

23 January 2012

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

Dear Manager

## **Proposed reform: Living Away From Home Allowance (“LAFHA”)**

We refer to the consultation paper released by the Federal Treasury in November 2011 titled “*Fringe Benefits Tax (FBT) Reform – Living-away-from-home benefits*” (**Consultation Paper**). The Consultation Paper invites feedback and comments on the proposed LAFHA reform set out in the Consultation Paper. According we set out below our views and concerns as an Australian owned and operated organisation likely to be negatively impacted by the proposed reform (see section 3 below).

### **Our submission**

Our primary concerns with the proposed LAFHA reforms as set out in the Consultation Paper are that:

- No transitional period has been contemplated or proposed. Should the changes be effective from 1 July 2012 as proposed, it will have very undesirable (and unequitable) financial consequences for effected staff and/or our business. At the very least, we consider a transitional period of 2-3 years to implement the proposed reform for employees receiving LAFHA under the existing rules.
- Our ongoing ability to recruit foreign based staff to supplement domestic shortfalls in supply (particular in highly specialised roles such as cardiologists and oncologists) will be negatively affected without the availability of LAFHA to alleviate some of the financial burden associated with foreign recruitment and relocation (from the perspective of both the Employer and Employee).

## **1 Background on GenesisCare**

### **1.1 Our Network:**

GenesisCare is a national network of premium cardiology (**GenesisHeartCare**) and radiation oncology (**GenesisCancerCare**) practices and is a private provider that operates in the public and private sectors. GenesisCare also recently diversified into treating sleep disorders with the recent acquisition of a sleep network in Queensland. The core philosophy of GenesisCare is to deliver ‘sustainable care excellence’ to our patients. Over the last 12 months, GenesisHeartCare cardiologists treated nearly 153,500 patients with cardiovascular disease across the 12 months which included nearly 34,000 new patient consultations. Over the same period, the GenesisCancerCare team performed over 230,000 treatments for cancer patients. GenesisCare is the largest private provider of both cardiovascular care and radiotherapy in Australia.

### **1.2 Our People:**

Like most organisations, our people are the key to our success (or failure). Given the specialised nature of the services we provide to patients around Australia, we recruit highly trained and specialised professionals to provide our services, including doctors (both cardiologists and oncologists), radiation therapists, physicists, lawyers, investments analysts and more. Particularly in respect of our medical staff (that is cardiologists, oncologists, radiation therapists and physicists) recruitment is challenging. These are highly skilled

individuals, some of them training for up to over 20 years (including at overseas facilities such as The Mayo Clinic), and their supply is very limited. We therefore commonly look to overseas markets, particularly New Zealand, to recruit 'talent' that is not available in Australia to fill vacancies for fixed periods (normally 3-4 years).

## **2 LAFHA and recruitment**

### **2.1 Recruitment challenges:**

Identifying a suitably trained candidate to join our business is merely the first of a number of recruitment challenges we face. Where the candidate is foreign based, we then need to conquer challenges and costs associated with any relocation to Australia, both from the point of view of the business and that of the prospective employee. This challenge is merely amplified by the fact that most of our target candidates who after completion of their training are in their thirties, are married with children and have purchased their first home in their country of residents. The cost (including ongoing costs) of any relocation is therefore greater.

### **2.2 Using LAFHA to alleviate relocation burden:**

One-off costs associated with relocating a candidate and their family to Australia is a cost of recruitment usually borne by the business. It is generally easily quantifiable and paid once. However, the costs associated with a professional and his/her family living away from their usual home for a fixed period is ongoing, very material and often very difficult to quantify. From an Employer's perspective, such costs relate to reasonable accommodation expenses and additional food costs that Employees are paid salaries for. From an Employee's perspective, these additional costs with living in Australia need to be covered by a third party i.e. the Employer, whether directly or via a payment in addition to their salary. However, an Employer is only ever going to agree to pay slightly above 'market' as ongoing costs associated with living overseas in Australia are very material.

As it stands, LAFHA provides the resolution. Relocated Employees (and their families) can access a tax-free rent and food allowance. Where otherwise the candidate may not have been successfully recruited due to either Employer or Employee costs, they are. We therefore consider it very positive for the business and the Australian public generally in a very important industry sector (i.e. Health).

### **2.3 Regulating the use of LAFHA within GenesisCare:**

Eligibility of LAFHA within GenesisCare is regulated by a dedicated team which includes myself (the General Counsel of the Group), our tax accountant and payroll team. We have also, on occasions, sought input in respect of LAFHA eligibility and application from PricewaterhouseCoopers and private organisations such as [www.lafha.com.au](http://www.lafha.com.au). Key criteria include:

- (a) Is the employee 'required' by the employment to live away from home in order to perform duties of their employment?
- (b) Is the candidate an Australian resident?
- (c) Are we recruiting the person from their usual place of residence (whether inter-state or international) and will they continue to have a usual place of residence (such as owning their own home) in the home location?
- (d) Is the position permanent or for a fixed term?
- (e) Does the candidate have an intention or expectation to return back to their usual place of residence following completion of their position with GenesisCare?

