (whether paid as an allowance or reimbursement of expenses) are exempt from FBT and income tax. However, it appears that under the proposed reforms, this exemption may be removed. This will have a major impact on the ability of Australian universities to attract academics to visit Australia. If universities are required to pay FBT on living allowances or reimbursements, they will need to reduce the number of academics visiting Australia, essentially by half. Based on current visa requirements, the individual is unable to receive the amount as a taxable allowance as the subclass 419 visa does not allow any form of salary or remuneration to be paid. Therefore, the only way to provide assistance will be to reimburse the visiting academic, however if reimbursement is reduced to compensate for FBT, academics are unlikely to accept the offer to visit Australia..

The primary reason the consultation paper provides for the proposed changes to the FBT treatment of LAFHA is to address the inappropriate exploitation of the current arrangements. Some employers and particularly labour hire companies have been allowing temporary resident workers to convert their taxable salary into a tax-free allowance, thereby re-characterising their salary income into a tax free benefit. The changes are said to ensure that "a level playing field exists between hiring an Australian worker or a temporary resident worker living at home in Australia, in the same place, doing the same job". This rationale does not relate to visiting academics, who do not receive any salary from the Australian university, and indeed, must not receive any salary as a condition of their visa.

Even if the proposed reforms proceed in relation to employees, the Go8 submit that the impact on the reimbursement of living expenses to visiting academics and occupational trainees would be an unintended consequence and that a specific exemption is warranted for the reasons outlined above.

5. Impact re: occupational Trainees (subclass 442 visa holders)

An Occupational Trainee is a person from outside Australia who wants to improve their skills through training with an Australian organisation. The most common stream that an occupational trainee may be nominated under at a university relates to overseas students participating in a structured workplace training to enhance their skills and promote capacity building overseas.

To be eligible for the occupational trainee visa, the applicant must have adequate private medical and hospital health insurance for the duration of their intended stay in Australia and show evidence of funds to contribute to the cost of living and studying in Australia. Currently any support provided by the university in the form of a living allowance or paid accommodation can count towards the person's ability to prove adequate means of support for the visa application.

The person applying for the visa needs to demonstrate funds of approximately 485 AUD per week (25,220 AUD per year) as the primary applicant and this figure increases if dependent applicants are included in the visa application. Any reduction to the LAFHA contribution offered to the person could impact their ability to obtain the visa.

A condition of the visa (condition 8102) is that holder must not engage in work in Australia (other than in relation to the holder's course of study or training). This condition limits the earning capacity of the person and makes any LAFHA contribution the person receives essential to sustain their visit to Australia.

These payments are currently exempt from income tax and in most cases exempt from FBT. If these payments become taxable to the individual or re-imbursments becomes subject to FBT, the occupational trainees may not be able to afford to come to Australia.

6. Temporary Residents Education Fee

The draft proposal appears to retain a concession for employees receiving FBT free education expense for their children's education, when they are living away from home for work. However, due to uncertainty in the words and their definitions in the final legislation we would still like to identify issues around the impact of any changes to this aspect of the proposed LAFH reforms.

A flow –on consequence of removing LAFH eligibility for temporary residents, would be the removal of the ability of temporary residents to salary package the Temporary Resident Education Fee and the costs associated with overseas education for children.

The current NSW Temporary Residents Education Fee is required to be paid by all temporary residents, regardless of the level of their salary, and is commensurate with a low to mid range private school fees. Within the corporate environment, many employers will meet such costs as part of their global mobility policies, and as an attraction tool for their internationally experienced employees. For those employees who are not eligible for payment of such costs by their employers, salary packaging offers an alternate method of support, by reducing the tax liability on the value of the fees paid.

As noted above, within the University sector, the payment of such costs is highly unlikely to be available, and most staff members are salary packaging such costs, under the section 65A concession in the Fringe Benefits Tax Assessment Act 1986. If the eligibility to LAFH benefits is removed, staff members may no longer be able to salary package these costs, and may be required to meet the costs in full. For the reasons outlined in point 2, above, many overseas academics will not be in a position to meet such a cost.

We acknowledge that there is an ability to apply for an exemption from the Temporary Resident Education Fee but there is currently no transparency around the parameters which are used to determine if a particular individual's request for an exemption is granted.

The potential for an overseas academic to be liable for such a cost, added to the burden of high tax rates, would affect the ability of Universities within Australia to attract overseas talent.

7. Impact regarding current employees receiving LAFHA

If the proposed reforms proceed, there will be a significant impact on employees currently receiving LAFHA. Many employees in this category will have accepted the offer of employment and travelled to Australia on the understanding that they were eligible for LAFHA for the duration of the appointment. Academics typically receive relatively modest salaries compared to like positions in corporate industry and the proposed reforms would result in significantly reduced after tax income for those already making use of these arrangements. It is also likely that many in this group will have made living arrangements and commitments (for example entered into rental leases) on the assumption that they would receive LAFHA; and would be unable to maintain these arrangements without the benefit. It is anticipated that if the proposed reforms proceed, many of these employees will leave their employment in Australia and return to their home country before the end of their fixed term appointment, abandoning research grants and other important projects currently underway. Transitional arrangements would be needed to address these issues.