



Chartered Accountants
& Business Advisers

**Submission to Federal Treasury
by PKF Chartered Accountants
Fringe Benefits Tax (FBT) Reform
Living-away-from-home benefits**

PKF Australia Limited provides the following comments regarding the proposed amendments to the FBT and income tax treatment of living away from home (LAFH) benefits.

We have grouped our comments under some of the headings that Treasury has asked questions for consultation.

Are there any unintended consequences from the proposed reforms?

Effect on commercial and personal decisions

An important issue with the proposed changes is the effect on existing employment arrangements as at the date of announcement, 29 November 2011. Many employers and employees have medium term arrangements that will go for a number of years after 1 July 2012 (the proposed introduction date of these changes). In many cases commercial and personal decisions have been made based on the LAFH concessions being available over the term of the arrangement. The proposal to cease the LAFH concessions for many of these arrangements could have dramatic commercial or personal consequences. Many commercial projects may be in jeopardy as a result of budgeted costs being exceeded. In cases where the employer does not compensate the employee for the increased tax burden, the employee will be in the position of having to fund private accommodation commitments that were entered into on the basis of cash flow that may be reduced after 1 July 2012.

Transitional treatment for existing arrangements

We suggest transitional period for arrangements in existence as at 29 November 2011 so that the new rules will not apply to those arrangements for a set period to allow commercial and personal arrangements to be renegotiated on a reasonable basis. We consider the 7 month period from announcement to commencement of the new rules provided in the discussion paper is not long enough for this purpose. We suggest a four year transitional period from the date of announcement would be appropriate in these circumstances. If it is considered four years is too long we consider any period less than two years would not provide the employers and employees with adequate time to renegotiate their commercial and personal arrangements.

Cause further Skill Shortages

These changes to LAFH concessions are likely to cause or exacerbate skills shortages in certain industry sectors that are already struggling to attract suitable Australian or overseas employees. To alleviate these concerns perhaps the Government could consider continuing the existing LAFH allowances/benefit for temporary residents in those industry sectors that have recognised skills shortages, bearing in mind that some of these sectors are key contributors to Australia's continuing success.

Regional employment

There are many Regional areas (but not remote for FBT purposes) that are finding it difficult to attract skilled workers. The proposed changes to the LAFH concessions will make this even more difficult.

As a further alternative the Government could consider allowing the LAFH concessions for temporary residents in certain regional areas that are having difficulty attracting skilled workers.

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What practical aspects of the proposed reforms need further consideration?

Inconsistent treatment for residents and temporary residents

The Government has mentioned unfair advantages over local Australian workers and the need to ensure a level playing field. However, the proposed changes provide for an inconsistent treatment between residents and temporary residents. Residents who are LAFH will generally be given status quo treatment with a few more substantiation requirements and more stringent food component, whereas temporary residents will be required to maintain a home in Australia as well as accommodation where they are required to live somewhere else in Australia to perform their employment duties in order to obtain LAFH concessions. In these circumstances residents will have a distinct advantage over the temporary residents - that is not a level playing field.

It should also be borne in mind that temporary residents cannot claim many social security benefits and rebates, cannot access tax-free superannuation on retirement, have to pay much more for private medical insurance with no rebate, are required to pay much higher university fees for their children than residents and pay a fee to use public schools in NSW.

Of course, temporary residents are exempt from tax on most foreign sourced passive income, but that measure was put in place to make it easier to attract them to Australia in the first place.

We understand that one of the Government's main concerns is temporary residents who have come to Australia with the real intention to emigrate but arrange to get LAFH concessions for a while before they confirm they are staying. The Government may have a point in relation to these situations but there are plenty of temporary residents that have a real intention to be in Australia temporarily and to return home on conclusion of their employment.

We suggest that clearer legislation, with set parameters around timescales, amounts, circumstances, targeted sectors etc would deal with most cases of perceived abuse. See our further comments below.

