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Dear Sir

**KPMG Submission: Fringe Benefits Tax Reform – Living-away-from-home Benefits.**

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

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

*KPMG response:*

***1. Attracting talented workers to Australia in a competitive market place***

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 ability of Australian employers to attract highly skilled workers from overseas, where these skills are not available within the local labour market. Individual employees may reconsider relocating to Australia or those already located here may experience hardship where their employers are unable to cover the additional costs of their expatriate assignment. The impact of the proposed reforms will be felt across all industries, including financial services, resources and manufacturing and may also impact Australia's aspiration to be a regional financial centre.

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 (see Table 1).

**Table1: Asian country tax rates and expatriate tax concessions**

Country	Highest Marginal 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%	Salary relating to non-Hong Kong workdays is not taxable provided it is not remitted to Hong Kong.  Housing – taxable on concessional basis (taxable value is 10% of taxable remuneration (excluding housing))
Singapore	20%	Salary relating to non-Singapore workdays is not taxable provided it is not remitted to Singapore.  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"> <li>• Housing</li> <li>• Meals and laundry</li> <li>• Language training</li> <li>• Children’s education</li> <li>• Home leave (up to 2 trips a year)</li> </ul>
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

The Government is keen to promote Australia as a regional hub for headquarters locations for the financial services industry. The proposed reforms increase the cost for companies, and their employees, considering locating here when the Australian tax regime is already less attractive

than other Asian locations. Employers placing individuals in regional financial services roles will now have even lower relative tax costs, as well as more convenient travel opportunities, if they choose to locate their staff in Singapore or Hong Kong. The reforms will be impacting the financial services sector at a time when it is facing increasing pressure to cut costs.

Equally reliant on attracting overseas talent to maximise opportunities is the Australian resources sector, which is facing a well documented skills shortage. The proposed LAFH reforms will increase project costs and overseas project locations may look more attractive than those in Australia when competing for investment. Additionally, the resources sector, in particular, was impacted by the recent changes to the foreign earned income exemption. Whilst the foreign earned income exemption changes increased costs for overseas projects rather than those in Australia, the proposed LAFH reforms present further challenges for Australian companies with both on and offshore projects.

Foreign companies may consider limiting their investments in Australian operations due to the increased cost, for their business and their employees, of sending foreign 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.

## ***2. Use of LAFH to promote labour mobility***

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.

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 concession will be retained for Australian nationals. Foreign nationals, who are also resident taxpayers, are thereby discriminated against. Many foreign nationals retain their principal residence in their home country and therefore the cost of accommodation in Australia is an additional expense.

## ***3. Alternative approach***

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. Employers could be required to disclose the number of employees benefitting from the exemption, and the total value claimed, in their annual FBT return. Currently this is not a requirement where the employer reimburses the employee's rental expense.

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

*KPMG 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, subject to contractual employment agreements, it will cause unbudgeted costs for businesses or additional costs and hardship for individuals. Australian businesses, particularly the resources sector, who have tendered for long term contracts factoring in the availability of the LAFH concessions, will now have considerable costs that were unable to be foreseen in tendering and may affect their viability.

Delaying the implementation date will enable individuals to alter commitments and find more appropriate accommodation and for businesses to reassess budgets and project costs. We would propose that the government delay the implementation from 1 July 2012 to 1 January 2013. The proposed implementation date is part-way through the FBT year, so there would be no additional administrative impact by delaying the date to 1 January 2013 (which is also part-way through the FBT year).

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

*KPMG 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 it stated in the Consultation Paper, are not intended to be affected. Those concessions include access to school fee (s. 65A FBTA 1986) and holiday home leave travel (s. 61A FBTA 1986) FBT concessions for "overseas employees" that are living away from their home country, as defined in s.143B FBTA 1986.

The Government must ensure that the concept of living-away-from-home is appropriately redefined so that the definition of "overseas employees" in s.143B FBTA 1986 is retained and

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continues to connect to the concessions in s. 61A and s.65A FBTAA 1986, leaving those concessions intact.

The Government's proposal to treat LAFH allowances as part of assessable income for tax purposes with the requirement to substantiate accommodation and food expenses beyond a statutory amount is a positive reform and is supported by KPMG.

***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?***

*KPMG response: No comments*

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

*KPMG response: No comments*

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

*KPMG response:*

Further to our comments in relation to consultation question 2, we note that, as for other organisations, the suggested implementation date does not provide sufficient time for the community sector and their employees to re-arrange their affairs. Again, we recommend the proposed implementation date is delayed.

Should you have any questions in respect of our submission, please contact Martin Morrow, Sarah Hodgson or me.

Yours faithfully



Andy W Hutt  
Partner