

3 February 2012

Email: [FBT@treasury.gov.au](mailto:FBT@treasury.gov.au)

**Attention:** Raylee O'Neill

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

Your reference

Our reference  
2682095

 **NORTON ROSE**

Norton Rose Australia  
ABN 32 720 868 049  
Level 15, RACV Tower  
485 Bourke Street  
MELBOURNE VIC 3000  
AUSTRALIA

Tel +61 3 8686 6000  
Fax +61 3 8686 6505  
GPO Box 4592, Melbourne VIC 3001  
DX 445 Melbourne  
[nortonrose.com](http://nortonrose.com)

Direct line  
+61 3 8686 6325

Email  
[carmel.williams@nortonrose.com](mailto:carmel.williams@nortonrose.com)

Dear Sir/Madam

### **Fringe Benefits Tax Reform - Living Away from Home Allowance, announced November 2011**

We refer to the Treasurer's announcement of proposed changes to the Living away from home (LAFH) legislation, and the Consultation Paper issued on 29 November 2011 by the Assistant Treasurer and Minister for Financial Services and Superannuation, Bill Shorten. We appreciate Treasury's invitation to respond to the announcement, and in Appendix 1, we have addressed the specific 'questions for consultation' included in the announcement, outlined in the requested format, together with our comments and suggestions with respect to Treasury's proposed changes.

We have outlined in Appendix 2 the different types of secondments/appointments which are undertaken at present by our organisation.

We recognise the need for the government to address the exponential increase in LAFH concessional claims under the Fringe Benefits Tax (FBT) legislation and note the examples provided of excessive or potentially incorrect claims (for examples, claims by labour hire firms). However, we ask that the proposed abolition of the LAFH concession for temporary visitors not proceed, as this concession is important to manage the costs in Australia of temporary relocation of key employees. Rather than abolish the concession for temporary residents, we have included a number of suggestions to better manage the LAFH claims, both to protect the Australian revenue base and also to enable employers to continue to attract key talent to Australia.

Norton Rose Australia is a member of Norton Rose Group, a leading international law firm. We offer a full business law service from many of the world's principal business and financial centres. Our lawyers share industry knowledge and sector expertise across borders, enabling us to support our clients anywhere in the world.

Global staff mobility is critical to our success. We operate a one firm management structure and have worked to build a one firm culture. We need to be able to offer mobility opportunities for employees within the Group – to work temporarily in Australia – to support our business model; to ensure our clients are serviced by the best legal expertise, no matter where they are in the world; and to provide necessary international training and work opportunities to staff in the Group. In return, we are able to provide training and development opportunities to our employees through secondment outside Australia to our member firms.

We joined Norton Rose Group in 2010. The mobility of our staff was critical at the outset and remains critical to the ongoing global integration of our business.

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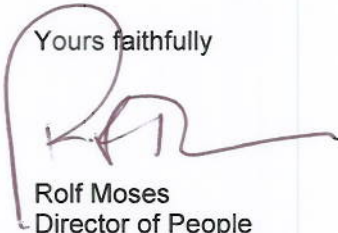
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Our concern with the proposed LAFH changes is that they will make it financially prohibitive to temporarily bring foreign expertise to Australia, and will remove a legitimate concession to a firm such as Norton Rose Australia, which needs to bring lawyers and other staff to Australia from time-to-time on short term secondments. Also, given the interaction with Norton Rose Group, this potentially jeopardises the participation and opportunities which we are currently able to offer to our Australian staff for training and development outside Australia.

We hope that a compromise can be reached which supports the Federal Budget objectives, whilst not adversely impacting Australian business operating in an increasingly global labour and services market.

If you have any queries, do not hesitate to contact me on +07 3414 2628 or our Global Mobility Manager, Carmel Williams +03 8686 6325.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'R. Moses', with a large, stylized initial 'R' on the left side.

Rolf Moses  
Director of People  
Norton Rose Australia



**Appendix 1 - QUESTIONS FOR CONSULTATION****1 Are there any unintended consequences from the proposed reforms?****1.1 Cost to Australian business**

Our primary concern is that the proposed changes will exponentially increase the cost to Australian business by removing a tax concession which currently allows Australian business to manage the additional costs associated with supporting a temporary resource here. We note that Treasury's proposal is to pass along the tax cost of accommodation to the (temporary inbound) employee, but in reality, the cost is likely to be borne by Australian business, especially for short term secondments, where the employee is protected from tax costs in Australia when working here on temporary assignment (under tax equalisation). It is necessary in these secondment agreements that the employer will meet the costs for the individual to temporarily reside in Australia. The proposed abolition of LAFH for temporary inbound assignees will cause a significant cost increase to Australian companies.

**1.2 Market competitiveness**

Norton Rose Group operates within our network in locations which concessionally tax housing assistance provided to short term secondments, including Hong Kong, Singapore and the United Kingdom, or do not tax accommodation where a corporate lease is held, including Japan, China and Indonesia. Norton Rose Group has introduced a number of 'swap' opportunities for our lawyers and business services staff to integrate our business and culture, and we believe Australia would become a cost prohibitive location for these swaps.

