

3 February 2012

Manager
Philanthropy & Exemptions Unit
Personal and Retirement & Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: FBT@treasury.gov.au

CONSULTATION ON FRINGE BENEFITS TAX (FBT) REFORM – LIVING-AWAY-FROM-HOME BENEFITS

The Minerals Council of Australia (MCA) welcomes the opportunity to comment on proposed changes to the Fringe Benefits Tax in relation to the Living Away From Home Allowance (LAFHA) announced by the Assistant Treasurer in November 2011.

The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable economic and social development.

The minerals industry has consistently supported disciplined budget policy and recognises the fiscal constraints under which the Government is operating. However, it is important to preserve as far as possible good policy outcomes. Sound tax settings are based on the principles of efficiency and equity and should seek to enhance rather than impede Australia's competitive position.

The minerals industry is Australia's most globalised industry accounting for nine per cent of Australia's GDP and more than 50 per cent of its export income. Access to skilled employees is critical to the industry's growth and its ongoing ability to secure Australia's future prosperity.

Mining industry skills are internationally transferrable and the Australian industry faces intense competition for the most skilled and talented people. Since the previous peak in 2008, employment in the minerals industry has grown 38 per cent to 226,200. Skills Australia estimates that the sector will require an additional 83,000 operational workers and 19,000 replacement workers over the period to 2016. Australia's education and training sector cannot meet this demand alone.

The MCA recognises the Government's prerogative to amend long-standing tax provisions to increase revenue collection but anomalies and impractical transition issues should be addressed. Accordingly, the MCA submits the following observations and recommendations on the proposed changes to the LAFHA.

Anomalies

Point 2.1.5 of the Government's consultation paper regarding "Maintaining a home for own use" states that a temporary resident employee can either own or rent a unit of accommodation and that unit of accommodation must be available for their use at any time and cannot be rented out or sub-let while they are living away from home (LAFH).

However, current practice would indicate that Australian permanent residents and citizens are renting out or sub-letting their usual place of residence whilst LAFH, and accessing the LAFHA or LAFH benefits.

Noting that it is the Government's stated intention to "ensure a level playing field exists between hiring an Australian worker or a temporary resident worker", this anomaly would significantly disadvantage temporary resident employees.

Given that no permanent resident who is genuinely receiving LAFH benefits will lose any existing entitlement, the MCA submits that the Government should consider allowing temporary resident employees to similarly rent out or sub-let their usual place of residence in Australia.

Unintended consequences

The proposed reforms would have significant consequences for businesses using or requiring support from skilled migration labour by adding to project costs and delays.

Where project work has commenced predicated on employee remuneration budgets (and on-costs including payroll tax and superannuation) in which LAFHA or LAFH benefits were available to skilled migration labour, this may lead to:

1. significant tension between customer and supplier when negotiations are required to uplift the rates and loss of future project work from that customer; and/or
2. legal disputes where no agreement can be reached.

The impairment of companies' ability to retain and attract key talent to Australia is another likely consequence. Member companies already engaged in discussions about these changes report that employees who are temporary residents and responsible for their own taxes are considering terminating their employment rather than going through the lengthy process of re-negotiating their remuneration. In a highly competitive global labour market, these employees have a range of viable other options including job opportunities in countries where there are benefits relating to accommodation and/or food or lower tax rates apply.

Although the temporary resident exemptions for foreign investment income may be attractive, other countries have similar exemptions and, in addition, provide concessions for employer-provided accommodation. Limiting the benefits available to temporary residents in Australia diminishes Australian business' ability to retain and compete for key talent.

Transition issues

The Government has specified that it will examine the need for special transition arrangements, particularly for some sectors. The MCA submits that proposed transitional arrangements should be consistent across all sectors.

There are a significant number of employment contracts which will have a duration beyond the proposed introduction date, and which will cause extra burden on employers and employees alike, particularly where employees are responsible for their own taxes.

The Government should, at a minimum, consider a grandfathering provision for all existing employment contracts.

Additional costs of compliance

The proposed changes will enact tax benefits of a similar nature by multiple pieces of legislation rather than maintaining like provisions within one Act.

Employers and employees will suffer additional compliance activity as each year new Pay As You Go Withholding variations will be sought by each affected employee, requiring ATO approvals, notification to the employer and processing into the employer's payroll system.

Employees will incur additional costs in preparing their personal income tax returns as tax agents will wish to ensure their clients do not face exposure by interpreting the rules incorrectly. The data required to substantiate

claims will be more voluminous than a simple declaration as is currently relied on by the employer for LAFH purposes.

Employees who self-prepare may be exposed to penalties if they do not fully appreciate the substantiation rules, or may equally under-claim allowable deductions.

Practical aspects requiring consideration

The MCA submits that the proposed changes pose a number of questions from an administration perspective that require further consideration including:

1. Will the LAFHA be treated as salary and wages and 'folded' into that disclosure on the employee's Payment Summary, or will it be required to be disclosed as a separate allowance?
2. How does an employer satisfy themselves that a temporary resident who can evidence a home in Australia has not sub-leased it for the duration of a temporary absence, thereby ensuring they are 'maintaining a home for their use in Australia'?

Recommendations

The MCA submits that the Government can address the perceived areas of abuse without removing the concessions altogether for temporary residents (apart from those living away from an Australian home) and therefore recommends that the Government:

1. ensure consistency between temporary residents and Australian permanent residents and citizens with regards to maintaining a home (whether rented or not); and
2. extend the definition of usual place of residence to ensure temporary residents own and maintain a home in their usual place of residence.

Implementing these recommendations would ensure Australia remains competitive in attracting key talent.

If you would like the MCA to provide further explanation of any issues raised above, please contact me in the first instance (john.kunkel@minerals.org.au or 02 6233 0649).

Yours sincerely,



John Kunkel
Director – Economics & Taxation
Minerals Council of Australia