



Submission No 11

Inquiry into Australia's trade and investment relationship with the economies of the Gulf States

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*Why fewer Australians will work
in healthcare in the Gulf
and
why Australia should care.*

**A Submission by Promesse Pty Ltd
to the**

**Enquiry on enhancing Australia's trade and investment relations
with the Gulf economies**

conducted by

**the Trade sub-committee
of the**

**Joint Standing Committee on
Foreign Affairs, Defence & Trade**

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Summary

Relatively recent changes to the administration of part of the Australian Income Tax Assessment Act, namely Section 23AF, has meant that Australian healthcare personnel employed by organisations in the Gulf, such as the various Governments' healthcare authorities, will be required to pay Australian income tax on their earnings in the Gulf.

The effect of these changes will be that Australian healthcare personnel will not take up positions in the Gulf and the Australian personnel already there will leave. This has already caused some disruption to the Gulf's healthcare systems and will continue to do so as key Australian personnel resign or fail to re-contract. This can only be bad for Australian relations with these healthcare authorities in the Gulf.

The loss of Australian personnel in the Gulf,

- will jeopardize Australia's efforts to enhance trade particularly in healthcare services,
- will significantly reduce Australia's foreign exchange earnings, and
- will dissipate much of the goodwill established over the years by dedicated Australian nurses, doctors and other professional healthcare workers in helping to address the healthcare problems in the region.

The healthcare sector in the Gulf States has been identified by Austrade and Australian firms such as Promesse, as a market sector of particularly high potential for the supply of Australian services and expertise. The healthcare systems in the Gulf are growing very rapidly as a result of a rapidly growing population, particularly in Saudi Arabia, and an effort to raise the standards of healthcare for the populations overall. In other words, the Gulf States need the help and expertise of countries with advanced healthcare standards and Australia is in a very good position to be able to provide this.

However, Australia's taxation legislation does not take account of the special circumstances applicable in the Gulf countries. Australian healthcare personnel are being strongly discouraged from working there because they will be liable for Australian income tax as a result of falling under provisions of the tax legislation designed to prevent the avoidance of tax in tax havens. The Gulf countries are not tax havens nor are Australian healthcare personnel who are interested in working there tax cheats.

The salaries of Australian healthcare personnel working at healthcare authorities and hospitals in the Gulf are significantly lower than Australian salaries. The idea that these personnel receive fabulous salaries is a myth and betrays a lack of appreciation of the overall healthcare scene in the Gulf region.

In conclusion, Promesse believes that it would be very much to Australia's advantage to discontinue the imposition of Australian income tax on Australian healthcare personnel working in the Gulf. The more quickly this can be done, the less damage there will be to Australian firms' efforts to develop the healthcare services trade with the Gulf.

Scope of this submission

By way of a short introduction, the source of this submission, Promesse Pty Ltd, is an Australian company specializing in the provision of Australian personnel and other healthcare services to the Gulf countries. Promesse has been working with Austrade staff in the region, both in Riyadh and Dubai, and they have been very helpful in assisting to develop the export of healthcare services into the region. Promesse has been building credibility and trust with the Arab healthcare administrators by initially supplying Australian healthcare personnel to Government healthcare authorities as a precursor to broader healthcare contracts.

This submission deals with the issue of Australian healthcare workers, who are employed by local organizations in the Gulf, such as the various government healthcare authorities, being required to pay Australian income tax on their overseas earnings.

This issue has been precipitated by a revision of the interpretation of a part of the Australian Taxation Act, i.e. Section 23AF, with the result that Australian personnel working in the Gulf countries will have to pay Australian tax when they were formerly exempt.

Note that this change in tax treatment has affected and will affect Australians working in the Gulf in general, not just those working in the healthcare sector. The issues that Promesse has raised in this Submission may apply more broadly than just in the healthcare sector. However, Promesse can only speak with any authority about the healthcare sector in the Gulf and therefore has restricted its comments to this sector.

Note also that this submission is not necessarily arguing for a return to the former mode of operation of Section 23AF. The legislative mechanisms by which Australians may be granted exemption from tax on their foreign sourced income in the Gulf is not a matter on which Promesse can comment with any authority. This however does not in any way diminish the need for such a mechanism.

This submission will argue that imposing Australian income tax on the personal service income of Australian healthcare personnel in the Gulf is very counter-productive to Australia's national interest and will lead to a decrease Australia's trade in services and a reduction in the level of goodwill towards Australia.