Maintain concessions for temporary residents maintaining a home overseas

Our preference is for both residents and temporary residents to be given consistent treatment. However if this is not possible, as an alternative to the proposed treatment of temporary residents, we suggest the requirement for temporary residents to maintain a home in Australia be extended to allow the LAFH concessions when maintaining a home in either Australia or their home country to assist with the costs of maintaining two households.

Maximum qualifying periods

Another alternative to the proposed restrictions for temporary residents, the Government could consider keeping the existing arrangements but with maximum qualifying periods as is common in other countries i.e. limit the time period that an employee could be considered to be LAFH.

Maximum housing benefits

The Government could also consider as an alternative the restriction of tax free housing allowances/benefits to a set amount, determined by family size, as a percentage of base salary etc.

Substantiation requirements

In addition the substantiation requirements could prove to be difficult to comply with and enforce and therefore there could be some safe harbour amounts that can be claimed without substantiation.

What transitional arrangements would be appropriate for the community sector

There are a number of occupations for which it is hard to find suitable employees in Australia and therefore employers need to look for foreign employees to fill the positions. The LAFH concessions have been an important attraction for many of these industries. This is a particular problem for the community sector such as health, education and certain sectors of the arts. Nurses, doctors, lecturers and professors are some examples.

We suggest that certain industries be given specific concessions in relation to the LAFH concessions. Preferably, these concessions would be ongoing but at least for a few years so these industries can restructure their employment conditions.

Comments from Clients

We have received a number of comments from clients regarding these proposals. These comments are included in the attached schedule.

If you have any questions regarding this submission please contact me by phone on 02 9240 9736 or email lance.cunningham@pkf.com.au

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LAFH Concessions - proposed amendments Comments from PKF clients and contacts

A web design/developing company

"LAFHA is a main component to offer competitive wages. This client is unsure how to maintain its current employee skill base or how to attract new employees with the skills required if they can't use LAFHA."

A major construction company

"We have included LAFHA for a top executive as an incentive to move here and said it will just have to wear the cost of LAFHA so that its employee receives the net payment as promised."

An international manufacturing company

"..any additional cost or disincentive to employ people with the correct skills will only cause harm to the Australian manufacturing environment. In particular we agree entirely with your comment regarding transitional arrangements. It is hard enough to have any incentive removed, but to remove one from short term employees who made decisions to uproot their lives and those of their families, based on the best information and regulations available, only to have them "reneged" upon, is difficult to accept.

Surely 457 visa holders from overseas incur as many, if not more, additional costs as Australian residents moving to take up a temporary position in another region of Australia."

An international renewable energy company

"some sectors that could have shortage of skills (could renewable energy be one of them?)..... that the law is applied prospectively and not to the employees that have been moved to Australia..."

A communication company

"I think the remark you make with reference to honouring existing arrangements with a time cap is very important to take into account, especially with smaller business that just cannot afford to make up the gap and have more recently appointed on the basis of LAFH being in existence. The seven month transition period is too quick and does not give time to plan."

An arts and cultural organisation

Our organisation produces art which is deeply rooted in European tradition. Bringing overseas nationals to Australia means we are able to bring that depth of tradition, experience and skill to our organisation and our audience and our home grown employees.

Without the ability to attract highly talented and skilled foreign artists we will not be able to maintain the highest possible standards of artistic excellence expected of us as the leader in our field, as Australia simply does not produce the depth of highly skilled artists necessary to support our domestic market.

As a cultural organisation any reduction in the quality of our output actually means we are lowering the quality of the cultural experience of Australian audiences which will have a substantial effect on our reputation in the short term but also on the future of the artform in Australia in the longer term.

As an arts organisation we have limited means to offer highly attractive remuneration packages. Utilising LAFHAs means we are able to maximise our budget so that we can offer terms favourable enough to attract talent of the highest calibre away from the traditional and established market places of Europe and America.