

2 February 2012

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: FBT@treasury.gov.au

Dear Sir/Madam

**Fringe Benefits Tax (FBT) Reform
Living-away-from-home (LAFH) Benefits**

Summary

On behalf of AECOM Australia Pty Ltd, I am pleased to provide our response to the Consultation Paper regarding the FBT Reform of LAFH Benefits.

We appreciate the Federal Government's concerns contributing to the proposed changes. However, we would contend that the effect of the proposed LAFH Benefit changes will countervail other public policy responses which are deliberately intended to address skills shortages in identified areas.

Our application of the LAFH Benefit is consistent with achieving several government policy objectives including:

- short-term increases to the supply of scarce skills including those identified by the government as being in actual or imminent shortage (see attached DEEWR skills shortage summary or <http://www.deewr.gov.au/Employment/LMI/SkillShortages/Documents/SkillShortagesSummary2011.pdf>)
- delivering influential infrastructure that avoids backward movement of productivity in key sectors of the Australian economy
- ensuring the government receives value for money for the funds it contributes to many infrastructure projects on which we work by sourcing people globally to deliver these projects on time and on budget.

AECOM is a global provider of professional technical and management support services to a broad range of markets. In Australia, we are approximately 5,000 professionals who play a significant role in the delivery of major infrastructure projects in the resources, transportation, building, environment, water and energy sectors.

We have some 380 employees on a 457 visa, of which 280 presently receive a LAFH Benefit as part of their remuneration package. These are highly skilled individuals ranging from:

- Project Directors and Project Managers
- Tunnelling Engineers
- Quantity Surveyors
- Civil Engineers

Domestically, we have over 60 team members receiving a LAFH Benefit. At AECOM we presently have 77% of 457 visa employees and 63% of domestic secondments on remuneration packages of under A\$150,000. Accordingly, the majority of our staff receiving this benefit are not "Senior Executives", but professionals who are central to the day-to-day delivery of infrastructure projects around Australia.

Therefore, given the important role LAFH benefits play in attracting and retaining overseas professionals for delivering our projects, I feel that we are well placed to respond to the government's consultation paper.

Application of LAFH Benefits by AECOM

We note in the Consultation Paper of November 2011 (page 5) that the government considers some employers, including labour hire agencies/contract management companies, are "re-characterising salary or wage income to allow an employee to significantly benefit from tax concessions". However, AECOM adopts a very strict regime in line with the government's view outlined in its paper that, "*The LAFH benefits are intended to compensate employees for additional costs they incur when they are temporarily relocated by their employer for their work.*"

A LAFH Benefit is only offered to our employees in Australia on a 457 Visa if they meet the criteria including "intention to live away from home temporarily". The amount of LAFH Benefits paid is in line with present ATO legislation/guidelines and only the approved "food element" and actual rental accommodation costs are reflected in the LAFH. The food element is based on the employee's actual family size and an actual residential lease needs to be supplied to confirm the rental LAFH component.

Where an employee wishes to continue to receive a LAFHA beyond four years, for example, we request they obtain an ATO Ruling to confirm they are still eligible to receive a LAFH element in their package.

Unintended Impacts

The proposed LAFH Benefit changes will have ramifications to Australia's competitiveness moving forward. We are concerned that the following unintended consequences have not been fully taken into consideration:

- current and future projects in Australia being scaled down or not proceeding due to increased cost of workforce resources;
- our inability to attract and retain skilled workers - they will not accept roles in Australia or will return home;
- the Government runs the risk of any savings being eroded through escalated costs of projects it funds because of the additional costs of attracting professionals from overseas.

Unintended consequences that may flow from the above also include:

- companies moving their R&D operations offshore because it is too expensive to undertake here, leading to a loss of expertise and knowledge.
- projects being scaled back, postponed or at worst, cancelled resulting in loss of government revenues including tax on company profits and PAYG and payroll tax
- loss of projects to overseas based businesses who can provide their services in Australia utilising staff based in lower cost jurisdictions, with similar impacts as above
- flow-on effect of the loss of employment on projects of temporary foreign and local Australian workers, sub contractors, service providers and community services as project costs rise to attract the right skills resulting in the project scaling back or not proceeding
- scaling back of any current or proposed project also has the potential to increase demand on government spending through the payment of welfare benefits to those who would have been employed on the larger project.

AECOM Australia strongly recommends that LAFH Legislation is strengthened, to reduce the government's perceived "exploitation" of current LAFH Benefit legislation. We have suggested alternative approaches later in our response.

Improving how LAFH benefits may be applied moving forward, while retaining the intended spirit of the benefits, will allow Australia to continue attracting and retaining skilled workers who are temporarily living away from home to deliver influential infrastructure that leave lasting legacies for Australian communities.

