

3 February 2012

Philanthropy & Exemptions Unit  
Personal and Retirement & Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Email: [FBT@treasury.gov.au](mailto:FBT@treasury.gov.au)

Attn: Ms Raylee O'Neill

Dear Sir,

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

Ensign Australia Pty Limited (Ensign) welcomes the opportunity to make a submission in relation to the proposed reforms to the fringe benefits tax (FBT) treatment of Living Away From Home (LAFH) benefits as announced by the Government on 29 November 2011.

The proposed reforms are expected to have a significant impact on Ensign's business and these impacts may not be the intended consequences of the proposed reforms.

Ensign is an integrated contract drilling company and currently provides LAFH benefits to several of its management employees. The provision of LAFH to temporary residents is important for the business due to the severe shortage of appropriately skilled Managers and Supervisors in the onshore drilling industry in Australia.

To encourage suitably qualified and experienced workers to temporarily reside in Australia there must be some tangible benefit in relation to LAHA as the alternative option for many workers is to work a FIFO (Fly in / Fly out) 4 or 5 week rotating work cycle where they return to their home country after each work cycle. As a result their wages are taken back to their home country rather than being injected into the Australian economy.

Australia's hydrocarbon industry is borderless and the biggest challenge facing the industry is the skills shortage amongst the workforce. With few exceptions nearly every business in the sector is using, has used, or is considering using expatriate workers. Most importantly those expatriate skilled workers are being used as mentors and trainers for upcoming Australian workers with the aim of passing on their knowledge and expertise to and enable Australian workers to ultimately take their place. Without sufficient and appropriate financial incentives this will not occur and the industry will be faced with a worsening situation in regards to skilled workers which ultimately will impact on the health and safety of Australians who will end up in jobs that they are not yet ready to perform but are forced to do due to the unavailability of skilled overseas workers.

The oil and gas sector in Australia depends on overseas workers, particularly at the supervisor and management level. Australia competes with many other countries for skilled workers including the many countries that make up the Middle East. With few exceptions, these countries do not have

any income or other personal taxes which makes it quite lucrative for expatriates to work and reside in these countries.

While moving LAFH allowances back into the income tax regime does not alter the Australian companies' contractual liability to meet the employees' tax liabilities, it has the potential for multiple disputations in the event of ATO audits where the employer is ultimately going to have to incur significant costs in dealing with the administration of and compliance obligations of LAFH allowances. In our view LAFH allowances are a benefit which properly belongs in the FBT regime.

While Ensign is disappointed the Government proposes to make these reforms as stated in the Consultation paper, we would ask the Government to seriously consider not moving LAFH allowances back into the income tax regime. In our view this can only complicate compliance and porting of benefits at the employee level with its more elevated potential for disputation may be an unintended consequence. We wish to point out that most companies do "tax equalise" their foreign expatriate personnel and the cost of both Fringe Benefits Tax and the employees' income taxes are borne by the Australian employer.

The proposed reforms would take away any competitive edge that Australia has in providing a tax benefit relating to a LAFH allowance. Workers will no longer consider Australia as a viable international location for work which could force some global oil and gas companies to consider relocating their Australasian businesses to other countries such as Singapore or Dubai.

However, should changes be implemented as a result of the proposed reforms, the Government should seriously consider introducing transitional rules for all affected taxpayers who, as at 29 November 2011, were LAFH, were claiming accommodation benefits under the LAFH provisions and who were in a fixed term lease.

Where the fixed term for this lease ends after the proposed implementation date of the reforms of 30 June 2012, transitional rules should permit these taxpayers to continue to claim accommodation benefits under the LAFH provisions until the end of the fixed term lease. Without such transitional rules there will be significant financial hardship for these taxpayers who made the decision to enter into the fixed term lease based on the taxation laws that existed at the time that the decision was made. This would ensure that all affected temporary residents were given a "Fair Go".

Ensign would welcome the opportunity to discuss this submission with Treasury. Please contact David Kerr on 08 8209 3163 with any queries in relation to the contents of this submission.

Sincerely,  
Ensign Australia Pty Limited



David Kerr  
Human Resources Manager