



3 February 2012

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: FBT@treasury.gov.au

Dear Sir/Madam

**Fringe Benefits Tax (FBT) Reform – Living-Away-From-Home Benefits
Consultation Paper**

The Australian Financial Markets Association (AFMA) welcomes the opportunity to comment on the Treasury's *Fringe Benefits Tax (FBT) Reform (Living-away-from-home benefits)* Consultation Paper (the Consultation Paper). The fringe benefits tax treatment of the living-away-from home (LAFH) benefits is a significant component of Australia's labour mobility strategy, and the proposed reforms will have an impact on the financial services industry.

AFMA is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets. These markets are an integral feature of the economy and perform the vital function of facilitating the efficient use of capital and management of risk. AFMA represents over 130 participants in Australia's financial markets, including Australian and international banks, leading brokers, securities companies, treasury corporations, fund managers, traders in electricity and other specialised markets.

The finance sector is the largest contributor to Australia's national output, generating 11% or \$135 billion of real gross value added in the year to June 2011. The financial services industry is a major driver of Australia's economic growth.

AFMA believes that the proposed reforms should be more finely tuned to address the real risks in the system and avoid having a detrimental impact on the ability of financial

institutions to remain internationally competitive in attracting employees with specialist skills. For example, an employee who is relocated temporarily by their firm from say, London to Sydney, will incur living away from home expenses that are the same, if not higher, than a similar employee temporarily relocated from Melbourne to Sydney. However, under the terms of the proposed changes the UK employee will receive no tax concessions under the LAFH benefits but the domestic employee will. This outcome seems unreasonable and the effect will be to increase the cost to the firm of attracting expertise that may only be available overseas to their business.

We recognise the need for reform of the fringe benefits tax treatment of LAFH benefits to address the concerns cited in the Consultation Paper around misuse of the concessions. However, the reforms need to be balanced with the specific needs of business and, in particular, recognition that there are many individuals who create value within businesses and are legitimately entitled to the benefits and utilise it for its intended purpose. We are particularly concerned that the proposed reforms will unfairly penalise expatriate employees who incur genuine living away from home expenses, and the benefits will be narrowed in such a way as to present an obstacle to the mobility of labour into Australia that will ultimately place a higher cost on business.

1. Effects on Labour Mobility Into Australia

One of the guiding principles of tax reform should be to improve the competitiveness of the Australian economy and to help Australian-located businesses to integrate seamlessly into global business systems and markets. This is imperative for Australia given our relatively small scale and visibility in world markets and our need to attract investment in very mobile capital markets. It also supports jobs, economic growth and tax revenue. The need for a competitive expatriate taxation regime has long been recognised in this context, for example, through the recommendations of the Ralph review of business taxation.

The proposed reforms will unfairly penalise expatriate temporary resident employees who do not maintain a home in Australia from which they are living away from. As currently proposed, these employees will not be able to claim deductions for expenses incurred and their employers, if reimbursing expenses for or directly providing accommodation and food, will be subject to fringe benefits tax. In the finance sector, the changes will primarily affect 457 visa holders who are typically highly skilled individuals critical to business operations. These individuals tend to be employed to fill specialist roles where local talent has not been available.

The changes are also of particular concern to financial institutions with an international presence that need to be able to move their key employees freely around their global operations. The location of senior executives and key specialists in Australia is often linked to the creation or growth of a business unit here that will generate business activity, including export sales, and create jobs for Australians. However, if locating to Australia carries a high taxation cost, it is likely these in-demand professionals will seek assignment to other places, like Singapore and Hong Kong where personal taxes are

lower, and the benefit of their knowledge and skills, and consequent new employment opportunities, will be lost to our rivals in Asia.

The reforms will likely have a detrimental effect on the Government's objective of promoting Australia as a global and regional financial centre. Australia faces significant challenges in protecting its relevance as an international financial centre and in maintaining the level of associated financial services jobs. By their nature, international financial centres need the regular, free movement of staff between jurisdictions to function effectively.

In considering the taxation of temporary residents, it should be borne in mind that while paying Australian taxes, they generally cannot access education and health services on the same terms as other taxpayers. For example, although they pay income tax while in Australia, they must pay to send their children to public schools.

We believe the current fringe benefits tax treatment of LAFH benefits can be reformed to remove incentives to exploit the benefits, but also provide a fairer treatment of expatriate employees. Expatriate employees who are living away from a home outside of Australia should be treated the same way as permanent and other temporary residents as proposed in the Consultation Paper.

Therefore, any taxable allowance should be subject to deductions by the employee, and any actual expenses should be exempt from fringe benefits tax for the employer. To address concerns cited in the Consultation Paper around exploitation of the benefits by labour hire and contract management companies, an appropriate cap, subject to consultation, can be placed on the use of the concessions by temporary residents who do not maintain a home in Australia.

2. Existing Employees and Transition

It is expected that the changes, in their current form, will result in the loss of many existing expatriate employees, which will not only adversely affect business operations but will also increase recruitment costs for employers.

There are also other significant anticipated costs for employers. Existing employees may raise a breach of contract claim, estoppel or custom and practice claim. For example, employees may seek to claim that an employer represented to the employee that they would receive a certain amount of LAFH benefits "tax free" and, as a result of the changes, the employer seeks to resile from this promise or representation by reducing or removing that benefit. Alternatively, someone who has been receiving a certain amount of LAFH benefits may argue that the receipt of LAFH benefits is now a 'custom and practice' such that it forms part of their contractual terms. To prevent excessive costs in challenging such claims, employers may be pressured to increase affected employees' base remuneration to compensate them for the financial impact the changes will have.

If the proposed reforms are implemented in their current form, there need to be adequate transition arrangements for affected employees. The proposed effective date of 1 July 2012 will create financial difficulty for many employees, for example, employees who have already entered into fixed term accommodation leases. Significant costs are likely to be involved in breaking these agreements.

We suggest appropriate grandfathering arrangements so that the beneficial tax treatment of LAFH benefits provided for under the current regime continues for the duration of employment for existing employees whilst they are required to live away from home. At the minimum, a transition period of 3 years for existing employees in receipt of LAFH benefits and those employees who may have finalised an employment contract with an employer in expectation of receiving LAFH benefits as at 29 November 2011 (the date the changes were announced).

These measures would ensure that expatriates would be partially compensated for some of the increased cost of living expenses they incur whilst on assignment in Australia and also provide for a more orderly and less disruptive transition to a new regime for both employers and employees.

Thank you for the opportunity to comment on the Consultation Paper. Please do not hesitate to contact me for further information or clarification as required.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Lynch". The signature is written in a cursive, slightly slanted style.

David Lynch
Head of Policy & Markets