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Dear Manager

Fringe Benefits Tax (FBT) Reform Living-away-from-home benefits

Thank you for the opportunity to submit our comments in relation to Treasury's Consultation Paper "Fringe benefits Tax (FBT) Reform – Living-away-from-home benefits" (**Consultation Paper**). As a general comment, we consider that there are a number of aspects of the proposed reforms which require clarification to assist employers and employees in understanding the impact of the proposed reforms.

Please see our specific comments below relating to a number of questions posed in the Consultation Paper.

1. Unintended consequences

The proposed reforms may increase compliance for employers if they are required to be satisfied that employees have used a living-away-from-home (**LAFH**) allowance for tax deductible purposes in determining the amount that should be withheld from an allowance for PAYG purposes.

For example, if an employer provides a LAFH allowance for food, it is not clear to what lengths the employer will need to go to confirm that the employee has used the LAFH allowance for deductible expenditure.

Consistent with the existing treatment of LAFH benefits, we submit that employers should be entitled to rely on a declaration from employees that the employee will only use their allowance for prescribed purposes (ie to meet the additional costs of food and accommodation for eligible family members as a result the employee being required to work away from their usual place of residence) in determining whether the employer is required to withhold an amount from any LAFH benefits.

2. Practical aspects

If LAFH allowances are treated as assessable income of an employee and the employee is required to claim a deduction for reasonable or substantiated LAFH expenses, this effectively shifts any uncertainty

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associated with determining what are reasonable LAFH expenses to the employee. For example, it is not clear whether employees will need to show that the accommodation expenditure they incur is reasonable (even though it may be fully substantiated).

In addition, it may be difficult for Australian employees working overseas to determine what are reasonable food costs in the foreign country they are working in (ie they are not able to rely on ATO determinations). This is a change from the current arrangements whereby employers determine what are reasonable food and accommodation components having regard to data which is often more widely available to employers. This shift in uncertainty to employees may undermine the purpose of the LAFH allowance tax concession to act as an incentive for employees to work away from their usual place of residence.

Certainty may be increased if the proposed reforms make it clear that employees can claim a deduction for actual substantiated LAFH food and accommodation expenses. As an alternative, we submit that consideration should be given to treating a LAFH allowance as non-assessable non-exempt income to the extent that it is:

- equal to or less than a prescribed amount (eg this may be the reasonable food component for expatriate employees published by the Australian Taxation Office annually); or
- reasonable and calculated by reference to anticipated costs of an employee living away from their usual place of residence

This would make the treatment of a LAFH allowance consistent with its current treatment and would avoid the added compliance and uncertainty of determining whether an employee will have sufficient deductions to offset their LAFH allowance.

3. Statutory food amount

The statutory food amount should be based on reliable, objective and publically available data which indicates the average cost of food and groceries for average Australian households. For example, the Australian Bureau of Statistics publishes a Household Expenditure Survey, which is currently conducted every six years and was last published for the 2009-2010 year in September 2011. The data from that Survey indicates that the average weekly expenditure on food and non-alcoholic beverages was:

- \$94 for a lone person;
- \$195 for a couple;
- \$292 for a couple with dependent children (based on an average household, which would have more than one dependent child);
- \$178 for a one parent family with dependent children (based on an average household, which would have more than one dependent child).

We submit that this indicates a reasonable statutory food amount should not be more than approximately \$95 for each adult and \$40 for each dependent child.

As a household expenditure survey is likely to more accurately represent actual expenditure on food, we would submit that the statutory food amount should be reviewed every six years and updated to reflect each Household Expenditure Survey conducted by the Australian Bureau of Statistics (ie the next review would be released in September 2017 for the 2015-2016 year). This would also reduce compliance costs as employers would be able to negotiate LAFH allowances for a period with certainty without the need to make annual adjustments for inflation.

Alternatively, the statutory food amount could be set for the income year ended 30 June 2013 and then indexed annually with the "food and non-alcoholic beverages" component of the weighted average of eight capital cities CPI.

4. Transitional arrangements for community sector

We submit that the removal of tax exemptions for temporary residents working in Australia will have a significant impact on community organisations seeking to attract workers from overseas. In particular, organisations which are currently exempt from fringe benefits tax (eg religious institutions, public benevolent institutions, relevant hospitals and ambulance services) may experience significant hardship if they have employees in receipt of LAFH benefits and those LAFH benefits will not be tax-free under the proposed reforms. We submit that such organisation should be given at least 12 months to adapt to the proposed changes.

We would welcome the opportunity to be further involved in the process of finalising Treasury's views in relation to the introduction of the proposed reforms for LAFH benefits.

Yours faithfully



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