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Dear Sir/Madam,

Thankyou for the opportunity to contribute towards the Consultation for the Exposure Draft of the proposed Fringe Benefits Tax (FBT) / Living Away from Home Allowance (LAFHA) reform.

I am a British national, currently on a 457 visa and have been working in Sydney, for an Australian company, since October 2011. I was recruited specifically to fill a recognised skills gap in transport planning.

### **Personal Impact of the Reform**

The impact of the changes will result in a greater than 20% pay cut for me from July 1<sup>st</sup>.

As a temporary resident, my situation means that I will incur two principal additional costs that LAFHA currently goes towards ameliorating:

- Overseas temporary residents pay higher annual fees than Australian citizens or permanent residents for private health insurance and/or ambulance cover; and
- Temporary resident families are not eligible for Family Assistance payments such as the childcare rebate, which covers up to 50% of preschool costs for Australian citizens and permanent residents.

As a result, the removal of LAFHA will put me at a considerable disadvantage to a similar citizen or permanent resident. Therefore, the removal of LAFHA does not create a level playing field between temporary residents and citizens and permanent residents.

The impact of the change is such that I have to radically reconsider my short term plans. I may have to, regretfully, return to the UK at personal cost to myself and at cost to my employer (not including the costs already incurred by my employer in identifying and hiring me as a worker with the skills they required) and leave a skills shortage in my area of expertise.

Alternatively I may need to look at permanent residency to ameliorate the costs outlined above, which would entail additional costs to the Government in providing health and preschool services for example.

### **Timing and Notice of Reform**

The Treasury Consultation Paper of 29 November 2011 detailed the *Fringe Benefits Tax Reform – Living Away From Home Benefits* proposals and announced a consultation period that ended on 3<sup>rd</sup> February 2012. It appears that no summary or specific response to this earlier consultation has been released.

I received no further information prior to the Budget announcement on 8<sup>th</sup> May. Confirmation of how the changes would affect me were not relayed to me by my employer until 14<sup>th</sup> May 2012 as further clarification was required from the Treasury.

The Department For Immigration and Citizenship states on its website:

*“if an employer committed to pay a subclass 457 visa holder LAFHA, it is expected this payment will continue. The only difference will be how the Australian Taxation Office (ATO) views such payments.”*

However, my employer has stated that they are seeking guidance on all the issues relating to the legislation before letting me know any further information. I have been made aware that my employer does not intend to renegotiate my terms of employment.

As a result, with less than 5 weeks to go before the proposed reform is implemented I have no assurance about my level of income after July 1st. This provides very little notice for me to make adjustments for such a considerable change in my financial circumstances, not least because I am tied in to a 12 month rental agreement in what is one of the most expensive areas in the world to rent property.

### **Transition rules**

I am unclear as to how the proposed transition rules, specifically the provision of the 2 year transition period for Australian workers but not for UK citizens on temporary overseas work visas, are consistent with Article 25 of the UK/Australia Double Taxation Convention 2003 (<http://www.hmrc.gov.uk/pdfs/uk-australia-dtc.pdf>), which states that:

*1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.*

Furthermore, it seems that the transition rules as drafted impose a differential taxation outcome. As temporary residents are not eligible for the transition rules, it does not appear

that all taxpayers would be treated equitably.

## **Summary**

I am sympathetic to the view that LAFHA requires some level of reform as its use may have deviated from its original policy intentions. However, there would appear to be a number of alternative policy options for addressing this issue but in a way that is consistent with wider Government policy on skilled migration and sustainable economic growth. I chose to take up a position to apply and share my expertise in transport planning in Australia precisely because I was told there was a recognised skills shortage and therefore an opportunity for me to broaden my global experience in the application of my skills. I am not being paid an executive wage and am offended to have been painted as someone who is rorting the system, and within mere months of my being brought into the job and the country. As a temporary resident I incur additional costs that citizens and permanent residents do not, which LAFHA goes but somewhat towards ameliorating, as well as the cost of maintaining my property in the UK. The reforms are being implemented suddenly with very little notice period for those affected to alter their medium to long term financial commitments.

It would appear that, as an interim measure, applying the transition period to all current beneficiaries of LAFHA would be equitable, would allow affected individuals to adjust to any change within a more reasonable timeframe, and would enable suitably thorough and coherent alternative policy options to be developed and properly consulted upon to ensure the skills required in Australia continue to be available and that the wider economic impact of any changes are properly scoped and costed.

Yours faithfully,

Simon Payne