

## Introduction

### Referral of the Bill

- 1.1 On 28 June 2012 the Selection Committee referred the Tax Laws Amendment (2012 Measures No. 4) Bill 2012 (the Bill) to the Standing Committee on Economics for inquiry and report.

### Origins and purpose of the Bill

- 1.2 The Bill contains three schedules which address separate matters. **Schedule 1** amends the *Fringe Benefits Tax Assessment Act 1986* (FBTA Act) and the *Income Tax Assessment Act 1997* (ITA Act 1997) to reform the taxation treatment of living-away-from-home (LAFH) allowances and benefits and the associated tax concession. **Schedule 2** amends *A New Tax System (Goods and Services Tax) Act 1999* to clarify the goods and services tax consequences when a representative of an incapacitated entity is a creditor of that entity. **Schedule 3** amends the *Tax Laws Amendment (2012 Measures No. 2) Act 2012* to ensure that no interest is payable if an overpayment of income tax arises, or if additional tax becomes payable. As the majority of evidence relates to Schedule 1 of the Bill the report focuses on this issue.

- 1.3 The report of the *Australia's Future Tax System Review* recommended that 'all fringe benefit tax (FBT) exemptions should be reviewed to determine their continuing appropriateness'.<sup>1</sup>
- 1.4 Under existing law, the FBTA Act provides concessional taxation treatment of benefits provided to employees who are required to live away from their usual place of residence to undertake employment elsewhere. The Explanatory Memorandum (EM) notes that 'this differs from other allowances paid to an employee which are assessable income to the employee'.<sup>2</sup> The EM states:
- Under the fringe benefits tax (FBT) law, a LAFH allowance is an allowance paid by an employer to an employee to compensate for additional expenses incurred and any disadvantages suffered because the employee is required to live away from their usual place of residence in order to perform their employment duties. The allowance is intended to cover reasonable and additional accommodation and food and drink expenses. Additional expenses do not include expenses the employee would be entitled to claim as an income tax deduction. Specific provisions cover accommodation, food or expense payments provided by the employer.<sup>3</sup>
- 1.5 A tax concession for LAFH allowances was introduced in 1945. The EM to the former income tax law noted that a:
- LAFH allowance was intended to be an allowance objectively determined by a wage fixing authority, for the purposes of compensating an employee for additional expenditure incurred on food and accommodation where an employee is required by their current employer to live away from their usual place of residence, where they are maintaining a residence.<sup>4</sup>
- 1.6 In 1986 LAFH allowances were moved to the FBTA Act, and the incidence of tax moved to the employer as a fringe benefit.
- 1.7 During the last decade, the use of the tax concession for LAFH allowances and benefits has significantly increased. The EM states that the tax concession is being interpreted broadly which has allowed certain groups to exploit and misuse the tax concession.
- 

1 *Australia's Future Tax System Review, Final Report, Part 1 Overview*, May 2010, Recommendation 9C, p. 82.

2 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 4) Bill 2012, p. 8.

3 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 4) Bill 2012, p. 8.

4 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 4) Bill 2012, p. 8.

1.8 On 29 November 2011, as part of the Mid-Year Economic and Fiscal Outlook (MYEFO), the Treasurer announced reforms to the tax concession for LAFH allowances and benefits. The Treasurer, the Hon Wayne Swan MP, noted that the 'tax exemption is being increasingly misused by a narrow group of people, particularly highly paid executives and foreign workers, at the expense of Australian taxpayers'.<sup>5</sup> The Treasurer stated:

Rorting of this tax exemption was one of the issues raised at the Tax Forum, and has seen the total amount of tax-free living-away-from-home allowance reported by employers to the Australian Taxation Office increase from \$162 million in 2004-05 to \$740 million in 2010-11.<sup>6</sup>

1.9 The Assistant Treasurer, the Hon David Bradbury MP, as part of his second reading speech, also raised concerns about the exploitation and misuse of the tax concession, and noted that the current tax rules have a number of deficiencies. The Assistant Treasurer stated:

Firstly, people are able to access the tax concession even if they are not maintaining another home in Australia. This means that people who have sold their old home, or are renting it out, can still access the tax concession.

Secondly, people are able to receive the tax concession in relation to cash payments in excess of the actual amount they spend on accommodation and food.

And thirdly, people are able to access what was meant to be a temporary tax concession for long periods – often three or four years or more.<sup>7</sup>

1.10 The Assistant Treasurer confirmed that, under the new legislation, 'temporary residents will need to be maintaining a home for their own use in Australia that they are living away from for work to be able to access the tax concession'.<sup>8</sup> The same requirement will apply to permanent residents. In addition, all individuals will need to substantiate their actual expenditure on accommodation and food. There will be a 12 month time

---

5 The Hon Wayne Swan MP, Treasurer, *Media Release*, Tax Measures in Mid-Year Economic and Fiscal Outlook, 29 November 2011.

6 The Hon Wayne Swan MP, Treasurer, *Media Release*, Tax Measures in Mid-Year Economic and Fiscal Outlook, 29 November 2011.

7 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 28 June 2012, p. 30.

8 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 28 June 2012, p. 30.

limit on how long people, other than fly-in fly-out and drive-in drive-out workers, can access the tax concession.

## **Date of effect and transitional provisions**

- 1.11 The amendments to LAFH allowances and benefits and the associated tax concession were announced in the 2011-12 MYEFO and the 2012-13 Budget.
- 1.12 Subject to transitional rules, the reforms will apply from 1 October 2012.
- 1.13 For permanent residents, receiving LAFH allowances and benefits, who have employment arrangements in place prior to 7.30pm (AEST) on 8 May 2012 transitional rules will apply. This means they will not be subject to the requirement to maintain a home in Australia for their own use at all times and the 12 month time limit will not apply until the earlier of 1 July 2014 or the date a new or altered employment contract is entered into.
- 1.14 Transitional rules will also apply to temporary residents, receiving LAFH allowances and benefits, who had employment arrangements in place prior to 7.30pm (AEST) on 8 May 2012 and who are maintaining a home in Australia for their own use at all times. This means the 12 month time limit will not apply until the earlier of 1 July 2014 or the date a new or altered employment contract is entered into.

## **Treasury consultation**

### **First round**

- 1.15 On 29 November 2011 the Government announced reforms to the tax treatment of LAFH allowances and benefits and released a consultation paper. Submissions were sought by 3 February 2012. Treasury received 106 submissions and seven confidential submissions.

### **Second round**

- 1.16 On 15 May 2012 the Government commenced its second round of consultation by releasing exposure draft legislation. Submissions were sought by 29 May 2012.

- 1.17 The Assistant Treasurer noted that ‘in response to the submissions received, the Government has taken the decision to defer the start date of the reforms from 1 July 2012 to 1 October 2012’.<sup>9</sup>
- 1.18 The Assistant Treasury advised that ‘some technical changes have also been made to the amendments in response to feedback on the exposure draft legislation.’<sup>10</sup>

## **Objectives and scope of the inquiry**

- 1.19 The aim of the inquiry is to investigate the adequacy of the Bill in achieving its policy objectives and, where possible, identify any unintended consequences.
- 1.20 On 29 June 2012, the committee Chair, Ms Julie Owens MP, issued a media release announcing the inquiry and called for submissions to the inquiry.
- 1.21 The committee received 37 submissions and one exhibit for this inquiry, which are listed in Appendix A. It held a roundtable discussion in Canberra on 26 July 2012. The participants are listed in Appendix B. The submissions, exhibit and transcript of evidence are available on the committee’s website.

---

9 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 28 June 2012, p. 30.

10 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 28 June 2012, p. 30.