

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

3 February 2012

Dear Sir

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

NASSCOM Australia welcomes the opportunity to make a submission in relation to the proposed changes to the tax 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 the business of NASSCOM Australia's members and these impacts may not be the intended consequences of the proposed reforms.

About NASSCOM

NASSCOM is India's National Association of Software and Service Companies, the premier trade body and chamber of commerce of the IT software and services industry in India. NASSCOM member companies are in the business of software development, software services and IT-enabled BPC services. NASSCOM has approximately 1250 members, of which nearly 200 are global companies from the US, UK, EU, Japan and China.

NASSCOM Australia is the Australian chapter of NASSCOM. Its 14 members have currently invested upwards of \$100M to setup more than 20 development centres in Australia and currently employs more than 7000 people in Australia. This workforce comprises of residents of Australia as well as expats coming from various countries.

NASSCOM Australia's members have strong links with many universities in Australia working closely to recruit students for our global projects. It runs student internships programs and have established scholarships.

NASSCOM Australia's membership criteria are strict, with a level 3 membership of the Software Engineering Institute's Capability Maturity Model (SEI-CMM), an industry world standard, as a minimum requirement.

NASSCOM and LAFH benefits

NASSCOM Australia members provide LAFH benefits to a diverse range of employees on varying levels of remuneration. However, the remuneration for most employees falls within the 30% to 37% tax brackets.

Generally, LAFH housing amounts are paid as a reimbursement of actual expenses to the employee. As such, an employer would generally require proof from the employee of the actual expense, for example, rental agreements.

As detailed below, employees coming to work in Australia face an unenviable combination of comparatively high tax rates and high cost of living, while incurring duplicate living expenses back in their home country. Furthermore, temporary residents from overseas generally cannot access Australian Medicare benefits. They are also required to pay for their children's education fees in NSW and ACT public schools, which is free for Australian citizens/Permanent Residents.

By offering LAFH benefits, NASSCOM Australia members can offset these hurdles to encourage talented individuals to Australia with a lessened financial disadvantage.

NASSCOM's members make a valuable contribution to the Australian economy. If implemented as drafted, the reforms will have a significant impact on the competitiveness of these Australian businesses operating in Asia Pacific.

Accordingly, we outline below our views of the unintended consequences from the proposed reforms

Unintended consequences from the proposed reforms

1) Creation of IT skills shortage gaps

As in many sectors in Australia, there is a critical IT skills shortage and therefore a need to attract and retain skilled employees from overseas. To put the size of the IT skills shortage in perspective, in 2008, the Government was advised that *"the Australian ICT industry is looking at a shortfall of 14,000 jobs by 2010, growing to 25,000 within another 10 years"*¹

NASSCOM Australia has proactively worked with Department of Immigration and Citizenship (DIAC) in the past to promote immigration matters for suitable temporary workers to Australia.

For example, NASSCOM Australia drafted the agreement with DIAC regarding an IT market based salary model. The model is a framework proposed by NASSCOM Australia, which DIAC uses to evaluate all work permit applications filed by Indian IT-BPO companies (NASSCOM Australia members) for bringing their employees to Australia.

The IT industry and temporary workers from India forms a significant portion of the entire 457 visa population. As per the DIAC December 2011 report, Indian nationals account for over 17.6% of all primary 457 visas granted in the 2011-12 programme year to 31 December 2011, the second highest country of origin behind the United Kingdom. Looking at the IT industry, 457 visas granted have increased by 37.1% from the 2010-11 to 2011-12 years and now forms over 10% of all 457 visas granted in the 2011-12 year to 31 December 2011.

This rise in inbound IT labour has been specifically identified as a key requirement to fill a skills gap until more trained IT professionals are created in the Australian domestic system.

2) Decrease Australia's attractiveness as a temporary work destination.

Despite the clear need for key IT skills in Australia, NASSCOM Australia's experience strongly suggests that Australia is "generally" not the automatic destination of choice for skilled Indian IT professionals. Australia competes with other countries such as the United States (specifically California) and the United Kingdom for these professionals.

While Australia is renowned for the enviable lifestyle and opportunities it offers, it is also true that Australia is also swiftly gaining a reputation for a high cost of living.

