



Submission to the Treasury,
Philanthropy and Exemptions Unit,
Personal and Retirement Income
Division

*Fringe Benefits Tax Reform
Living-away-from-home benefits*

By the Australian Mines & Metals
Association (AMMA)

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Executive summary

A consultation paper was released by the Treasury on 29 November 2011, in response to the Federal Government's proposed reforms to the Fringe Benefits Tax (FBT) treatment of living-away-from-home allowance (LAFHA) benefits.

AMMA has prepared this submission in response to the consultation paper outlining the Federal Government's proposed reforms.

AMMA understands there are three main reforms being proposed, which are:

- 1. Requiring individuals to substantiate their actual expenditure on accommodation and food beyond a statutory amount;*
- 2. Limiting access to LAFHA for temporary residents to those who maintain a home for their own use in Australia which they are living away from when they work; and*
- 3. Administering taxation treatment of LAFHA to be administered under the income tax system rather than the current fringe benefit legislation.*

In part, the proposed reforms will require temporary resident employees to maintain a home for their own use in Australia (which they are living away from for work) in order to access the concession. In those cases, their expenses will need to be substantiated. All other employees will be required to substantiate their LAFH expenses.

AMMA believes the requirement for individuals to substantiate their expenditure will be a significant administrative burden on employers and led to further justification.

In AMMA's view should the taxation treatment of LAFHA be administered under the income tax system as proposed, this will add significant costs to projects and operations in the resource industry.

AMMA understands that the proposed changes will apply prospectively from 1 July 2012 for both new and existing LAFHA arrangements. All benefits and allowances provided in respect of the period commencing 1 July 2012 will be subject to the new arrangements.

The following submission outlines AMMA's position on each of the proposed reforms mentioned above.

Furthermore, AMMA has also provided its view on the transitional treatment of the reforms which will apply from 1 July 2012 for both new and existing arrangements.

In short, AMMA contends that the proposed reforms will have significant impacts on both employers and employees and we do not support the proposed reforms in their current form.

AMMA member survey

In January 2012, AMMA conducted a survey comprising an online questionnaire and telephone interviews of its members in order to examine the impact the proposed reforms will have on employers in the resource industry.

Based on responses to those surveys and interviews as well as other feedback from AMMA members, if the proposed reforms are enacted in their current state, AMMA believes that they will have the following negative consequences:

1. Increased costs for projects and operations in the Australian resource industry;
2. Increased administrative burdens on both employers and employees;
3. Increased compliance costs; and
4. Increased difficulties for companies in attracting workers with the appropriate skills from overseas, thus making Australian businesses uncompetitive in the global market as employers.

As a result of these consequences, AMMA calls on the Federal Government to give further consideration to these reforms.

About AMMA

AMMA is the only national employer group representing the interests of the resource industry, having been serving the industry for over 90 years, particularly in relation to workplace relations issues.

AMMA members employ a significant proportion of the 239,000 direct employees in the mining industry as a whole¹, with the industry estimated to be responsible for three to four times as many indirect as direct jobs.

AMMA member companies are engaged in a variety of activities in sectors including:

- Mining;
- Hydrocarbons;
- Maritime;
- Exploration;
- Energy;
- Construction;
- Transport;
- Smelting;
- Refining; and
- Suppliers to those industries.

AMMA's Board is comprised of business leaders from:

- Alcoa of Australia Ltd;
- Esso Australia Pty Ltd and Mobil Oil Australia Pty Ltd;
- Minara Resources Ltd;
- Newcrest Mining Ltd;
- Oz Minerals Ltd;
- P&O Maritime Services Pty Ltd;

¹ Labour Force, Australia, Detailed, Quarterly, November 2011, ABS, Catalogue no: 6291.0.55.003

- Sodexo Australia and New Zealand; and
- Woodside Energy Ltd.

