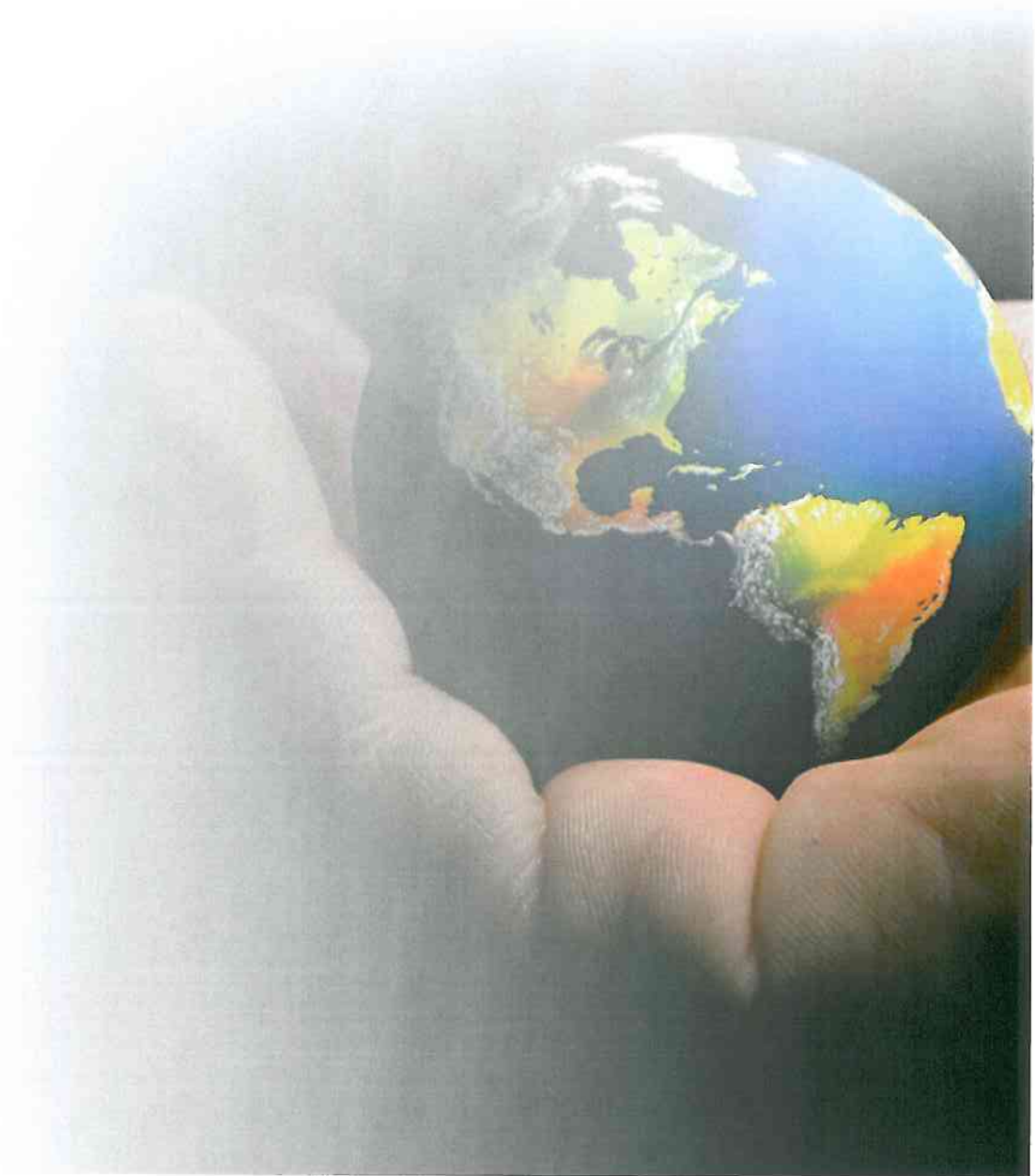




SUBMISSION ON THE *FRINGE BENEFITS TAX REFORM, LIVING AWAY FROM HOME BENEFITS* CONSULTATION PAPER (NOVEMBER 2011)

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INTRODUCTION AND EXECUTIVE SUMMARY

ResMed Background – The Business

ResMed is a leading developer, manufacturer and marketer of products for the screening, treatment and management of sleep-disordered breathing (“SDB”) and other respiratory conditions. The company was founded in 1989 and since then has become one of the world’s leading respiratory medical device manufacturers, exporting the majority of its global production from Australia. ResMed is listed on both the Australian and New York Stock Exchanges.