Unintended impacts on AECOM, the Australian economy and workforce

In Australia, AECOM aims to source the best candidates for positions locally as our first and preferred option for delivering projects.

These projects employ many local Australian residents (e.g. AECOM employees, sub contractors, joint venture partners) and support local communities.

We have to compete for skilled labour with other organisations in Australia and indeed internationally. Where we cannot source the required skills in Australia, we look to our professionals in our overseas offices and the broader market to attract people who can help us deliver our projects.

Many of our projects are the sort where the Australian Government has introduced specific measures to increase supply of skills from overseas – that is, the Government has already identified the national interest is best addressed by introducing policy to reduce skills shortages.

Given our geographic location and personal tax regime, the ability to utilise a LAFH Benefit helps us to compete for the right people against countries like the U.A.E., Hong Kong, Singapore and the United States.

If the LAFH Benefits are removed it will be more difficult to attract skilled workers to Australia to work on projects. Our highly skilled individuals here on a 457 Visa and receiving LAFH benefits range from project directors and project managers, tunnelling engineers, quantity surveyors, and civil engineers. These key individuals are integral to the success of delivering small to multi-billion dollar infrastructure projects.

Many of these projects are fully or partly, directly or indirectly, funded by government. In this context, Government may incur higher than anticipated costs, or elect to defer projects of merit should the changes as proposed be implemented.

If the LAFH benefit is not available, we will need to reconsider the commercial viability of attracting the right overseas professionals to deliver these projects. This will result in increased cost of current and future infrastructure projects in Australia, many of which are funded by government. This increased cost will ultimately impact government spending through increased project costs or reductions in PAYG and payroll tax resulting from projects that are scaled down due to additional costs.

Accordingly it is our view that the unintended impact to the Australian economy and costs to the Australian taxpayer could exceed any potential savings from removing the LAFH concessions as proposed in the Consultation Paper.

Unintended impact on employees in Australia

One of the key considerations an individual makes in their decision to temporarily relocate to Australia is the financial impact of moving from their home country (e.g. the United Kingdom). This includes pay parity, cost of living differences, the tax regime and relocation costs. The financial and emotional considerations of moving to a different country are great and should not be underestimated.

Our temporary workers are sponsored to Australia on a 457 visa to cover a skills gap needed to deliver projects and in line with visa validity are placed on a fixed term contract of up to four years, and offered a salary that is equal to an Australian peer.

In terms of the 457 visa criteria there is no employment guarantee after their contract expires and they may need to return home. Accordingly most of our temporary workers have a residence in their home country. Effectively they maintain this residence (and they may not receive a rental income), plus rent a home in Australia, resulting in the need to maintain two homes. The financial cost and time required for selling a home in the UK, buying one in Australia to live in, moving here, and on contract completion selling in Australia and buying back in the UK all within in a two to four year period would be significant and financially disadvantage an individual, making relocating to Australia unlikely.

Removing the availability of LAFH Benefits from our temporary (overseas) skilled workers will not see a "level playing field" with local Australian workers, as perceived by the government.

Where a temporary worker on a 457 visa moves to NSW/ACT, they pay an additional loading on their public school fees. Tertiary education costs also come at a premium for temporary visa holders.

Some temporary workers from reciprocal health care countries receive "essential" access to Medicare only. Those not from a reciprocal health care country do not have access to Medicare. In both instances these employees have to obtain "Overseas Visitors" private health insurance at premium rates, whereas a local Australian can utilise Medicare and "retail" private health insurance rates.

If the LAFH Benefit is withdrawn to temporary workers (on the basis they only have a residence in their home country) a number of our current staff have indicated they need to consider returning home (as they will see a significant reduction in net pay). Some may have overcommitted themselves with rental housing costs in Australia. This is because they have accepted a local fixed term contract in Australia qualified for LAFH Benefits, and will be financially disadvantaged if those benefits cease.

Accordingly most of our 280 temporary workers (from overseas) receiving a LAFH Benefit will face significant financial stress if the LAFH Benefits cease from 1 July 2012.

Employee Case Study – feedback from an existing employee on a 457 visa

"I came to Australia on the basis that LAFHA was included in my package and played a major part in my calculations on whether or not to come to Australia. I have a house in the UK of which I pay a mortgage and various bills including heating. This is unoccupied. My family check on it a couple of times a week. If it was being rented out and I was gaining an income from it, then rightly it would be unfair to receive LAFHA. Likewise, if I had sold it to come to Australia, then I would not expect LAFHA. I do not fall into those categories. I am in no different position to an Australian worker, working away from home.