The proposed reforms

In the *2011-12 Mid-Year Economic and Fiscal Outlook*, the Treasurer announced reforms to the LAFHA benefits concessions in the FBT law. LAFHA benefits were originally introduced to compensate employees for the additional costs they incurred when they were temporarily relocated by their employer for their work.

Many argue that there is a proposition that the LAFHA benefits concessions are now being widely exploited in a manner that is outside the original policy intent.

As mentioned earlier, the Treasury has announced three main proposed reforms, which are:

1. The requirement for individuals to substantiate their actual expenditure on accommodation and food beyond a statutory amount;
2. The taxation treatment of LAFHA being administered under the income tax system rather than the current fringe benefit legislation; and
3. Limiting access to LAFHA for temporary residents to those who maintain a home for their own use in Australia that they are living away from for work.

1. Requiring individuals to substantiate their expenditure

A living-away-from-home-allowance (LAFHA) is currently calculated based on a 'reasonable' amount, regardless of whether the amount is actually being incurred and expended by the employee.

AMMA understands that under the proposed reforms, Division 7 of Part III of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) will be amended and LAFHA will no longer be treated as a fringe benefit. Under the proposed reforms, where an employer reimburses an employee for accommodation expenses incurred while they are required to live away from home, the exemption under s.21 of the FBTAA will continue to apply for permanent residents.

However, the exemption will only be available to temporary resident employees who maintain a home for their use in Australia, which they are required to live away from to perform their work.

The Treasury's consultation paper outlines that in order to qualify for the LAFHA expense payment exemption under the proposed reforms, the expenses of the employee must be substantiated. This will require employers to obtain documentary evidence from employees to substantiate the expenses incurred on accommodation, for instance.

AMMA notes that food expenses will not need to be substantiated for an amount considered to be reasonable by the Australian Taxation Office (ATO) under the proposed reforms.

AMMA contends that a requirement to substantiate actual expenditure on accommodation and food beyond a statutory amount will lead to increased reporting and an unnecessary administrative burden on employers and employees

in the resource industry, who will both be required to compile appropriate documentation.

In AMMA's view, employers are already required to ensure amounts are reasonable. The proposed reform means further justification for employers and more 'red-tape'. Employers already have very strict and stringent processes in place to ensure that individuals are bone-fide in claiming their entitlements.

One respondent to AMMA's survey said:

'Compliance costs for businesses in Australia are already very high and the government never seems to have regard to this in decision making. There will be a day of reckoning for this and it will be low growth and unemployment.'

Another respondent also commented on the increased administrative burden this reform would bring:

'Employers are already required to ensure amounts are reasonable. LAFHA is one of the most onerous types of allowances payable, due to the collection of declarations, calculation of reasonable amounts, checks and balances to ensure payments start and stop when required, calculation of FBT assessable on certain components and other data collection. We have a large temporary workforce and requiring yet more paperwork from them is also going to make it more difficult for us to maintain good relationships with them.'

Another respondent suggests:

'It would seem more appropriate that all payments be paid to employees as gross payments and that a deduction is then

claimed by the employee at tax time. Most employees in remote locations, with genuine claims, would not have trouble in sustaining actual costs. However, it should not be incumbent on the employer to go chasing such evidence of costs.'

It was further suggested by AMMA members that median housing prices are well publicised around Australia and this, along with the seniority of the position held by the employee, should determine the amount that could be expensed.

AMMA does not support the requirement for employers and employees to have to substantiate actual expenditure on accommodation and food beyond a statutory amount.

2. The requirement to maintain a residence in Australia

Given that the Australian resource industry is in the midst of a very serious skills/labour shortage, it is important that in the global arena, Australia is seen as an attractive place to work. AMMA believes the proposed reform to limit LAFHA to those who maintain a home in Australia for personal use will make it more difficult for employers in the Australian resource industry to attract labour from overseas.