Why taxing Australians in the Gulf is a problem

The recent change in tax treatment under 23AF

The tax exempt status, formerly provided under Section 23AF of the Australian Income Tax assessment Act for Australian healthcare personnel (along with personnel from other market sectors) contracted to various health authorities in the Gulf, is being phased out. This Section 23AF tax exemption has been available since 1980 and has been provided to healthcare professional working for the Gulf's healthcare authorities for many years until the recent change.

According to Austrade, which is the Australian Government body responsible for the administration of the Section 23AF exemptions, a review of the interpretation and original intent of the Section 23AF provisions, has necessitated this change. Promesse also understands that this review has taken place in the context of a broader review by the Australian Taxation Office of the taxation of overseas sourced income in general.

The impact of the tax changes on Health Authorities in the Gulf

This change is having an immediate impact on the retention of Australian personnel currently working in the Gulf and on the recruitment of further Australian personnel for the healthcare sector of the Gulf. The number of Australian healthcare professionals who will be working in the Gulf is expected to decrease very significantly because the imposition of tax will make it financially disadvantageous compared with working in Australia or other Western countries such as the USA or Britain.

This is a serious development for the government healthcare authorities in the Gulf because many of the key positions in their healthcare systems are held by Australian personnel and the authorities realize they will not be able to retain their Australian personnel staff members if they have to pay Australian tax on their earnings in the Gulf. For example, in one of Promesse's clients, a major teaching hospital, over half of its clinical nurse educators are Australian personnel. Naturally, the hospital is very concerned at the potential disruption to their healthcare systems as a result of this change of policy by the Australian Government.

Promesse itself has been contacted by a number of healthcare authorities, seeking urgent clarification of the issue. The Saudi Arabian government healthcare authorities in particular have been very concerned. (Note that the Saudi economy is by far the largest economy in the Gulf.) For obvious reasons sensitivities in the healthcare sector are more finely tuned than in other less critical areas. Note also that this problem is occurring across the full breadth of the healthcare systems in the Gulf. Promesse has been informed that the Saudi government is considering making representations to the Australian government on this issue because so many of its hospitals across the country are being affected.

The Healthcare sector in the Gulf countries

The healthcare sector in the Gulf States has been growing very rapidly for decades and will continue to do so. This is being driven by two forces firstly the rapid rise in population and secondly the commitment of the Gulf States to raise the overall standards of healthcare for their populations. In Western countries, such as Australia and Italy, the major demographic concerns are about an aging population and zero or even negative population growth. In the Gulf States, the demographic problems are reversed. A high population growth has resulted in a very large proportion of the population being children. In Saudi Arabia for example, the average Saudi woman has over 6 children. Over the last two decades, the Gulf States have made impressive progress in their standards of healthcare but the challenge ahead is to deal with the healthcare demands created by the burgeoning populations. This also has serious budgetary ramifications since the growth in state revenues are not keeping pace with the growth in demand for healthcare services. This in turn has encouraged the health authorities to embrace greater private sector provision of services such as hospital management contracts.

In Saudi Arabia, about 25% or 6 million of the Saudi population are foreign nationals sourced from every country of the world to provide extra skills and expertise. In the other Gulf States, this proportion is even higher. The management of the Gulf's healthcare authorities attempt to source the best talent from around the world. Australian healthcare personnel are highly regarded and as long as they are not too expensive to hire, the role of Australian healthcare personnel and service providers can have an expanding role. As mentioned before, Austrade has identified healthcare services to the Gulf as a major export opportunity for Australia.

The importance of Australian healthcare personnel in the Gulf

The work of Australian healthcare personnel with health authorities in the Gulf is important to Australia for the following reasons:

The opportunity to participate in large healthcare projects and programmes

As the Austrade staff based on the ground in the Gulf countries will attest, there are great opportunities for the export of Australian healthcare services and expertise to the Gulf. These countries certainly have a major need for this and Australia certainly has the skills. In Arab countries even more so than others, the establishment of trust based on personal relationships, a sustained commitment and sensitivity to cultural issues, is a critical prerequisite to success with major projects and programmes. Promesse believes that the Austrade staff in the Middle East would agree that, in the government healthcare sector, the best way to achieve this is by having Australian personnel demonstrating our country's expertise by contracting to the health authorities. Without this, Australia will forfeit its chance of participating in the major developments that are needed in the Gulf's health systems. Certainly, creating problems for the health authorities by inadvertently causing key Australian personnel to resign is a very bad development.

Tremendous levels of goodwill towards Australia.

