

3 February 2012

MANAGER
PHILANTHROPY & EXEMPTIONS UNIT
PERSONAL AND RETIREMENT & INCOME DIVISION
THE TREASURY
LANGTON CRESCENT
PARKES ACT 2600

Dear Sir

[Submission on the Consultation Paper – Fringe Benefits Tax Reform – Living-Away-From-Home Benefits released on 29 November 2011]

Rising Sun Pictures welcomes the opportunity to make a submission in relation to the proposed reforms to the fringe benefits tax (FBT) treatment of Living Away From Home (LAFH) benefits as announced by the Government on 29 November 2011.

The proposed reforms are expected to have a significant impact on Rising Sun Pictures' business and these impacts may not be the intended consequences of the proposed reforms.

Rising Sun Pictures is based in Adelaide and is in the business of producing complex visual effects and cg (computer generated) character work to feature film clients from all over the world. We have worked on films such as the Harry Potter series, Pirates of the Caribbean: On Stranger Tides, Green Lantern and Terminator Salvation. We compete in a world wide market with other visual effects businesses based in many countries. The industry is very specialised and requires a range of specialised artists to be able to produce the work. The range of these specialisations is not necessarily consistent across all projects but is dependant upon the type of project being completed. To deal with this Rising Sun Pictures as a medium sized player in the market employs a broad core level of staff supplemented by shorter term project specific hires.

Rising Sun Pictures recruits significant numbers of employees from interstate and overseas to perform this work and provides LAFH benefits to these employees where applicable. The provision of LAFH benefits to these employees is important for the business because it encourages these people to relocate they and their families to Adelaide. Adelaide does not have a sufficient volume or variety of qualified local talent to be able to undertake the amount and complexity of the work we perform hence it is essential that we are able to recruit quickly and efficiently from around the world in competition with facilities not only in Sydney and Melbourne but also the US, Canada, New Zealand, England and Singapore. Some of these other countries have generous benefits available to employees relocating there for work purposes. We need to remain competitive. The current LAFH benefits provide consideration towards the additional living costs incurred for making this move in a manner that is tax effective for the employee and requires minimal input on their part making its management for them very easy. This is an important factor for people relocating interstate and in particular from overseas.

The impacts on the business are:

- We believe it will significantly decrease our ability to recruit overseas specialists as it removes all accommodation and food benefits hence in effect reducing their net benefits. If we were to have a

significant reduction in overseas staff it would make it increasingly more difficult to resource the volumes of work required to maintain a profitable, world class facility. If we were to compensate current and future temporary residents for this and ensure their net remains the same then our total annual wages could increase in the vicinity of 5%. This is a cost that cannot be recovered from clients and is straight off our bottom line. As labour is by far the major cost for our business the bottom line effect of this is much higher than 5%. With the Australian dollar currently so high margins are already very tight. The timing of this legislative change with the Australian dollar so high is not ideal.

- We believe it will adversely effect the business with regards to temporary resident staff here currently who are contracted beyond 30 June 2012. With the removal of the LAFH benefits they will be "out of pocket" compared to now. They have made the decision to relocate to Australia based in part on the financial arrangements in place currently. Were that to change staff may be lost unless we as a business compensate them for this. We believe it is likely we will have to compensate them which will be an additional cost to our business.
- It will cost the company considerably more to relocate overseas staff through the fact that FBT will now apply to any accommodation costs we pay for them. Current practice is to provide accommodation for the first two weeks to assist the new employee to settle into Adelaide and thus allow them time to look into sourcing appropriate longer term accommodation. If we continue this practice it could cost the company a large amount in FBT based on recent volumes of overseas staffing – otherwise we would need to employ additional staff to increase our involvement in liaising and sourcing that longer term accommodation for prospective staff before they arrive in Adelaide. Either way this is a reasonable cost to the company that again is fully borne by the company from its bottom line. We would request there be consideration of the regulations allowing for the first few weeks (for example two or three) of accommodation being exempt from FBT.
- If the proposed changes bring about a reduction in the number of overseas staff this has the unintended consequence of reducing our capacity to have locals trained and mentored. It is in our best interests to have staff available locally rather than having to spend resources on recruiting and relocating staff from overseas. The senior overseas staff play an invaluable role in assisting local staff obtain the training and experience to do some of this work.
- The removal of a tax free allowance for permanent residents to one that is taxable is a disincentive for people to relocate within Australia compared to now. The requirement that staff maintain individual records of expenses and claim that through their tax return significantly delays their ability to receive the benefit. It also makes it more difficult for them by having to maintain the required documentation. For us in Adelaide it will make it more difficult to employ these people – it makes it more desirable for people to remain say in Sydney where there are multiple facilities to work with. While the individual has the ability to apply for a PAYG Withholding Variation based on expected tax deductions hence can in effect receive the benefit immediately there is still a risk they run of getting it wrong and ending up in an adverse tax position at year end. If the company was to abolish the employees LAFHA allowance and pay for their accommodation direct or via reimbursement this will increase our administrative workload.
- The work we bid on is generally sourced from the United States and hence our revenue is received mainly in US dollars. The appreciation of the Australian dollar compared to the US of around 25% since July 2010 has had a significant impact on the Australian visual effects industry and our competitiveness with businesses situated in other countries. The Australian Government has acknowledged this and been very generous in increasing the PDV Offset in recent times to assist the