As of the end of February 2011, the resource industry directly employed 239,000 people². By 2015, based on increased production driven mainly by demand from Asia, the resource industry is expected to employ at least 250,000 people directly³ and up to an extra 750,000 indirectly. This means the industry will need to find few of thousands more people to employ in the next few years, a feat made even more challenging by the fact that Australia has a comparatively low and steady national unemployment rate of 5.2 per cent⁴.

Given that the talent pool in Australia is dwindling in relation to industry needs, and job vacancies continue to grow, it is important that Australia is able to continue to attract the labour it needs in the coming years including from overseas where it is not available locally.

In AMMA's view, by limiting access to LAFHA to those who maintain a residence in Australia away from where they work, it will become increasingly difficult for employers in the resource industry to attract labour from overseas to meet their operational needs.

Respondents to the survey were also asked if they supported the reform to limit LAFHA to those that maintain a home in Australia for their personal use. Responses included:

² Labour Force, Australia, Detailed, Quarterly, November 2011, ABS, Catalogue no: 6291.0.55.003

³ Resourcing the Future:NRSET Report, July 2012, Australian Government

⁴ ABS Labour Force, Australia, December 2011, Catalogue No: 6202.0

'If this restriction is brought in, the oil and gas industry will suffer even more severe personnel shortages as it will become impossible to attract overseas personnel to take up roles here in Australia where the tax rates are already very high. Taking LAFHA away will only make this situation worse.'

'Permanent residents are not expected to maintain a residence for their own use in one location, while living away from home for work purposes in another location (i.e. they are not currently required to maintain a rental property in their place of usual residence while also renting during their period away from home). It seems unreasonable to expect temporary residents to maintain a residence while living away from home.'

'Anybody working away from home should be entitled to LAFHA; they do rack up additional costs that they would not normally incur.'

'This will drive up the cost of employment. It will make it hard to attract skilled people to work in Australia for positions for which we have a severe shortage in this country.'

'This will severely impact the attractiveness of Australia to employees coming from overseas.'

Respondents to the AMMA survey were asked if the proposed reform would discourage them from employing overseas workers. The majority of respondents, who currently use LAFHA as an incentive to attract overseas workers, said that it would make attracting overseas workers significantly more difficult.

Below are some comments from AMMA members in this regard:

'It doesn't discourage us, but it makes Australia very uncompetitive as an employer.'

'Limiting access to this benefit will have a very serious impact on the deliverability of key oil and gas projects. Personnel living temporarily in Australia on 457 temporary resident visas should retain their rights to this allowance.'

'It won't discourage us from employing overseas workers. It will however, impact on the salary and package offered, to compensate for this.'

As noted in the consultation paper, LAFHA was introduced to the income tax system in 1945 as an *'incentive for employees to move to difficult locations and promote job mobility.'*

AMMA believes the proposed reform undermines the original intent of the introduction of LAFHA as a tax concession. By limiting LAFHA to domestic relocations only, this restricts job mobility and makes it more challenging for employers to promote difficult locations to overseas workers (such as, regional areas where skills shortages are high). The current skills shortage in regional areas has resulted in the inability to fill positions from the local market despite considerable local recruitment initiatives; this will only worsen if employers are unable to use LAFHA as a tool to attract workers from overseas.

As one AMMA members said:

'We understand that the changes are designed to assist the Australian permanent resident employees to compete equally with potential offshore employees. What is the justification for having temporary resident employees come to Australia and then move

and live in another home before they are entitled to receive concessional tax treatment?'

The member added:

'Why the additional hurdle, because this type of barrier to entry severely limits the ability of employers to compete on the global labour market to attract skills and employees.'

In short, the removal of LAFHA for temporary residents who do not maintain their own homes in Australia will impact significantly on an employer's ability to attract skilled workers into Australia and will severely impact existing arrangements that employers have with temporary visa holders.

In AMMA's view the proposed reform, will severely hamstring an employer's ability to attract the essential skills that employers need to grow their businesses and the economy.