While part of this rise in cost can be attributed to the appreciation of the Australian dollar, it cannot be ignored that several cost of living reports have placed Australian state capital cities amongst the most expensive cities to live in the world. According to a recent UBS report, Sydney in particular is now the 7th most expensive city in the world. The effect of costs of living can be significantly increased for employees who come to Australia for a short-term period (18 months or less). These individuals' families will often remain in their country of origin and continue to incur living costs at home on top of assignment-related living expenses.

In addition to the high cost of living, our employees also face a high marginal rate of tax on their income (compared to the US and UK), paying 30% tax on income above \$37,000 and 37% on income above \$80,000 (the likely pay bands for NASSCOM employees).

Combining the high cost of living with comparatively high tax rates can be enough to dissuade talented individuals from joining Australian-based employers or projects.

¹ Review of the Australian government's use of information and communication technology, Sir Peter Gershon (2008)

Currently, NASSCOM Australia's members can offer LAFH benefits to recognise the unique circumstances of individuals who are temporarily assigned to Australia and go a long way in addressing the disadvantages of a high cost of living and high marginal tax rates.

Without the benefit of the LAFH arrangements, NASSCOM Australia members will have little in the way to offer potential employees to offset the financial disadvantages of an Australian assignment, particularly short-term projects. Unless the companies absorb the additional costs (potentially eroding the economic viability of their business strategy), NASSCOM Australia expects it to become significantly harder to attract the talent that Australia desperately needs.

3) As a result of higher tax costs, our members will have lower commercial viability of projects impacting their near future investment plans

NASSCOM members are involved with current and future projects for which the budgets have been set and profitability examined.

The proposed changes will add significant costs for NASSCOM member's client projects, including the possible increase in remuneration required to attract employees to work in Australia, as well as increased employer costs such as payroll taxes, superannuation contributions and workers compensation arising where LAFH accommodation and food benefits will be considered salary and wages.

The likely reduced profitability of client projects would impact our members' ability to make further investments for the benefit and promotion of IT skills in Australia (along the lines of investments already made as set out in appendix 1.5).

4) Higher tax costs could endanger the viability of Australian based projects.

The increased costs would put significant pressure on projects whose economics were analysed contemplating tax exempt LAFH benefits.

One of NASSCOM's members has estimated the effect the proposed changes would have on a specific fixed-bid project with a 20-member team working for an Australian client. On the assumption that the firm will need to absorb the increased costs, the profitability of the project after all expenses is estimated to reduce by at least 11%. The member has noted that this is likely to result in the project not going ahead.

If the same logic is applied for all existing projects and also future projects across our member firms, we can conclude that the sustainability of much business in Australia may not be feasible.

Possible solutions and transitional arrangements

We believe that the current LAFH accommodation and food benefit provisions allows our members to best serve Australian business and help drive the Australian economy forward.

However, should the changes continue to be deemed necessary by the Government, we believe that the aims of the proposed reforms could alternatively be achieved through the following suggestions:

1) *Reimbursements only for LAFH accommodation*

- We would recommend that LAFH benefits could still be provided, to both temporary and permanent residents, exempt from Income Tax (and Fringe Benefits Tax) but only where these are provided as a reimbursement of actual costs and not as a cash allowance.
- With the reimbursement approach, there is no potential excess amount, which may occur where the employee is provided with a fixed cash allowance. This would achieve the aim of a level playing field for all.

2) *Setting a strict time-limit in which exempt LAFH benefits could be provided*

- Many employees who are assigned to Australia on a short-term basis are likely to retain significant living costs in their home country, most commonly as their family does not accompany them to Australia.
- If steps are not taken to offset these costs, it will be extremely difficult (or costly) for companies to employ individuals on short-term projects in Australia. As such, we would propose that employees who are currently receiving LAFH benefits should have their entitlement grandfathered for the remaining period of their employment contract, up to a maximum period of 2 years.
- Should the Government deem it to be necessary, a reasonable cap on LAFH benefits could be set for those individuals receiving a grandfathered benefit.

3) *Transitional Arrangements*

- Should changes be implemented as a result of the proposed reforms, NASSCOM would urge the Government to consider providing transitional measures for taxpayers who, at the time of the announced changes, had entered into a lease set to last beyond 1 July 2012. We would propose that these individuals should be allowed to retain tax exempt LAFHA accommodation benefits until the end of that lease.
- If no transitional measures are provided by the Government, taxpayers who entered into accommodation leases based on the tax law at the time will be severely financially disadvantaged.

