

***Federation of Japan Chambers of Commerce and
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Our ref LAFH Submission 2012

Contact Daisaburo Akita (02 9223 7982)
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3 February 2012

Dear Sir

**Federation of Japan Chambers of Commerce and Industry in Australia (“FJCCI”)
Submission: Fringe Benefits Tax Reform – Living-away-from-home (“LAFH”)
Benefits.**

This submission is made by the FJCCI.

The FJCCI is very concerned that the recent announcement regarding LAFH will significantly add to the cost of doing business in Australia and therefore, will impact adversely Australia’s cost competitiveness.

Currently there are 446 Japanese companies with operations in Australia and 71,000 Japanese living in Australia. Federation of Japan Chambers of Commerce and Industry in Australia has been established in 5 Australian cities; Sydney, Melbourne, Perth, Brisbane and Gold Coast, and has 352 member companies. The objectives of the FJCCI include enhancing friendly ties, and economic and cultural relations between Japan and Australia. Member companies of the FJCCI represents across all industry sectors including trading houses, manufacturing, food and beverage, property, tourism, finance and insurance.

Also importantly, during the period 1962 to 1963 the Australia Japan Business Co-operation Committee (AJBCC) and Japan Australia Business Co-operation Committee (JABCC) were established and they have made a great contribution to developing and strengthening the economic relationship between Australia and Japan over 50 years. Many of the members of the JABCC are also members of the FJCCI.

Prior to addressing each of the “Questions for Consultation” we believe it is important to reflect upon the importance to both Australia and Japan of the longstanding bilateral relationship.

Australia-Japan economic ties date back to the early 1960’s. The original focus was in the resources and energy sectors, however in recent times investment has expanded into new sectors such as food and beverage, infrastructure, housing, insurance and pharmaceuticals.

To emphasise the importance of the bilateral relationship, Japan is Australia’s second largest export market and its third largest import market, and Australia has a trade surplus with Japan.

Moreover, recently Australia and Japan are endeavouring to further strengthen their economic relationship through EPA negotiations, and the position of both countries as strategic partners in the Asia Pacific region will become even more important.

Japan is the third largest foreign investor in Australia after the US and the UK, and the stock of Japanese foreign direct investment (“FDI”) in Australia in 2010 was A\$49,417M and constituted 10.4% of the total.

The many years of continuous Japanese FDI has contributed significantly to the creation of employment opportunities in Australia. More recently a final investment decision on the huge US\$34 billion “ICHTHYS” project was reached. INPEX in Japan holds a 76% interest in the project. During the construction 4,000 people will be employed, creating new job opportunities especially in Australia.

The FJCCI is confident that Japanese companies will continue to contribute significantly to the Australian economy and job creation through active investment and expansion of businesses in the years to come.

Our Submission

Following the release of the Government’s Consultation Paper “Fringe Benefits Tax (FBT) Reform – Living-away-from-home benefits”, we have set out our submission in relation to the questions for consultation below.

Consultation question 1: Are there any unintended consequences from the proposed reforms?

FJCCI response:

The proposed reform of the living-away-from-home (LAFH) benefits concessions in the Fringe Benefits Tax Assessment Act 1986 (FBTAA 1986) will have a significant impact on the cost for Japanese expatriates working in Australia, where these skills are not available within the local labour market. The impact of the proposed reforms will be felt across all industries, including resources, manufacturing, trading, property development, tourism and financial services.

Australia is competing with other countries in Asia, particularly Hong Kong, Singapore and China, for both talent and to attract businesses to locate here. These countries have headline tax rates substantially lower than Australia with more generous concessions available for expatriate benefits. Also, we note in particular that Japan has provided concessional measures for expatriates (including Australians) working in Japan. (See Table 1)

