



**CORPORATE TAX  
ASSOCIATION**  
of Australia Incorporated

**Response to Treasury Consultation Paper**

**Fringe Benefits Tax (FBT) Reform**

**Living-Away-From-Home Benefits**

**Corporate Tax Association of Australia Inc.**

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3 February 2012

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**Response to Treasury Consultation Paper  
Fringe Benefits Tax (FBT) Reform  
Living-Away-From-Home Benefits**

The Corporate Tax Association (CTA) welcomes the opportunity to provide feedback on the above Consultation Paper (CP) and also appreciates Treasury's preparedness to meet with us to discuss various matters raised by the CP at a meeting held on 25 January 2012.

The CTA shares many of the concerns that have given rise to the CP – in particular the opportunities for some temporary residents to convert their taxable salary into a tax-free allowance. However, we believe that rather than setting up a test which very few temporary residents will ever be able to satisfy, most abuses could be stamped out by adopting a more targeted approach. We would also make some further modest changes to the rules applying to Australian residents that go beyond the requirement to substantiate accommodation costs.

We consider that the CP pays insufficient regard to the very real benefits that accrue to the broader Australian economy from the exchange of ideas and experience as a result of temporary international assignments, both into and out of Australia. We also believe that the extent of the relative disadvantage suffered by Australian employees *vis a vis* temporary residents is somewhat overstated in the CP – Australian firms will always hire suitably skilled locals when they are available (and are willing to work at the required location) because of the high costs involved in recruiting temporary residents.

In a competitive labour market where demand can only be met by recruiting some specialist skills from overseas, business will end up absorbing the additional costs in many cases. A number of member companies have raised with us the likelihood of these proposed changes adding to the cost of capital projects that are already under some pressure. We are aware of one new enterprise in the finance sector which will require a large number of inputs in the initial years. The cost structure of the new business includes a high salary component and the project's viability would be under serious threat if the proposed changes were to go ahead.

While some aspects of the existing LAFHA arrangements may be seen as generous, they do make relocations more attractive to potential candidates. We also note that the CP is premised on the basis that Australian residents will not be disadvantaged, which will enable some very generous arrangements to continue unchecked (subject merely to being able to substantiate accommodation costs). Under current arrangements, some Australian residents on 'temporary' assignments within Australia, many of whom do not incur significant additional costs, would continue to receive tax-free allowances while their colleagues who were recruited locally (and, from July 2012, temporary residents) will not be eligible.

Recent reports on labour market mobility suggest that, for a variety of reasons, many Australians are reluctant to move between cities or States to take up alternative employment. This is a problem as the Australian economy restructures and new job opportunities open up in the resource States, some of them on a temporary basis. We broadly accept, therefore, that the government may wish to retain some incentives in the tax system to encourage labour mobility.

Rather than suggest extending the requirement to maintain a home in Australia for their own use to Australian residents, we would like to put forward some ideas for reducing the overall cost of the continuing concession by introducing a time limit for which a person can be regarded as living away from home, as well as a dollar cap on the exempt accommodation component. We also consider that the exempt food component no longer has any sensible policy rationale and should be abolished altogether. We elaborate in greater detail below.

### *Some Temporary Residents Have More Genuine Claims than Many Australians*

The proposed changes would have a better policy rationale if the test were modified so that a tax-free allowance would only be paid where a temporary resident maintains a home in their country of origin for their own (or their family's) use. This would eliminate virtually all temporary residents traveling on holiday visas (mainly backpackers) as it would be unlikely that any young person spending twelve months or so in Australia would incur additional costs by maintaining such a residence. The law would make it clear that persons living at home with their parents in their country of origin would not be taken as maintaining a home in that location, and most temporary residents who do own such a home would be renting it out during their absence.

Those expected to be eligible for a tax-free allowance would be a small minority of persons who travel to Australia, often on a 457 visa, and leave their family behind in their home country. It is hard to conceive of a group of persons who are more genuinely living away from home and it is difficult to justify denying them access to a LAFHA – particularly when compared to domestic transfers involving employees who rent out their home in their city or origin but still qualify for an exempt allowance. The period of eligibility for a LAFHA would be limited to the term of the person's initial 457 visa.