The proposed changes make Australia less competitive when compared to other locations, if the LAFH concession is removed as proposed for this temporary inbound population. This will reduce opportunities for development of our Australian employees, as associated firms within Norton Rose Group will be unlikely to approve swaps with Australia, due to higher costs when sending an employee to Australia.

**1.3 Experience of the employee/individual**

Norton Rose Australia provides visa sponsorship under the 457 temporary visa program, to allow key talent to temporarily enter and work in Australia, where we have specific needs. Relocation support, including airfares, shipment of personal goods and a few weeks accommodation upon arrival is provided to enable the individual (and their family) to relocate and temporarily reside in Australia.

Accommodation forms the most significant concern and cost to individuals who temporarily relocate to Australia for a defined period. Certain factors which further impact the accommodation choice and therefore costs include:

- (1) Whereas an Australian citizen or Permanent Resident (PR) residing here is able to leverage their (real estate market) experience when choosing accommodation (and proximity to family will often drive this decision), individuals temporarily residing here do not have deep market knowledge of real estate in Australia, which can be reflected in the overall higher spend when compared to an Australian citizen or PR.
- (2) Also, once employees have relocated, they need to locate a home and become settled as quickly as possible in order to meet the conditions of the Australian visa and work contract. They do not have the luxury of time in choosing longer term accommodation (after accommodation is utilised for the first few weeks), and again, this factor can be reflected in the overall higher spend when compared to an Australian citizen or PR.
- (3) Temporary visitors typically do not have a motor vehicle. In considering a temporary move to Australia, and locating accommodation for daily commuting to our office, we find that relatively expensive inner city locations are usually preferred, for proximity to work and accessibility to public transport.



- (4) We need to consider the safety of these employees, who may be unfamiliar with the demography and safety of certain suburbs. Access to safe and secure accommodation is a paramount concern, and again this impacts the decision of the type of accommodation, cost and location where these temporary visitors reside.
- (5) These individuals are prohibited from purchasing property in Australia under the Foreign Investment Review Board (FIRB) measures, and given the high cost of stamp duty, which is unlikely to be recouped within a four year period (where on a temporary resident visa and where sale is required upon departure), they have to seek accommodation primarily in the rental market only.

For the reasons outlined above, our experience is that the type and cost of accommodation chosen may be higher when compared to an Australian citizen or PR, and this also has a flow-on impact on the increasing quantum of legitimate LAFH claims for temporary accommodation in Australia. The current LAFH concession has been important in attracting foreign talent and alleviating the often higher accommodation cost in Australia. The proposed LAFH changes would significantly disadvantage this population. In a competitive global market, Australian businesses need to be able to attract key foreign expertise, and the abolition of the LAFH concession would be expected to have a negative impact on this important component of the employment market.

#### 1.4 Cost to the Australian economy

The increase in mobility to Australia in recent years (and increased population of individuals both temporarily and permanently relocating to Australia) provides jobs and opportunities within the economy for Australian business supporting this population, including aviation (airflight for relocation and home leave), our ports, customs and transport (who facilitate the shipment of household goods), education/training and development (both of the employee and schooling for their family) and many services, including hotel (for temporary accommodation upon arrival) and other destination providers.

The Treasury's announcement implies that the tax cost of current salary packaging would be passed on to temporary resident employees, but in reality, these costs would be unsustainable to these individuals and many are expected to leave to return to their home. This will have a longer term impact for the Australian service providers who are currently employed assisting this mobile population, in an already uncertain economic environment.

Further, a negative effect can be expected for the (already struggling) tourism industry, as many of the temporary inbound visitors currently take the opportunity of being here temporarily to travel domestically within Australia. We know that the higher Australian dollar is causing many Australians to travel overseas for holidays, and these temporary inbound individuals (and their visiting families) are providing much needed travel demand intra-Australia.

We therefore urge the government to closely consider the impact of the proposed changes.

## 2 What practical aspects of the proposed reforms need further consideration?

### 2.1 1 July 2012 deadline

The nature of the Australian rental market is that many of these temporary visitors who are already here have obtained and are locked into 12 months leases. We would propose if the changes are enacted as proposed, to grandfather the changes until the end of the employee's current lease, or move the 1 July 2012 deadline to 1 January 2013. Current arrivals into Australia, following the announcement of the pending changes, are able to make accommodation decisions taking the proposed changes into account, but many employees are already locked into 12 month leases, which cannot be broken. Flexibility on the implementation date is requested.