NASSCOM would welcome the opportunity to discuss this submission with Treasury. Please contact Anu Agrawal on 0434 083 085 with any queries in relation to the contents of this submission.

Yours sincerely



Anu Agrawal

Chairman

NASSCOM AUSTRALIA

APPENDIX: Details on NASSCOM Australia

1.1 NASSCOM Australia members

NASSCOM's member companies are broadly in the business of software development, software services, software products, consulting services, BPO services, e-commerce & web-services, engineering services off-shoring and animation and gaming.

1.2 List of NASSCOM Australia members operating in the country (in Alphabetical order)

1. Genpact Onsite Services Inc
2. HCL Australia and New Zealand
3. Infosys Technologies Ltd
4. Mahindra Satyam
5. Mindtree Ltd
6. Mphasis
7. NIIT Technologies Limited
8. Oracle Financial Services Software Pty Ltd
9. Patni iGate Australia Pty Ltd
10. Polaris Software Pty Ltd
11. Tata Consultancy Services
12. Tech Mahindra
13. Wipro Limited
14. Zensar Technologies Pty Ltd

In India and around the world, NASSCOM members are participants in the new global economy and are reputed for their cutting-edge business practices and social initiatives.

NASSCOM Australia is working proactively to encourage its members to adopt world-class management practices, build and uphold highest quality standards and become globally competitive.

NASSCOM Australia - Management team

Executive Council

- Anu Agrawal – Head NASSCOM Australia Chapter, (MphasiS)

Governing Council members

- Deborah Hadwen – TCS
- Sidharth Kaul – NIIT
- Kamal Chauhan - HCL

1.4 Positive partnerships

NASSCOM Australia is in regular communication with the Consul General of India in Sydney, and works closely with various associations like the Australian Trade Commission (Austrade), Australian Industry Information Association (AIIA) and Australian Computer Services (ACS).

NASSCOM Australia is in close communication with the ICT Chapter of the Australian Indian Business Council (AIBC) in organizing issues-based seminars covering important topics such as skills shortage, immigration, taxation, insurance, the Australian workplace and its requirements, etc. Speakers from appropriate government

and industry organization are invited to help members understand and discuss these issues through interactive networking forums.

1.5 Industry developments by NASSCOM members in Australia

Australia is a nation of sophisticated ICT users who eagerly embrace new technology. The Australian market is used extensively by leading international companies to develop and trial new applications and they have acted to ensure that ICT systems are interoperable, secure, and broadly available and contribute to productivity gains. From policies to encourage uptake of new technological solutions, to legislation to protect privacy and prevent spam, Australia is a location where companies can successfully develop solutions with global applications. Many international companies deliver solutions from Australia to both the region and the world, including:

1. HCL's investment in Australia includes 2 development centres in Sydney and Melbourne and investments in human capital;
2. TCS Investments include office establishment, employment of local staff, local employee and customer training initiatives, and acquisitions. TCS acquired a Sydney based company Financial Networks Services Pty Limited in 2005 and took the niche core banking product of Australia globally. TCS acquired a Melbourne based boutique consulting firm TCSM Pty Ltd in 2006;
3. Polaris supports student-related initiatives like teaching software testing as part of the Computing Science Degree - Under Graduate (3yrs- ongoing) and Masters (1 Year ongoing) at the University of Western Sydney, recruitment of Graduates in software testing and have instituted a Tenure Scholarship for Aboriginal students in UNSW in the School of Computing Science under a 3 yr program;
4. Infosys is the IT services company sponsoring the Smart Services CRC collaborating with government, industry partners and 6 Australian universities to build new services IP for Australia;
5. Mphasis opened a near shore integrated development and delivery centre in NSW, working with the University of Wollongong on a range of initiatives including training, recruitment and research and development;
6. Mindtree makes an annual contribution to RMIT to support scholarships and grants for students;
7. Mahindra Satyam has two development centres in Sydney and Melbourne that are equipped with sophisticated ICT Infrastructure and Business Continuity facilities and are certified with the highest security standards of ISO27001. The organization ran a Blood Donation Camp & charity towards the Japan earthquake victims and supports Run Melbourne by the AGE for Charity.