Manager

Philanthropy and Exemptions Unit

Indirect Tax Division

The Treasury

Langton Crescent

PARKES ACT 2600

Dear Sir

This submission is in response to the exposure draft of the proposed legislation concerning the reform of the living-away-from-home benefits ('LAFHA').

108 comment letters were posted by the Treasury in response to the initial consultation paper proposing these reforms, and I note with concern an overwhelmingly common theme – namely, that the manner in which the proposed reforms will be implemented will directly affect Australia's ability to attract overseas labour – which does not appear to have been taken into account in the draft legislation. These responses were written by some of the largest companies and institutes in Australia, and I, along with many other 457 visa holders, am dismayed that the government is choosing to proceed with an approach that will not only reduce my take-home pay by 25% overnight from 1 July 2012, but directly contradicts the advice of such an extensive, experienced and qualified population of respondents.

As a 457 visa holder, I currently receive a LAFHA payment from my employer and, having resided here for the past 18 months, have committed to a rental lease and other expenditures based on my previously agreed salary. Whilst I genuinely do understand the need to reform the current system due to abuse by a small number of individuals, I am amazed and shocked at the abrupt method by which this benefit will be revoked.

Furthermore, various transitional arrangements which have been proposed in the draft legislation appear to be unlawful, as they breach all of Australia's double-taxation treaties. These treaties are incorporated into Australian domestic law through the International Tax Agreements Act 1953.

This is because, in order to qualify for transitional arrangements under which the LAFHA reforms will not be applied before 1 July 2014, temporary residents and foreign residents will be subject to an additional restriction to which permanent residents will not be subject – namely the requirement to maintain a dwelling in Australia – in breach of the non-discrimination clauses in each treaty.

Taking the UK as an example, this contravenes Article 25.1 of the UK/Australia Double Taxation Convention, because it is subjecting UK nationals to requirements connected with income tax/FBT which is "other" and "more burdensome" than requirements to which Australian nationals are subject in the same circumstances, "in particular with respect to residence".

The result is that on 1 July 2012, those already working in Australia on 457 visas under LAFHA arrangements will overnight see a huge decrease in their take home pay and possible immediate financial ruin, whereas the Australian Government has seen fit to put full transitional arrangements in place for Australians with existing LAFHA arrangements. Those transitional arrangements would allow existing 457 visa holders, particularly those with families (who incidentally receive nowhere near the level of public service due to their immigration status as permanent residents) time to renegotiate rental contracts, employment contracts, other commitments and consider their futures. Instead, these arrangements have been denied.

These discriminatory transitional arrangements appear to be justified by the Treasurer (and those under his authority) by continually suggesting that all 457 visa recipients of LAFHA are highly-paid executives "rorting" the system. This is not only inflammatory and unfair but completely inaccurate - the Temporary Skilled Migration Income Threshold is $49,330, compared to the average Australian full-time salary of $68,791(Q3 2011). The Treasury has, to date, published no statistical information to support its claims of "rorting".

I urge the Treasury to consider these arguments and the huge number of responses already received from all sectors of Australian business and elect an alternative method of LAFHA reform.

Yours faithfully

John Askham