3. Changing the tax treatment of LAFHA

AMMA understands that as part of the proposed reforms an allowance paid to an employee as compensation for being required to live away from their usual place of residence will no longer be considered a fringe benefit. Instead, the allowance will become assessable income of the employee.

This proposed reform reverts this particular part of the income tax system back to how it was before the introduction of the fringe benefits tax law in 1986. Under the proposed new rules, LAFHA will be taxed through inclusion in an employee's assessable income (rather than through the FBT system), and qualifying LAFH expenditure under the new rules will be an allowable deduction.

The proposed change will have serious implications for companies in the resource industry, in particular those who have to pay LAFHA on many contracts to which they supply labour. AMMA believes that if the proposed reform comes into play employers will be expected to pick up any extra tax an employee has to pay.

At the end of April 2011, there were 94 resource projects at an advanced stage of development – either committed or under construction – representing a record level of capital expenditure of \$173.5 billion⁵. This was an increase of 30 per cent on the 72 projects that were at an advanced stage of development six months earlier in October 2010, with a corresponding capital expenditure of \$133 billion⁶.

In the six months to April 2011 alone, 10 projects with a combined capital cost of \$2.8 billion were completed in Australia; and the resource industry accounted for nine per cent of Australia's GDP in 2009-10 at a value of \$102.6 billion⁷.

⁵ Minerals and energy: major development projects: April 2011 listing, published by ABARE in May 2011

⁶ Minerals and energy: major developments: October 2010, published by ABARE, 18 November 2010

⁷ Australian Commodities statistical tables, Vol 18, No 1 March quarter 2011, ABARE

Given, the significant contribution the Australian resource industry has on the economy, it is important that employers when costing projects have certainty. The proposed reform will increase costs and uncertainty for employers. AMMA contends that if employers are unable to cost projects with certainty, this sends a poor image to the international business community, and could ultimately limit future growth and lead to projects or parts of projects being relocated offshore.

AMMA members were asked if changing the treatment of LAFHA from the FBT system to the income tax system would have consequences for their company and workforce.

One AMMA member said:

'Due to the number of staff we have on LAFHAs in any given year (currently around 350 per year, mostly in remote locations), this shift will reduce our FBT compliance costs. We will have to manage collection of additional information from employees and also manage the impact on employees of their reduced weekly net income by providing them with all the information about the changes up front, as this is bound to have a negative outcome.'

That member went onto say:

'It will also probably no longer make sense to offer LAFHA as a salary sacrifice option, so we will have to review the salary packages of those currently salary sacrificing their LAFHA.'

Another AMMA member said that under the proposed reforms, workers would be financially worse off due to:

'Increased payroll tax, increased superannuation obligations, decreased cash in hand for employees.'

AMMA believes employers and employees will feel more pressure as a result of the proposed reform. As one AMMA member said:

'We are likely to feel increased pressure from employees to increase LAFHA payments, as employees will no longer be able to claim upfront tax free payments where they maintain a secondary residence for work and meet the current ATO requirements. Employees will have to wait to claim it back at tax time and this creates a cash-flow issue.'

That member went on to say:

'In essence, the day to day cost of renting becomes harder and in regions where rents are already extreme, this will either result in greater difficulty in obtaining applicants; an increase in workers wanting to live in camps or claims for higher payments; therefore increased costs.'

AMMA believes the proposed reform to change the tax treatment of LAFHA benefits will add significant costs to projects and operations in the resource industry and employers will be expected to pick up any extra tax an employee has to pay.

The proposed transitional period

AMMA understands that the proposed reforms will apply from 1 July 2012 for both new and existing arrangements. All benefits and allowances provided in respect of the period commencing 1 July 2012 will be subject to the new arrangements.

AMMA believes that further clarification is needed for employers who have already contracted with workers from overseas to assess the implications for new employees who arrive in Australia prior to 1 July 2012 and after 30 June 2012.

Furthermore, clarification is also needed with regard to existing arrangements where a temporary resident employee is already in Australia and is expected to be in Australia following the commencement of the new regime.

