



**RESPONSE BY**  
**AUSTRALIAN CONTRACT PROFESSIONS MANAGEMENT**  
**ASSOCIATION LTD**  
**TO THE**

**FRINGE BENEFITS TAX (FBT) REFORM**  
**LIVING-AWAY-FROM-HOME-BENEFITS**  
**EXPOSURE DRAFT OF THE LEGISLATION**  
**MAY 2012**

## **Executive summary**

- 1. There is a question as to whether the Non-discrimination Article 25 in the UK/Australian Double Tax agreement would be breached should the proposed transitional provisions become law.**
- 2. Substantiation rules for food in expenses are complex and should be simplified.**
- 3. Some examples in the Explanatory Materials are either incorrect or lacking clarity.**
- 4. What does “indication” mean?**
- 5. There is lack of clarity surrounding what a “new arrangement” is.**

## Preamble

Australian Contract Professions Management Association (ACPMA) reconfirms that it shares the concern of Government expressed in The Fringe Benefits Tax (FBT) Reform – Living –away-from-home-benefits Consultation Paper issued November 2011 (the Paper).

Whilst recognising that change is required, ACPMA has significant concerns with some of the proposed legislation as set out in the Exposure Draft.

## BACKGROUND TO ACPMA

As previously noted in a submission to Government on the proposed changes, Australian Contract Professions Management Association (ACPMA) was established in 2000 and has as its members Contract Management Companies (CMCs).

- **Members** have been in business for over 16 years.
- **Members** have more than 3,400 employees
- **Members** have contracted with more than 800 companies and businesses throughout Australia, many of which are:
  - **In the top 150 Australian Stock Exchange listed companies such as** News Corp, NAB, BHP Billiton, CBA, Telstra, ANZ Bank, Westpac, Macquarie Bank, Rio Tinto, Qantas, Woodside, Origin Energy, Boral
  - **Small businesses**
  - **In the public sector such as** ATO, ABC, DIAC, Defence, RBA, ASIC, NSW Police, NSW Attorney General's Dept
  - **In Community Organisations such as** AGSM, ANI, Deakin University, Mt Eliza Business School, Universities of NSW, Western Sydney, Sydney and WA.
  - **In the Community Organisations such as** Anglicare, Australian Business Ltd, Australian Consumer Association, Diabetes Australia, Mission Australia.

## **AREAS OF CONCERN**

### **1. TRANSITIONAL ARRANGEMENTS**

- a. IF ONE IS NEITHER A TEMPORARY RESIDENT NOR A FOREIGN RESIDENT (I.E. A PERMANENT RESIDENT) THE REQUIREMENTS TO PROPOSED SECTION 25-115(1)(b) AND (e) CAN BE DISREGARDED.**
- b. IF ONE IS A TEMPORARY RESIDENT OR A FOREIGN RESIDENT, TO CLAIM A DEDUCTION FOR EXPENSES FOR LIVING AWAY FROM HOME, A RESIDENCE IN AUSTRALIA MUST BE MAINTAINED FOR THAT PERSON'S SOLE USE DURING THE PERIOD SUCH RESIDENT IS REQUIRED TO LIVE AWAY FROM IT.**

#### **COMMENT**

**DOES THIS BREACH ARTICLE 25 OF THE DOUBLE TAX AGREEMENT BETWEEN AUSTRALIA AND THE UNITED KINGDOM?**

**IF THE ANSWER IS NO, ON WHAT GROUNDS HAS THE VIEW BEEN DETERMINED?**

**IF THE ANSWER IS YES, HOW MANY OTHER DOUBLE TAX AGREEMENTS ARE THERE WITH SIMILAR ARTICLES?**

**WHAT IS THE DISTINCTION BETWEEN A TEMPORARY RESIDENT AND A FOREIGN RESIDENT?**

### **2. SUBSTANTIATION OF FOOD EXPENSE**

#### **COMMENT**

**IF THE TAX DETERMINATIONS CURRENTLY ISSUED BY THE ATO ARE TO BE USED AS THE BASE FOR DETERMINING AN EMPLOYEE'S FOOD EXPENSE DEDUCTION, SUCH DETERMINATIONS CURRENTLY COVER FRINGE BENEFITS TAX YEARS ENDING 31 MARCH. THE EMPLOYEE COULD BE CLAIMING A DEDUCTION FOR FINANCIAL YEARS AND THUS MAY BE STRADDLING TWO FRINGE BENEFIT TAX YEARS. HOW CAN AN EMPLOYEE KNOW IN ADVANCE WHETHER THERE WILL BE AN EXCESS OVER THE DETERMINATION AND THUS BE REQUIRED TO OBTAIN AND RETAIN SUBSTANTIATION RECORDS? PARAGRAPH 2.46 REFERS. THIS IS NOT VIEWED AS MINIMISING THE COST OF COMPLIANCE FOR EMPLOYEES.**

**WHY CAN'T A SAMPLE OF SAY 13 WEEKS BE KEPT AND USED AS THE BASIS FOR EXPENSE DEDUCTIONS?**

- 3. EXAMPLE 2.2 (PAGE 13 OF THE EXPLANATORY MATERIALS) IS INCORRECT AS IT STATES THAT THERE IS A CLAIM FOR THE MELBOURNE RESIDENCE. ANY CLAIM WOULD BE FOR THE SYDNEY RESIDENCE. IN ANY EVENT SUCH A CLAIM WOULD BE RULED OUT FOR THE REASON THAT HE DOES NOT MOVE AT THE REQUEST OF AN EMPLOYER. SUCH ERRORS IN A DOCUMENT WHICH PURPORTS TO REFLECT THE INTENTION OF PARLIAMENT SHOULD HAVE CORRECT INFORMATION.**

**4. EXAMPLE 2.6 (PAGE 18 OF THE EXPLANATORY MATERIALS)**

**WHILST THE PROPOSED CHANGES SHIFT THE TAX POINT TO THE INCOME TAX REGIME AND NOT FBT, THE EMPLOYEE CAN “INDICATE” THAT A CLAIM FOR EXPENSES FOR ACCOMMODATION AND FOOD WILL BE MADE AND THEREFORE PAYG SHOULD BE REDUCED TO ALLOW FOR THIS.**

**COMMENT**

- a. **BASED ON THIS “INDICATION” NO PAYG NEEDS TO BE DEDUCTED BY THE EMPLOYER ON THE ESTIMATED ACCOMMODATION AND FOOD EXPENSES (UP TO THE AMOUNT SPECIFIED BY THE COMMISSIONER’S DETERMINATION)**
- b. **WHAT FORM WILL THE “INDICATION” TAKE?**
- c. **DOES THE USUAL PROCESS OF VARIATION OF PAYG DEDUCTIONS STILL APPLY?**
- d. **WILL THE USUAL PENALTIES OF BEING OUTSIDE THE ESTIMATES STILL APPLY?**
- e. **IN RELATION TO THE RIGHTS AND OBLIGATIONS OF THE EMPLOYER, THERE IS NOTHING IN THE EXPOSURE DRAFT WHICH ALLOWS THE EMPLOYER TO ACT ON AN “INDICATION” AND NOTHING WHICH REMOVES ANY LIABILITY FOR UNDER DEDUCTION OF PAYG. HOW WILL THIS BE TREATED?**

**5. A NEW EMPLOYMENT ARRANGEMENT BEING ENTERED INTO.**

**COMMENT**

- a. **WHAT CONSTITUTES “A NEW EMPLOYMENT ARRANGEMENT BEING ENTERED INTO”? SEE CLAUSE 2.59 IN THE EXPLANATORY MATERIALS.**

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