

**THE TAX INSTITUTE**

13 July 2012

Mr Stephen Boyd
Committee Secretary
House of Representatives
Standing Committee on Economics
PO Box 6021
PARLIAMENT HOUSE ACT 2600

By email: economics.reps@aph.gov.au

Dear Mr Boyd

TAX LAWS AMENDMENT (2012 MEASURES NO. 4) BILL 2012 – LIVING AWAY FROM HOME ALLOWANCE RULES

The Tax Institute is pleased to have the opportunity to make a submission to the House of Representatives Standing Committee on Economics (**Committee**) in relation to Schedule 1 of *Tax Laws Amendment (2012 Measures No. 4) Bill 2012 (Bill)*.

Schedule 1 of the Bill contains amendments to the *Income Tax Assessment Act 1997 (Cth) (ITAA97)*, *Fringe Benefits Tax Assessment Act 1986 (Cth) (FBTAA)* and the *Taxation Administration Act 1953 (Cth) (TAA)* in relation to the Reform of Living Away From Home (**LAFH**) Allowance and Benefit Rules.

We do not seek to make any comments in relation to Schedule 2 or Schedule 3 of the Bill.

Overview

Our submission below is set out in the following sections:

- **Section 1:** Policy intention (and the extent to which that intention is achieved by the Bill).
- **Section 2:** Administration of the Food Allowance component in two tax systems.
- **Section 3:** The 'variation of employment arrangements' and the transitional rules.
- **Section 4:** Recommendations.

SUBMISSION

Section 1: Policy Intention

As noted in our submission on the Exposure Draft of the Bill (attached as Appendix B), the original policy intent behind the introduction of the LAFH concession in 1985 was to exempt from Fringe Benefits Tax (**FBT**) a reasonable amount of compensation provided to an employee by an employer (whether as an allowance or benefit) who required the employee to live away from home to perform their employment duties.

The allowance/benefit was to compensate the employee for additional expenses or disadvantages suffered through having to live away from home. However, excessive amounts of allowances/benefits were to be subject to FBT. Therefore, the focus of the provision of a LAFH allowance/benefit is compensatory in nature for additional private or domestic expenses incurred due to employment purposes.

The reason for the inclusion of this concession in FBT rather than income tax was to reflect the fact that these are essentially employment-related costs for the employer arising as a result of resourcing requirements for their business activities (by requiring employees to relocate).

In contrast, the stated purpose of the Bill in moving this allowance back into the income tax sphere is to treat this kind of allowance in line with other allowances provided to employees that, broadly, are subject to income tax and rely on the availability of an income tax deduction to the employee to reduce the net income tax effect.

Employers meet these private expenses of their employees for legitimate business reasons (not as a reward for service, but in connection with relocating employees to meet the legitimate operational needs of the business) hence the current FBT concession. The exception to this situation is where an employee salary sacrifices for such expenses in the event the employer is unwilling to fully meet the cost of additional expenditure.

Policy intention of LAFH reforms

According to the Treasurer's press release of 29 November 2011, the policy intention of the changes to the LAFH rules announced as part of the Mid-year Economic and Fiscal Outlook was to 'introduce reforms to stop individuals from being able to exploit the tax exemption for living-away-from-home allowance and benefits.' The press release went on to note that 'These changes will ensure that a level playing field exists between temporary residents and permanent residents, and that Australian taxpayers are not funding the unfair exploitation of concessions.'

In addition, the policy intention of the further LAFH changes announced on 8 May 2012 jointly by the Treasurer and Assistant Treasurer was as follows: [to] 'further reform the tax concession for living-away-from-home allowances and benefits, by better targeting it at people who are legitimately maintaining a home away from their actual home for an initial period.'

The Assistant Treasurer's press release of 15 May 2012 on the release of the Exposure Draft states that the policy intention of the amendments contained within the Bill currently before the Committee is to 'ensure Australian taxpayers are not funding the unfair exploitation of [the LAFH] concessions by both employers and employees' as well as ensuring the concession is not misused.

