

28 May 2012

The Manager
Philanthropy and Exemptions Unit
Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: fbt@treasury.gov.au

Dear Manager,

Submission on the Reform of the Living Away From Home Allowance and Benefit Rules

The University of Melbourne wishes to make this submission with regard to the Exposure Draft for Living Away From Home Allowance (LAFHA) reform released on 15 May 2012.

By way of background, the University of Melbourne was established in 1853 and is now one of Australia's leading universities, with a tradition of excellence in teaching, research and research training. The university has a rich academic culture and is well recognised around the world.

The LAFHA reforms pose the following challenges to the university:

1. Impact regarding visiting academics (subclass 419 visa holders)

A visiting academic is a person employed by an overseas university (home university) who visits an Australian university (host university) to collaborate on research or for other scholarly purposes. These appointments are unpaid by the host university as the academic generally conducts the visit within the scope of their employment at their home university. These individuals will continue to receive a salary from their home university for the duration of their visit to the host university. The benefit to Australian universities is the exchange of knowledge from these guest lecturers. However, there are also administrative requirements for visiting academic programs – such as those university courses which require accreditation by international agencies and the criteria for accreditation include active international visitor programs.

A special category of visa exists for these appointments, being the subclass 419 Visiting Academic visa. The visa allows visiting academics to enter Australia on a temporary basis for the purpose of undertaking collaboration or research. A condition of the visiting academic visa is that the individual must not be paid any form salary, wages or scholarship (condition 8103). The visa does however, allow the host institution to make a contribution towards living or travel expenses associated with the visit. In the past, such living expenses have been paid as a LAFHA or as a reimbursement of expenses.

Under the current legislation, these payments are exempt from fringe benefits tax (FBT) and income tax, however under the LAFHA reforms, this exemption has been removed. The removal of this exemption will have a major impact on Australian universities to attract quality academics to Australia. In addition, if

universities are required to pay FBT on any reimbursements paid to visiting academics, the number of visiting academics may need to be reduced by half. To further complicate matters, the LAFHA cannot be paid as a taxable allowance to the visiting academic as the visiting academic will therefore be in breach of their visa conditions.

The primary reason for the LAFHA reforms is to address the inappropriate exploitation of the current LAFHA arrangements. The changes are said to ensure that a "level playing field exists between hiring an Australian worker or a temporary resident worker living at home in Australia, in the same place, doing the same job". It can be said that this rationale does not relate to visiting academics who do not receive any salary from the university. We believe this to be an unintended consequence of the LAFHA reforms and therefore believe that a specific exemption is warranted for the reasons outlined above.

If The Treasury is not willing to provide an exemption for visiting academics that enter Australia on a 419 visa, The Treasury must be responsible to liaise with the Department of Immigration and Citizenship to ensure the visa conditions are changed so that a taxable LAFHA can be paid to the visiting academic. This change is required with effect from 1 July 2012.

2. National Health and Medical Research Council Fellowships

The University of Melbourne is successful in receiving on average \$100 million in grant funding from the Australian Government National Health and Medical Research Council (NHMRC) annually. The NHMRC have a number of fellowship programs, where those successful in receiving a NHMRC Fellowship grant are required to undertake two years of training overseas – out of a total of four years. The two years spent overseas are mandatory and are the first two years of the fellowship. The NHMRC will always provide an accommodation allowance and in some instances will also provide a cost of living allowance. These rates are determined by the NHMRC based on the standard cost of living in the country the fellowship will be undertaken.

These amounts have currently been paid to the employees as a LAFHA which is exempt from FBT and exempt from income tax. Under the new LAFHA arrangements, those employees whose fellowships commence after 7:30pm on the 8th of May 2012 will be adversely affected as the LAFHA exemption is only applicable for a period of 12 months. As a result, the employee will only be able to claim an income tax deduction for their expenses while living away from their home for a period of 12 months. This means the employee will be out of pocket in the second year as a result of the changes to the LAFHA.

In order to apply for grant funding from the NHMRC, the employee is required to be an Australia Permanent Resident or an Australian Citizen. On this basis, the Australian permanent resident/ citizen is being unfairly disadvantaged when they are required to live away from home under this scheme for a period of two years, and at the same time, maintain a home at their usual place of residence whilst not being able to claim a tax deduction for the second year of the fellowship. In a number of instances in the past, the employee's family has continued to live in Melbourne at the family home while the employee was living away from home under the fellowship.

We therefore request The Treasury provide an exemption where an employee is required to live away from home under the above circumstances. Note: the

exemption being requested is on the basis that the employee meets all other requirements to be considered living away from home.

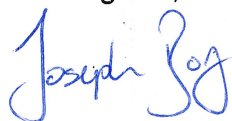
3. Private Binding Rulings can no longer be relied upon

The University of Melbourne has obtained a number of private binding rulings from the Australian Taxation Office in the last couple of years to provide employees with certainty the Australian government considers them to be living away from home, meaning they will be able to access the LAFHA concessions for a definite period of time. The LAFHA reforms unfairly affect these temporary resident employees who had previously been provided with certainty they are considered to be living away from home for a limited duration, but are no longer considered to be living away from home due to the change in legislation.

We believe that a transitional period of two years to 30 June 2014 must also be applied for temporary residents who have been determined by the Australian Taxation Office by way of private binding ruling to be living away from home for a definite period.

Please feel free to contact me on (03) 8344 2758 or by email at borgj@unimelb.edu.au if you would like to discuss any aspect of this submission further.

Kind Regards,



Joseph Borg
Senior Taxation Accountant
The University of Melbourne