ResMed is focused on continuous innovation to develop breakthrough products and technologies to remain a global leader in sleep and respiratory medicine. ResMed has proven its commitment to research and product development in the field of SDB as evidenced through a range of strategic medical, academic and business relationships. ResMed has made a significant financial investment of approximately 7% of global revenue (approximately US\$92m in FY 2011) towards research and product development.

ResMed’s significant investment in employment, education, career development and graduate programs continues to benefit the Australian professional engineering workforce in the manufacturing and product development teams at its Bella Vista facility.

Overview of Submission

ResMed welcomes the opportunity to make a submission on the Proposed Amendments to the Living Away from Home (LAFH) benefit rules as outlined in the *Fringe Benefits Tax Reform, Living Away from Home Benefits Consultation Paper*, November 2011 (“Consultation Paper”).

It is essential to ResMed’s continued success in Australia that ResMed is able to competitively source highly specialised and skilled employees from both the local and international markets.

The Proposed Amendments in the Consultation Paper unfortunately underestimate the significance of the LAFH benefit rules to Australian-based multinationals such as ResMed and this submission will highlight the adverse impact and why the LAFH benefit rules should remain substantially unchanged.

While the Consultation Paper states that some taxpayers are not complying with the existing rules, this should be addressed through more effective enforcement of these rules, rather than a complete overhaul of the rules.

ResMed's submission can be summarised as follows:

People Strategy and Importance of LAFH Benefits

- There may be an adverse impact on ResMed's key employees in manufacturing engineering, design engineering, systems engineering and product development, and the Proposed Amendments should not be enacted as they are currently outlined. The Australian economy is already being negatively impacted by the skills shortage and the Proposed Amendments will increase this further.
- ResMed does not have significant concerns "in-principle" with moving the LAFH benefit rules from the FBT Act to the Income Tax Act. However, ResMed submits that substantiation of deductible LAFH expenditure should be made available to both temporary and permanent residents, given the significant financial costs of living away from home.
- ResMed's experience has been that LAFH benefit recipients are in the mid-tier income bracket (i.e. less than \$150,000 per annum), and inconsistent with the Consultation Paper assertion that the benefit is received by highly paid employees with LAFH benefits forming a 'significant part' of their income. The assumptions by the Government in the Consultation Paper should be substantiated with accurate data prior to the introduction of the Proposed Amendments, as the concerns over loss of Government tax revenue are likely to be overstated.

Business and Administration Concerns

- The limited consultation time and lack of prospective transitional rules will cause undue hardship to Australian companies and their affected skilled expatriate employees. The effective start date should be at least 6 months after legislation has been passed, to enable Australian companies and affected employees to appropriately comply with the changes prior to commencement.
- Should the Government proceed with the changes as outlined, transitional rules should be introduced to "grandfather" existing LAFH benefit arrangements up until the expiry of the temporary employee's visa term, particularly due to rental contracts which have been entered based on current LAFH benefit rules.

RESMED SUBMISSION

People Strategy and Importance of LAFH Benefits

The proposed change to LAFH benefits will reduce the ability for Australian companies such as ResMed to attract skilled employees, further exacerbating the skills shortage and further reduce Australia's ability to be globally competitive.

- ResMed engages approximately 3,300 employees throughout its global operations in Australia, the Americas, Europe and the Asia Pacific region.

As at December 2011, approximately 1,250 employees are engaged in the Bella Vista facility in Sydney as direct permanent full time and part time employees. This translates to approximately 37.8% of ResMed's global workforce being Australian-based.

Additionally, ResMed maintains on average, 170 full time equivalent contract and casual employees to supplement the full time employees and to meet fluctuations in operational demand at the Bella Vista facility.

ResMed's employees are engaged in a diverse range of professional, technical, engineering, managerial, production and warehousing positions.

ResMed has also made a significant commitment to local employment, education and training by facilitating graduate programs and traineeships (in non – professional positions) with various academic institutions and registered training organisations in Australia.

- Up until 2006, ResMed maintained an overarching focus on local recruitment of it's strategically critical employees, particularly in core business activities such as manufacturing engineering, design engineering, systems engineering and product development.