It has been suggested that such a rule would be difficult for the ATO to enforce. We don't agree. The ATO could make it clear to employers by way of fact sheets that genuine cases are expected to be quite rare and that employers would be expected to take reasonable steps to verify any claims.

### *Suggested Changes to the Domestic Rules*

#### *A time limit*

1. The current open ended arrangements involve significant uncertainty about how long a person can be regarded as genuinely living away from home and is susceptible to abuse. Some taxpayers and advisers apply pressure on employers to keep extending the arrangement and we are aware of cases where tax-free LAFHA has been paid for close to ten years. Most other countries are not nearly as generous, and we would recommend a four-year limit for any one move, irrespective of whether a person subsequently changes employers.

#### *A cap on the amount*

2. Next, the substantiation requirements will do nothing to reduce the level of allowances paid to senior executives who spend very significant amounts on accommodation using pre-tax remuneration. We have considered suggesting a limit on the percentage of total remuneration that may be allocated to exempt accommodation. However, that may create problems for some employees who are not highly remunerated and who spend a relatively high proportion of their income on accommodation. We therefore recommend setting an upper limit as an absolute dollar amount, regardless of location (provided the cap is what most people would regard as quite high – we would suggest somewhere between \$1,000 and \$1,500 per week).

### *Abolish the exempt food component*

3. The exempt food component is an anachronism and should be abolished. As the CP noted, the LAFHA was introduced in the first half of the last century. That was a time when most employees were men who, if they were genuinely living away from their homes and their wives, would rightly have been regarded as being unable to fend for themselves in the kitchen. It was therefore reasonable to assume they would regularly have to eat out and incur some additional costs.

The great majority of domestic LAFHA recipients are not actually “living away from home” in the sense that would have been envisaged all those years ago inasmuch as many of them will have their families with them in the same location as their employment and would be spending more or less the same amount on food as they would in their original location. There is simply no policy rationale for providing them with a tax-free allowance to cover any of their food costs.

There may be a small number of domestic LAFHA recipients who do live away from their families and may incur some modest additional costs as a result. Most of those persons would live in a normal house or perhaps a serviced apartment with kitchen facilities and even most men these days would be capable of cooking basic meals.

The government should take the opportunity to put an end to this unnecessary concession and base its policy on the premise that the cost of food, wherever consumed, is essentially a private matter and should be paid for using after tax money.

### *Transitional Rules*

Many employers will have entered into salary packaging arrangements before the date the CP was released, and a number of these arrangements extend well beyond the proposed commencement date of 1 July 2012. Many employees will have entered into accommodation leases on the basis of remuneration packages negotiated in good faith under the existing rules. In some cases these employees are going to be significantly disadvantaged by the proposed changes and we consider that some sensible transitional rules should be developed to protect them.

One approach could be to grandfather temporary employees on the basis of the term of the 457 visa that was in place on 29 November 2011, when the CP was released. Failing that, employees should be given a period of grace until at least the expiry of the residential lease that was in place at that time, as some may well decide to move to less expensive accommodation as a result of the proposed change.

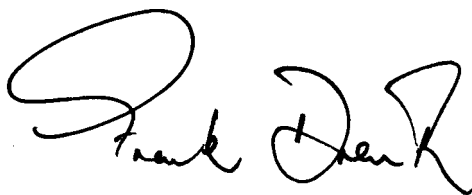
For Australian residents who will be beyond our suggested four-year limit as at 1 July 2012, they should likewise be grandfathered until at least the end of their residential lease (or twelve months, whichever is the less). The exempt food component should be abolished as from 1 July 2012 without any grandfathering.

### *Conclusion*

We believe that adopting our recommended changes would improve both certainty and fairness. Allowing a small number of temporary residents who are genuinely living away from home to continue to receive a tax-free allowance is not likely to impose a significant burden on the revenue. Our suggested changes to the LAFHA arrangements for Australian residents are far from harsh, and will improve the overall fairness of the system while at the same time generating revenue to cover the cost of some modest transitional relief.

We look forward to the opportunity to discuss some of the issues raised in our submission in more detail. In the interim, please feel free to contact me on (03) 9600 4411 if you require further clarification of any of our comments.

Yours sincerely,



(Frank Drenth)

Executive Director  
Corporate Tax Association