This ranges at the one extreme from the Australian companies, like Promesse, dealing with the senior health administrators in the Gulf State's healthcare systems and working out ways that Australian expertise may be brought to bear on their significant healthcare problems, such as emergency care, diabetes and paediatric healthcare. On the other side, there are the healthcare professionals themselves who are caring for the sick in the Gulf. Promesse can cite numerous incidents, which have strengthened the sense of goodwill towards Australia and Australians. These incidents are small in themselves but cumulatively they produce a powerful reserve of goodwill towards Australian and Australians. It would be a great pity to destroy this for no good reason.

Foreign exchange earnings

Healthcare workers who go to work for Saudi healthcare authorities and, who remain Australian residents for the purposes of the Australian tax system generally bring their earnings back to Australia, generating on average about AU\$35,000 per person per year. Promesse does not have any accurate figures on the overall number of Australian healthcare personnel working in the Gulf but estimates that the overall foreign exchange earnings would easily be in the tens of millions of dollars.

Implications for Australia

Promesse believes that Austrade and the Australian Government should be concerned about this issue because it has the potential to seriously damage Australia's trade prospects to the region.

The Gulf's healthcare authorities are relying on the Australian staff to fulfill important and in some cases critical roles. The loss of these people will cause these authorities some real problems. This can only damage the opportunities for Australian enterprise and would be a major discouragement in dealing with Australian companies and personnel in the future.

Unfortunately, the impression is that the Australian Government is treating the Gulf countries as if they are tax havens like Bermuda, Monaco or the Channel Islands, which unethical people use to try to avoid legitimate tax. It is plainly wrong for the Gulf countries to be classified in such a way.

The healthcare officials in the Gulf can appreciate that administrative difficulties arise from time to time but an attitude showing no sensitivity to the position in the Gulf is harder to ignore.

Furthermore, a failure to try to address this tax problem may be interpreted as a lack of knowledge or interest in the Gulf region and treated accordingly by the Arab leaders there.

In summary, Promesse believes that the imposition of Australian income tax on Australians working in the Gulf will be highly counter-productive for Australia because, unless addressed, it will;

- disrupt the Gulf's healthcare systems,
- damage the attempts of Australian companies, like Promesse, to promote healthcare services exports to the Gulf States,
- diminish the store of goodwill towards Australia in the Gulf, and
- reduce Australian foreign exchange earnings.

This situation appears even more counter-productive when one considers that Austrade has highlighted the healthcare sector as a high potential area for services exports to the Gulf region. As a case in point, Austrade has been worked together with Promesse to try to develop these precise markets that are now in danger of being seriously damaged.

The recent meeting between the Prime Minister and a high level delegation from the UAE underscores the importance that the Federal Government is placing on the Gulf region. This Committee of enquiry similarly demonstrates Australia's interest in developing further ties with the Gulf region.

It would be a great pity if this interest and effort were derailed by an inadequate Australian taxation regime.

Why the Gulf States are a special case in relation to tax

Overview

Promesse's fundamental point is that the Australian taxation system fails to recognize the special circumstances that apply in the Gulf. As a result, Australian personnel are caught by provisions that are essentially designed to prevent tax avoidance through tax havens. This is inappropriate treatment both of the Gulf States themselves and of the Australian personnel involved.

In order to appreciate why this is the case, some understanding of the current Australian taxation arrangements as well as the working conditions in the GCC countries is very useful.

Note that Promesse does not purport to be an expert on the Australian Taxation system and so the following description is simplistic and not meant to be a definitive account of how the Australian taxation system operates for Australians working overseas. However, it is only the broad workings of the system that need be described to illustrate Promesse's argument.

The Australian tax system for Australians working overseas

Foreign-sourced, personal service income of Australian residents is generally exempt from Australian tax under Section 23AG. So, for example, if Australians, who are Australian residents for tax purposes, go to work in the USA, they will pay American income tax on their US-based income, but be exempt from Australian income tax on this overseas income. Similarly, if they go to England to work, they will pay English tax on their earnings there, but not Australian tax. However, to prevent abuse of the system, this exemption from Australian income tax does not apply to countries that either exempt income from tax or don't impose tax. Consequently, the tax exemption does not apply to tax haven countries, such as Bermuda, Monaco or the Channel Islands, as is perfectly reasonable and expected.

However, the Gulf States do not impose income tax on their own nationals or on foreign nationals, like Australians, who work there. This means that Australian residents working in the Gulf region do not qualify for the Section 23AG exemption.