## 2.2 Examples of mis-use

Treasury's announcement includes examples of a mis-use of the current LAFH concession, and these examples provide guidance as to the types of mis-use which have been identified at audit. Tighter wording of the LAFH concession, including eligibility, defining the maximum timeframe for making the claim and substantiation of the LAFH - accommodation claims would all assist to limit mis-use and reduce the current LAFH claims. Some alternates are:

- (1) The rule of thumb applied to LAFH claims for temporary inbounds is often aligned to the 4 year temporary resident visa. If Treasury is concerned about the high level of LAFH claims, then we ask that the legislation define the maximum period of claim.
- (2) Introduce reasonable housing guidelines, similar to the reasonable food guidelines, with reference to location, family size and seniority, with an ability to request a higher accommodation claim based on particular circumstances (eg disability of the employee or a family member might cause a higher housing cost to certain individuals).
- (3) Limit the claim to a percentage of total remuneration (TR) where salary sacrifice occurs, so that an individual must receive a defined percentage of TR as base salary.
- (4) For substantiation, require submission of a lease for FBT records to substantiate the accommodation expense, as the current guidelines are left to interpretation and 'mis-use'.
- (5) Tighten the penalties for claims where dual claims are made within a domestic arrangement (eg the example of both husband and wife claiming the accommodation cost), including abolition of work/residency rights where a breach is identified.

We believe these changes will improve corporate governance and limit some of the excessive claims which drive the concern of potential mis-use.

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

- 3.1 With the abolition of the Section 23AG exemption for short term assignments, the living away from home concession has been applied to ensure that a per diem food allowance and accommodation provided for outbound short term secondments is exempt from FBT. Treasury's announcement is silent on whether the proposed changes to LAFH provisions will remove this concession where Australian citizens and PR travel outside Australia for temporary work (the examples refer to domestic, not international secondments).

We seek confirmation that the concession will remain in place, so as not to disadvantage Australian companies by subjecting to taxation employee benefits which would otherwise be exempt (where the employee is assigned within Australia) and/or where no foreign tax offset can be claimed as the benefit is either exempt or concessional taxed in the host location.

### 3.2 Immigration guidelines

We suggest Treasury define what visa types allow an individual to temporarily reside in Australia, such as the temporary resident (457) visa and occupational trainee visa (442), and when the LAFH concession can be claimed. Treasury may choose to legislate to remove the ability to apply LAFH claims to working holiday makers (417 and 462), for example.

## 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?

We have no comment (see question 5).

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

Yes, the current approach is understood, and reasonably reflects cost movements, so we have no proposed change to this method.

6 **What transitional arrangements would be appropriate for the community sector?**

We have no comment, and understand community groups will respond to this question.



## Appendix 2 - Norton Rose Australia – outline of our secondment and temporary transfer procedures

Norton Rose Australia (previously Deacons) joined Norton Rose Group in January 2010. The Group further expanded in June 2011 and January 2012 following mergers in Canada and South Africa, taking the firm to a top five international legal practice by number of lawyers.

The mobility of our staff – both inbound and outbound – was critical and remains critical to the ongoing global integration of our business and our one firm approach.

We mobilise staff internationally, primarily to and from our headquarters in the United Kingdom to support integration work, and to our regional offices in Asia due to the internationalisation of legal work in the Asia Pacific. We mobilise staff domestically to our offices in Sydney, Melbourne, Canberra, Brisbane and Perth. We also facilitate client secondments to temporarily assist our clients with the personnel resources they require for legal matters.

We have outlined below an overview of the different types of mobility options used by Norton Rose Group, which we thought might be useful to assist Treasury to understand our mobility initiatives and the likely impact on an Australian business of the proposed LAFH changes (with further comments in Appendix 1 to the questions raised in the announcement).

### 1 Outbound secondments, to other member firms within Norton Rose Group

#### 1.1 Short term Secondments

Norton Rose Australia has employees who undertake short term secondments outside of Australia, including lawyers who provide temporary support on legal matters (for our clients) within Norton Rose Group. Further, we have a number of business services staff who has been identified to work on projects associated with integration of Norton Rose Australia into Norton Rose Group. We have also implemented a number of training and development rotation opportunities for our lawyers and business services staff, to work temporarily in another location, to gain experience in a location where our clients operate, and to expand their networks and offering to their clients (both external and internal).

Norton Rose Group define a short-term assignment period as between 2 and 12 months.

#### 1.2 Long term assignments or Transfers

Typically, these secondments or transfers are for a period 2 years or greater. As these employees typically become tax non-resident, no Australian tax is generally due on employment income, and the proposed LAFH changes will have no identifiable impact (at this time).

### 2 Inbound secondments or temporary hires, both within Norton Rose Group network and lateral hires

#### 2.1 Short term Secondments

Similar to our outbound opportunities, Norton Rose Australia receives individuals from within Norton Rose Group who undertake short term secondments into Australia, including lawyers who provide temporary support on legal matters, where expertise or immediate availability may not be identified in Australia. Further, we have a number of business services staff who have been identified to work on projects associated with the global integration of our business.

#### 2.2 Inbound – Long Term Assignments and maximum term appointments

One of the benefits of joining Norton Rose Group is the opportunity for staff to gain international legal experience and mobility is a key tool to increase our talent pool. We have hired a number of key lawyers and business services staff, who temporarily relocated to Australia to undertake these roles, both from within Norton Rose Group and as lateral experienced hires, typically for a period of between two and four years.