

23 May 2012

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

Attn : Raylee O'Neill

VIRGIN AUSTRALIA'S RESPONSE TO FBT REFORMS ON LIVING AWAY FROM HOME BENEFITS

We welcome the opportunity to consult on the exposure draft of the FBT reforms to Living Away From Home (LAFH) Benefits. This submission requests clarification of our interpretation of the new legislation with regard to circumstances that Virgin Australia may encounter with regard to future employees.

Virgin Australia requests that additional commentary is provided with regard to the application of the new section 25-115 of the *Income Tax Assessment Act 1997* ("ITAA 1997") where an employee is offered a new employment position in a location that requires them to live away from their usual residence.

It is clear from the exposure draft, and the examples provided in the Explanatory Memorandum to *Tax Laws Amendment (2012 Measures No. 3) Bill 2012: deducting expenses for living away from home*, that paragraph (a) of section 25-115 of ITAA 1997 is satisfied for employees that have commenced employment, are performing duties in one location, and are subsequently required to live away from their usual place of residence in order to perform employment duties. Provided the other conditions of section 25-115 are met, a deduction will be allowed in these circumstances.

There is a subtle difference where an employee has not yet commenced their employment duties, and is required to move away from the usual place of residence in order to begin their employment duties. The question that arises is whether the requirements of paragraph (a) can be met where an employee is yet to commence their employment duties, but moves to a new location in order to commence employment.

Section 136 of the *Fringe Benefits Tax Assessment Act 1986* includes the following definition of employment

"employment" , in relation to a person, means the holding of any office or appointment, the performance of any functions or duties, the engaging in of any work, or the doing of any acts or things that results, will result or has resulted in the person being treated as an employee

Our interpretation is that the requirements of section 25-115(a) can be met in these circumstances as the employer requires the employee to live away from their usual place of residence "for the purposes" of the employee's employment. Where the employee's employment commences simultaneously with the employee moving away from their home, the requirements of paragraph (a) can be met. It is our understanding there is no requirement for the employee to hold an existing position with their employer in one location, and then be required to perform duties in another location.

The appointment of the employee to a new position can meet the requirements of paragraph (a) and this can be distinguished from the example in the Explanatory Memorandum where an employee firstly moves to a new location and then seeks employment and hence does not meet the deduction requirements for LAFH expenses.

Specifically, we ask that the abovementioned scenario be explicitly clarified in the explanatory memorandum by way of comment or specific example.

If you would like to meet in order to further discuss this interpretation we would be more than happy to do so. Alternatively, please do not hesitate to contact me on (07) 3087 0659 if you would like to further discuss any aspect of the submission.

Yours sincerely



Rohan Porter
Manager, Tax
Virgin Australia Airlines Pty Ltd