Australian visual effects industry. Any regulatory changes such as these proposed changes to LAFH benefits that decrease our international competitiveness run counter to the intent of the increase in the PDV Offset.

The proposed reforms are a considerable disincentive for employment of temporary residents. This seems to fly in the face of the general theory of reducing barriers to international trade and ensuring Australian businesses can produce work of the highest international standard. While it can be appreciated that the reforms are there in part to assist employment of Australian residents (by removing the perceived incentives available to temporary residents compared to locals), in some industries, like ours, we do not have the number and variety of specialists available here. The people who move here from overseas do so with much more inconvenience than those who move to Adelaide from interstate. The cost to us of employing someone from overseas is higher than employing someone locally so it is not something we do as a first choice. Our reason to employ someone from overseas is we can't find an appropriate person someone locally. Increasing our local talent pool through training would take longer than 1 July 2012 to achieve and also given the international nature of our industry a not insignificant portion of those people trained would in all likelihood seek work overseas anyway. It is essential to our business and industry that we can employ overseas specialists. We would request that consideration be given to the creation of a schedule of industries for whom these proposed changes would not apply to rather than having regulations that apply across the board.


The process we have to comply with to be able to employ people under 457 visa's ensures that we are a business that requires these people, ensures they are paid a market rate (ie we can't bring in workers at lower cost to those sourced locally) and also ensures we provide a portion of our annual wages expense on training of local staff to reduce our reliance upon overseas workers. We therefore believe for us and our industry that the Department of Immigration and Citizenship in approving visa's for these staff have ensured that we have complied with the Governments aims in relation to employing overseas workers in areas which they are required.

We believe that the stated aims of the proposed reforms could be achieved through ensuring the LAFH claimed is based on actual costs not a "reasonable" allowance for accommodation – ie the employee provides a copy of their lease to the employer and upon that the accommodation allowance is based. Otherwise there could be an Accommodation Matrix developed and updated annually similar to that used for food – ie reasonable allowance levels could be established for one person, two people, two people with one child etc. These would address issues of rorting of the system through the provision of excessively high "reasonable" allowances and also provides greater certainty to business in relation to the current FBT issue where without set limits the business runs the risk of FBT being payable if the ATO determines the allowances aren't reasonable.

Should changes be implemented as a result of the proposed reforms, the Government should consider delaying the commencement of the proposed reforms by 12 months to allow industry more time to plan for the changes. If this is not possible we would request that the Government consider introducing transitional rules for all affected taxpayers who, as at 29 November 2011, were LAFH and were claiming accommodation benefits under the LAFH provisions. Employment contracts were entered into based on the current legislation. At the very least consideration should be given to employees who are in a fixed term lease. Where the fixed term for this lease ends after the proposed implementation date of the reforms of 30 June 2012, transitional rules should permit these taxpayers to continue to claim accommodation benefits under the LAFH provisions until the end of the fixed term lease. Without such transitional rules there will be significant financial hardship for these taxpayers who made the decision to enter into the fixed term lease based on the taxation laws that existed at the time that the decision was made.

Rising Sun Pictures would welcome the opportunity to discuss this submission with Treasury. Please contact Gareth Eriksson on 08 8400 6400 with any queries in relation to the contents of this submission.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Gareth Eriksson', with a long horizontal flourish extending to the right.

Gareth Eriksson

Chief Financial Officer