I can see the Australian Government's point of view in clamping down on employees who are gaining tax breaks in the \$100k's but such as myself I am not. After I have paid for my house in the UK and the rent of comparable living here, there is not a great deal left for the lavish lifestyle that they want to believe we are living. Quite the contrary.

If LAFHA is taken away, then I will have no option but to consider whether it is worth staying here or not. I would need to have the equivalent source of income that LAFHA provides by a salary increase or a contribution towards rent costs, as I cannot run two homes without it."

Employee Case Study – feedback from a potential employee based in UK (who has declined our offer)

"The package as it currently stands excluding the LAFHA falls significantly short.....and is not considerably more than what I am currently earning in my current role.... The market here in the UK is fairly buoyant clearly, as I have already turned down an offer with [a local UK company] and there is some significant activity in the coming months in the Oil and Gas sector, here in the UK and the Middle East.

The real risk here is that the LAFHA may be abolished this year and or the next, which places me in a position whereby my costs, would be greater than my income...."

Proposed Alternative Approaches

We respectfully suggest alternative approaches for due consideration:

Approach A.

Strengthening the current LAFH Benefit legislation so it clearly defines eligibility criteria:

- Define eligibility to temporary workers from overseas viz:
 - must be a primary holder of a 457 visa, where they have an intention to return home
 - not available to working holiday makers or student visa holders

- LAFHA Benefits cease when the recipient's intention changes to remain indefinitely or when application for Permanent Residency Visa takes place or the individual has a spouse/partner who is an Australian national
 - actual rental housing cost eligible for LAFH
 - base the food element set by the ATO on actual family size with it reviewed annually in line with the CPI
 - the maximum duration LAFH can be paid is four years, then it ceases (including time paid with a previous employer)
 - spouse/partner cannot receive LAFH Benefit for the same residence
- Define eligibility to Australian residents temporarily seconded within Australia viz:
 - the actual rental housing cost eligible for LAFH
 - base the food element set by the ATO on actual family size with it reviewed annually in line with the CPI
 - maximum duration LAFH Benefit can be paid is three years, then it ceases (including if paid with previous employer)
 - spouse/partner cannot receive LAFH Benefit for the same residence

Approach B.

Targeting those employers in the labour hire and contract management companies through strengthening the LAFH Benefits Legislation and criteria (including potential monitoring of employers).

Approach C.

Capping the amount of the LAFH Benefit.

- fix the food amount based on actual family size (or abolish in full)
- LAFH Benefit rental capped at A\$100,000 pa (actual residential lease still has to be provided)
- maximum terms for LAFH Benefits (e.g. four years from overseas and three years if domestic).

Approach D.

Transition Period (should new LAFH Benefits be introduced from 1 July 2012)

- existing temporary overseas workers continue to receive LAFH Benefit under current legislation pending individual expiry of their 457 Visa
- domestic secondments (where home residence is rented out) continue to receive LAFH Benefit until the end of current secondment
- new legislation applied to new secondments from July 2012.

Conclusion

The focus should be ensuring a "fair and equitable" test and the ability to use the LAFH legislation to attract foreign skilled professionals to work on current and future infrastructure projects. An inability to attract these professionals will result in projects being adversely affected as we lose their technical expertise. In turn this impacts our local workforce (Australian residents), sub contractors, communities, service providers and revenues to government.

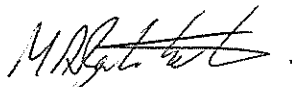
AECOM recommends the government clarify and clearly articulate LAFH criteria that will still allow us to attract skilled workers to Australia, including the ability to access the LAFH Benefits as they presently stand (subject to making sure they meet the defined LAFH criteria). That includes the ability to recognise that temporary workers will likely have a residence in their home country that is maintained whilst they are employed in Australia (so where an Australian worker may have an unoccupied residence in their home city, so could a foreign temporary worker and they should be treated equally).

As a minimum, AECOM strongly believes the government should adopt Approach D outlined previously.

As a large employer in Australia utilising both locally sourced team members and skilled professionals from abroad, we strongly urge the government to reconsider its proposed changes to LAFH Benefits as outlined in its Consultation Paper of November 2011. Preferably, they should not be introduced in their current form and further consultation with employers should take place to better understand the impact of changing the LAFH legislation. The consequences of the proposed changes are wide reaching and will in our view far outweigh the perceived cost savings and other benefits.

If invited, we would welcome the opportunity to nominate AECOM delegates to participate in focus or discussion groups, with a view to assisting the government find mutually agreeable solutions benefitting all parties.

Yours sincerely



Michael Batchelor
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AECOM Australia Pty Ltd