



29 May 2012

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Dear Sir/Madam

Subject: Submission on Exposure Draft Legislation Re- Fringe Benefits Tax (FBT) Reform: Living-Away-From-Home Benefits

CPA Australia represents the diverse interests of more than 139,000 members in 114 countries throughout the world. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders.

Against this background, we provide this submission in respect to our concerns in relation to the proposed changes, as reflected in the Exposure Draft (ED) legislation.

Our concerns are detailed below.

The transitional rules are far too restrictive. In particular, they do not allow sufficient time to plan where executives, who commonly come to Australia and live away from their usual place of residence for 2 to 4 years, are already employed and costed on the basis of the existing law.

If the Government is concerned about backpackers relying upon the LAFHA concessions, the concessions could be limited to non-residents on particular visas, and/or with particular work contracts. The reasonable food and accommodation rules already provide sufficient safeguards against abuse by executives. If the Government does not agree in relation to the existing safeguards, this aspect of the existing rules could be tightened.

Imposing a 12 month time limit on the LAFHA concessions, rather than the traditional 2 to 4 year rule of thumb is, in our view, unnecessary and out of step with the way employment agreements are commonly structured.

Moving much of the LAFHA rules back within the income tax legislation is a sensible reform.

Requiring that employees maintain a residence that continues to be available, in that it is not rented out while they live away, is plainly an unreasonable requirement and one which has never applied in the past. More particularly, this requirement would deny entitlement to the food and drink concession on no apparent logical basis.

Denying the concession to adult children who live away from their parent's residence is also unreasonable and contrary to established practice. Furthermore, it is highly doubtful that the ED legislation achieves that aim, given the meaning of 'ownership interest' (which includes a mere right to occupy). Plain legislative defects cannot be remedied by statements such as those at paragraph 2.25 of the Explanatory Memorandum (EM). Paragraph 2.25 is wrong in our view in light of both the ED legislation and paragraph 2.24 of the EM.

Similarly and further to the above, it is doubtful whether paragraph 2.28 of the EM extends the operation of the ED legislation to achieve its stated purpose. More particularly, it could clearly be argued that a home rented out for the period of a secondment 'continues to be available for your use and enjoyment' when it is used by the owner to derive rental income. The EM should not be used to attempt to remedy a defect in drafting and fundamental issues such as this should be clear on the face of the legislation.


Section 25-115(3)(d) describes the taxpayer's 'ordinary weekly food and drink expenses' as fixed amounts. This is plainly not a matter in the knowledge of the draftsman so it should simply be removed. The provision would make more sense and operate perfectly well without those words.

Section 25-115(5)(d) treating companies as one employer where they have ever been connected, eg. prior to a public company demerger, is unreasonable. A simple solution is to provide the Commissioner with discretion to disregard such earlier connections.

Finally, it should be made clear that food and drink costs will be deductible under s25-115, notwithstanding anything to the contrary in Division 32, such as birthday party costs while LAFH.

If you have any questions regarding the above, please contact Garry Addison, Senior Tax Counsel, on (03) 9606 9771 or via email at garry.addison@cpaaustralia.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Paul Drum', with a stylized flourish at the end.

Paul Drum FCPA
Head - Business and Investment Policy