The exponential growth of the business and the impact of a globally competitive environment for professional employees creating an Australian skills shortage has made it increasingly difficult to attract the necessary talent in sufficient volume and timeliness to meet operational demand.

ResMed has also experienced continuous voluntary turnover in its engineering positions from both local and expatriate employees. However, despite this turnover, there has also been an increase in engineering positions available due to business growth.

ResMed considers its success in producing world-class products is associated with the organisational capacity and competitiveness to attract, develop, retain and reward highly skilled employees for which there has been a significant lead time on local recruitment.

- ResMed has a number of expatriate employees (temporary residents) who currently access LAFH benefits as one component of their overall remuneration package. These employees are typically highly skilled and crucial to the innovative development and manufacturing expertise of the ResMed business.

Specifically, whilst the Proposed Amendments are in response to high-income earners exploiting the LAFH rules, ResMed employees currently receiving LAFH benefits are generally in the mid-tier earners category (i.e. less than \$150,000 per annum) which is inconsistent with the assumptions detailed in the Consultation Paper.

Recruiting expatriate employees is generally more administratively costly, as compared to local employees. There is also a significant financial and personal burden for the expatriate employee and their accompanying family. ResMed must be able to offer an attractive alternative for these temporary employees to work in Australia, in order to meet its global innovation and development demands.

- ResMed has a strong desire to maintain its manufacturing presence in the Australian market. To achieve this, ResMed understands the importance of maintaining its Australian-based professional engineering workforce and pursuing an international recruitment strategy to secure skilled expatriate employees, where sufficient engineering talent cannot be secured from the local Australian employment pool due to skills shortages in Australia.

The current LAFH benefits have enhanced ResMed's ability to attract expatriate employees in these roles and any changes to the proposed rules should not adversely impact employees that can substantiate their LAFH related expenses.

ResMed recommends that any amendments made to provisions in the Income Tax Act should be focused on the substantiation of LAFH benefit related expenses. Where allowances cannot fully be substantiated, then the unsubstantiated portion should appropriately be subject to personal income tax. Similar to other work allowances, temporary and permanent resident employees should be permitted to make a PAYG withholding variation to ensure that employers are not obliged to tax the substantiated portion of the allowance.

Business and Administrative Concerns

If the LAFH benefit changes are enacted, the Government must allow sufficient time for implementation by Australian companies and apply equitable transitional rules given rental and other commitments already entered by temporary employees.

- There are likely to be undue costs as a direct result of the Proposed Amendments including relocation costs of expatriate employees for both the employee and companies such as ResMed.

For expatriate employees affected, there may be costs such as break fees from existing rental lease contracts and physical relocation costs. There is an inherent adverse effect on expatriate employees that made bona fide decisions to accept positions based on the overall remuneration package including the LAFH benefits and who would be disentitled to these benefits.

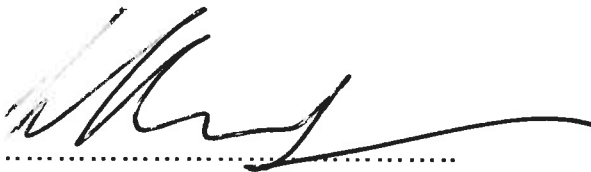
There would be additional costs for ResMed in the form of rehiring costs and internal costs associated with disruption resulting from skill shortages in core operational activities such as manufacturing and product development.

- Companies such as ResMed will be required to review all current expatriate employee arrangements as well as all expatriate employee contracts currently being negotiated based on the Proposed Amendments. This will result in withdrawing LAFH benefits currently available to these potential employees which may jeopardise the conclusion of these contracts and will create additional compliance complexity to an already large tax compliance burden on the business.
- Indirectly, the Government should also consider the current spill-over effect of temporary employees that rent their home whilst living in Australia, and taxation revenue that the government earns from such investment properties. Should the current benefits available to temporary employees be removed, resulting in the employee returning back to their home country, Government taxation revenue from rental returns will naturally reduce as many rental properties become vacated.

ResMed recommends that in the event that the Government proceeds with enacting legislation based on the Consultation Paper, it is essential that sufficient start time of at least 6 months after enactment is provided to enable implementation and compliance (e.g. 1 July 2013).

Further, to address the undue hardship that would arise to existing temporary residents that have already entered rental contracts under the current rules, these rules should be “grandfathered” until the expiry of their existing visa term, or such time as they are no longer living away from home.

ResMed would like to thank The Treasury for their consideration of ResMed's submission.



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