Table 1: Asian country tax rates and expatriate tax concessions

Country	Headline Tax Rate	Expatriate Concessions
Australia	45%	From 1 July 2012 only there will only be concessions for school fees and home leave trips.
Hong Kong	15%	Housing – taxable on concessional basis (taxable value is 10% of taxable remuneration (excluding housing))
Singapore	20%	Housing – taxable on a concessional basis (taxable value is lesser of annual value (rental) or 10% of the employee's taxable income) Home leave – taxable value restricted to 20% of one return fare for expat & spouse and 2 return fares for children
China	45%	The following expatriate benefits are exempt from tax: <ul style="list-style-type: none"> • Rental • Meals and laundry • Relocation • Language training • Children's education • Home leave (up to 2 trips a year)
Japan	40%	Salary relating to non-Japanese workdays is not taxable provided it is not remitted to Japan. Housing – concessional treatment where rent paid by employer (taxable amount is approximately 5%-10% of actual rent paid) Home leave – non-taxable for one trip per annum

Removing tax benefits increases the cost for companies considering locating here, when the Australian tax regime is already less attractive than other Asian locations. These announcements will provide another commercial reason to consider relocating high skill employees to other Asian cities.

The removal of the concession could be interpreted as a sign that Australia does not welcome senior expatriates who would be the instigators of business investment and research and development activity on behalf of foreign multinationals. This is particularly so when the

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concession will be retained for Australian nationals and foreign nationals, who are resident taxpayers. Many Japanese nationals retain their principal residence in Japan and therefore the cost of accommodation in Australia is an additional expense.

Japanese companies may consider limiting their investments in Australian operations due to the increased cost of sending Japanese nationals to Australia. This will particularly be the case for the manufacturing industry that is already severely impacted by market conditions and the strong Australian dollar.

The LAFH concessions were originally introduced to promote labour market mobility, with an expectation of increased national productivity as a consequence. Now more than ever before, it is vital that Australia attracts the right skills and expertise to develop its economy, and can deploy them in the right location.

There should be a presumption that in meeting the eligibility requirements to receive a temporary residence visa, the employee has satisfied the Government that their skills are not otherwise sufficiently available in Australia, and that as a result their presence in Australia is a benefit to the economy.

The mobility of this element of the labour force is therefore just as worthy of encouragement as that of Australian citizens and permanent residents.

We submit that the Government could eliminate the perceived abuses of the LAFH concession which the Consultation Paper highlights, without excluding from eligibility those foreign nationals whose usual place of residence is overseas.

A practically workable and enforceable alternative would include imposing a fixed annual dollar limit on the accommodation exemption, with reference to the rental value of the median house price nationally. This would assist in containing the cost to revenue of the exemption, while providing assistance to foreign nationals who may incur the considerable expense of maintaining a usual place of residence in their home country.

Consultation question 2: What practical aspects of the proposed reforms need further consideration?

FJCCI response:

Proposing an implementation date that is within 7 months of the announcement of the reforms may potentially cause some individual hardship. On the basis of an expectation of entitlement to LAFH benefits, under the current legislation and tax rulings from the Australian Tax Office, individuals are financially committed under lease arrangements.

The proposed implementation date of 1 July 2012 does not provide individuals with sufficient time to rearrange their affairs accordingly, particularly those that have entered into longer term leases. If the implementation date remains as it stands, it will cause unbudgeted costs for businesses and additional hardship for individuals.

The FJCCI is strongly of the view that the proposal to withdraw LAFH benefits not be proceeded with. If in the event that the Government wishes to withdraw the benefit, the FJCCI proposal is that all existing expatriates who currently receive the LAFH benefit would be grandfathered.

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

FJCCI response:

In implementing the proposed reforms, the Government should ensure that the drafting of the legislation achieves the proposed objectives and does not impact concessions which are not intended to be affected. Those concessions include access to school fee and holiday home leave travel FBT concessions for “overseas employees” that are living away from their home country.

The Government must ensure that the concept of living-away-from-home is appropriately redefined so that the definition of “overseas employees” is retained in the legislation leaving these concessions intact.

Consultation question 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?

FJCCI response: No comments

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

FJCCI response: No comments

Consultation question 6: What transitional arrangements would be appropriate for the community sector?

FJCCI response: No comments

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Should you have any questions in respect of our submission, please contact Jonosuke Hatta or me on 02 9223 7982.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D. Akita', with a large, stylized initial 'D'.

Daisaburo Akita
President,
Federation of Japan Chambers of Commerce
and Industry in Australia