As noted above, we offer LAFHA in respect of both the reasonable accommodation component and 'additional' food component to eligible candidates. The food allowance is quantified based on the food costs above the statutory food amount prescribed under the FBT Rules and limited to the by the Australian Tax Office's (ATO) Determination of the reasonable food component each year. The accommodation allowance is considered on a case by case basis depending on individual circumstances (e.g. whether the employee will be accompanied by family, location where the employee will be living and their current living standards ). Employees are required to provide evidence of their lease.

### 3 Impact of the proposed reform on GenesisCare

We consider that the proposed reform (in the form prescribed in the Consultation Paper) will have a materially detrimental impact on our business. It will impact our ability to source international talent with requisite skill and knowledge required in our industry. It will also likely impact our ability to retain talent (unless the business is willing to indemnify the employee for any loss as a result of the proposed reform in which case it will be an additional cost to the business).

The Consultation Paper is silent on how the Treasury seeks to implement the proposed changes. There is no mention of a transition period. How does the Treasury seek to deal with foreign residents who were recruited to Australia on the basis of LAFHA and have committed themselves on that basis, including likely signing up to fixed period leases? Noting changes required to comply with the proposed reforms will take time, what 'grace period' is the Treasury proposing?

Should these proposed measures be implemented commencing 1 July 2012, we believe it is only fair and reasonable that transition measures (such as a grace period of up to 2-3 years) be permitted for foreign employees that are currently receiving LAFHA under the existing rules.

#### **Case study:**

##### *Example 1 (future recruitment):*

Using a real example from our own business, GenesisCare operates Australia wide including regional centres such as Albury-Wodonga. To date, GenesisCare has had significant difficulty recruiting doctors who are willing to relocate to this region and provide the much needed services offered by GenesisCare (there has not been a consistent permanent doctor at our practice in Albury-Wodonga for almost 12 months now). GenesisCare has been desperately trying to fill the void at this site and has also resorted to searching for suitable candidates from overseas that are willing to relocate to this area for a defined period of time approximately 3-4 years. We believe we had identified a suitable New Zealand candidate but the proposed LAFHA changes have hampered negotiations (as have a material financial impact for the candidate).

The proposed changes to the LAFHA rules for foreign residents would significantly impact the ability of our business to attract and retain required employees, including in regional areas where recruitment is challenging. Health Care is an area for which there is a shortage of doctor's and waiting lists are extensive. We therefore believe that it would be reasonable to allow for exceptions to the new rules in respect of the Health industry.

##### *Example 2 (the need for a transition period):*

Using a hypothetical from our own business as a case study, consider a 40 year old cardiologist who was recruited to Sydney from New Zealand (**Bob**). His skills and expertise are highly sort after and in shortage in Australia so is an excellent candidate for GenesisCare. He owns a house in Auckland. He moves his wife and three children to Australia for a 3 year appointment.

Upon moving here, Bob finds a 4 bedroom house for rent in Chatswood (close to The Mater Hospital where he works). He signs up to a lease for 3 years and his rent is \$1,200 per week (he signs up on the basis he will receive the benefit of LAFHA). He also receives a food allowance for he and his family of \$333 per week (as per FY11 FBT Rules).

Assuming Bob earns over \$180,000 (and has a marginal tax rate of 0.45), the proposed reform will reduce his net income by \$540 per week in rent (or \$28,080 per annum) and ~\$150 in food (or \$7,800 per annum), altogether \$35,000. And this is \$35,000 net of any tax.

There are two likely outcomes from this change:

- (a) GenesisCare will need to pay Bob the difference on the basis that he was recruited on the basis of LAFHA (likely to be ~\$70k gross per annum); or
- (b) Bob returns to New Zealand.

Bob may also have problems exiting his existing lease.

#### 4 **Feedback and requests**

As set out above, our primary concern with the proposed LAFHA reforms as set out in the Consultation Paper is that no transitional period has been contemplated or proposed which will have very undesirable financial consequences for effected staff and/or the business. In addition to this, the proposed changes, as they stand, will significantly impact the ability for our business to recruit suitably trained and talented staff in the medical industry.

Accordingly, we submit that Treasury consider and implement a reasonable transition period in respect of foreign employees that are currently receiving LAFHA under the existing rules and consider exceptions to the new rules for certain industries such as the medical industry.

#### 5 **Questions / further discussion**

Should you have any further questions in respect of the above submission, please do not hesitate to contact me on (02) 8236 3352.

Yours faithfully,



**Aaron Pickett**  
*General Counsel / Company Secretary*  
**Genesis Care Pty Limited**