AMMA is calling on the Government to provide further clarification about the proposed transitional provisions and to give adequate time for stakeholders to give further feedback on them.

Further clarification is needed

In addition to more information being needed about the transitional provisions, AMMA believes that, in order to understand the true effect the proposed reforms will have on employers and employees in the resource industry, further clarity is needed around some of the more technical areas of the reforms. These include unanswered questions around the following scenarios:

1. Previously, the tax treatment of LAFHA would be subject to the FBT regime - under the existing framework, employers can reduce the taxable value of the fringe benefit to nil assuming the LAFHA was a "genuine" LAFHA. As a consequence, the FBT taxable value to be reported for payroll tax and workers compensation would also be nil, so there would be no additional on-costs. However, under the proposed new rules, companies would be required to disclose that they had paid an allowance. Would this mean that companies would now pay payroll tax and workers compensation on the gross allowance? Or that for payroll tax and workers compensation purposes no further on-costs would have to be paid?
2. Where an employee is expecting to deduct their LAFHA expenses against the allowance they will receive, will the employee have to lodge an official notification with the ATO to vary their pay-as-you-go (PAYG) withholding amounts or can the employer merely rely on what the employee tells them?
3. Who makes the decision as to whether the employee is 'expected' to incur deductible LAFHA expenses?
4. If it is the employee how is the employee able to make such a decision? AMMA believes this places a high degree of responsibility on the employee to be informed on tax legislation. What happens if the employee makes the wrong decision? Furthermore, what penalties could potentially apply to the employer for not deducting PAYG withholding and what penalties would apply to the

employee for varying their PAYG withholding amount in excess of reasonable thresholds?

5. For accommodation expenses to be reimbursed, what would that entail? For example, can the employee provide their rental agreement at the commencement of their lease and thereby satisfy the substantiation requirements? Or will the employee have to provide weekly, fortnightly or monthly rental receipts? If no rental receipts are provided, can the employee support their claim by showing details of bank transfer(s)?
6. Previously, a genuine LAFHA would have a nil taxable value for FBT purposes and would therefore not be a 'reportable fringe benefit' and would not appear on an employee's PAYG summary at the end of the financial year.

Under the proposed reforms, if employers are required to disclose this as allowance it would seem that this would also need to be detailed on an employee's PAYG summary. It is unclear whether this is correct or if the Federal Government will introduce an 'exemption' to exclude the allowance from being disclosed on their PAYG summary.

AMMA is calling on the Federal Government to provide further clarification in relation to the above questions to ensure employers and employees understand the true effect of the proposed reforms.

Conclusion

In AMMA's view, the suite of proposed reforms to the LAFHA scheme lack sufficient detail to enable stakeholders to understand the true effects they will have on both employers and employees in the resource industry.

AMMA believes if the proposed reforms are passed in their current state, they will have a serious negative impact on the resource industry.

Compliance costs for employers in Australia are already high; these reforms will create more 'red-tape' for employers.

The proposed reforms will lead to further expenses for employers and will be a significant administrative burden on both employers and employees, who will both be required to compile the appropriate documentation.

Given the current skills and labour shortage, it is important that Australia is seen as an attractive place for workers around the world to relocate. LAFHA is used by many Australian employers as a tool to attract workers from overseas. This will no longer be possible under the proposed reforms.

These reforms are a serious issue for all parts of business, including operational, managerial and administrative staff that will all be negatively affected.

AMMA contends that these reforms in their present state will add significant costs to projects and operations in the resource industry.

If employers cannot meet their operational needs this could limit future growth in the resource industry and lead to projects or parts of projects being relocated offshore.

AMMA would be pleased to elaborate on or clarify any of the points included in this submission should it be required.

A handwritten signature in black ink, appearing to read 'G. Bull', written in a cursive style.

Geoff Bull

Director Workplace Policy

3 February 2012

AMMA