Ironically if (say) the Saudi Government introduced a small level of income tax on foreign workers as has been mooted from time to time, then the Section 23AG tax exemption would apply and there would not be a problem. Alternatively, if the Saudi Government increased salaries for Western expatriate staff by (say) 35% and then imposed a 35% income tax, the Section AG exemption would again apply and there would be no problem. In this situation, the Australian healthcare personnel would be in the same financial position; the Saudi Government would be bearing the same net costs (except for the associated administrative costs). In other words, there would not be a problem as long as the Saudi Government changed its tax system to accommodate Australian tax administration – hardly a sensible suggestion.

Apparently, the difficulty with the blanket provisions of Section 23AG was recognized around 25 years ago and amendment was made to the Australian Taxation Act (by the inclusion of Section 23AF) to allow exemptions from Australian tax on income earned by persons employed on projects considered to be in the national interest. Notably, the legislation was later amended to specifically include medically related projects within the scope of approved projects.

For a lengthy period until the recent changes, Australian healthcare personnel were granted tax-exempt status under Section 23AF. Austrade have indicated that this is no longer appropriate for the reasons already mentioned.

A further complication is that if an Australian working overseas is classified as a “non-resident” for the purposes of Australian Tax, then they will not be subject to Australian tax on their earnings overseas. However, this is not really a solution to the problem in the Gulf, because the eligibility criteria to be classified as a non-resident are designed to cater for cases where the Australian has left Australia for a very extended period and established their domicile outside Australia. Apart from the fact that this will just not apply in very many cases, Promesse is of the view that this goes against everything that is trying to be achieved on the foreign relations and trade front. The desirable outcome is surely to foster closer relations between Australia and the overseas country not to encourage Australians to quit their own country.

Therefore, if Australian resident healthcare personnel in the Gulf are to be exempted from Australian income tax on their earnings in the Gulf, and Promesse believes that they should be, an alternative mechanism needs to be created.

The decision as to the best mechanism for providing exemption from Australian income tax for Australian healthcare professionals, who are working in the Gulf, is not something that Promesse is qualified to comment on. However, Promesse would expect that such a mechanism could be readily created if it was decided to do so.

Misconceptions about working in the GCC countries

There appears to be some misconceptions about healthcare personnel working in the Gulf States. These misconceptions are listed below followed by an explanation as to why they are misconceived.

Misconception 1. Healthcare personnel working in the Gulf States are involved in tax evasion. Everyone else pays tax, so why shouldn't these Australians.

This concern misses the fundamental point that the salary levels of healthcare personnel in the Gulf states are set on the basis that the personnel will not have to pay tax or in effect that the salaries are provided on a tax paid basis. The Gulf State's healthcare authorities set the salaries at those levels just high enough to attract international staff. Similarly, the international staff consider the adequacy of the salaries offered on an after tax basis.

Furthermore, tax evasion implies a situation where someone has some income and is seeking alternative taxation arrangements or regimes in order to circumvent the normal tax obligations. In the case of healthcare staff working for healthcare providers in the Gulf States, there is no attempt or opportunity to manipulate the tax arrangements. The employment contracts are open and straightforward. The Australian healthcare personnel involved, who have worked under a Section 23AF exemption to date, have acted in a completely ethical and transparent manner. These people are straightforward healthcare workers, like nurses, physiotherapists and medical lab scientists, not people trying to rot the tax system!

Misconception 2. Australian healthcare workers in the Gulf States are highly paid and are getting "a free lunch" by not paying Australian tax

This is just simply not correct. The salaries paid in the Gulf States are considerably less than the Gross salaries they could earn in Australia. The working hours are longer than in Australia, generally between 44 to 48 hours per week; there are no penalty rates and often no overtime.

Misconception 3. If Australian tax has to be paid and the salaries paid to Australian healthcare personnel by the Gulf's healthcare authorities are too low to attract Australian personnel, then these same authorities just need to raise the salaries to a level that the Australian personnel will accept.

This line of reasoning would lead to the conclusion that the Gulf's governments should increase their salaries and the extra funds would end up in the hands of the Australian government. Rather than do this, the Gulf's governments would more sensibly raise the salaries and then tax the recipients themselves. In this situation, Section 23AG would apply and the Australian healthcare personnel would not be subject to Australian tax. Promesse believes this line of argument is nonsensical because it does not take into account the fact that the Gulf countries are effectively paying their personnel on a tax-paid basis.

Misconception 4. The imposition of Australian income tax on Australian healthcare personnel working in the Gulf will increase the tax take of the ATO for the benefit of Australia.

This is not correct because almost no Australians will go to work in the Gulf if they have to pay Australian tax and so no tax will be collected. For those Australians who are determined to go, they will tend to leave the country permanently or at least for a lengthy period. They would then be eligible to be classified as non-residents for tax purposes and not be required to pay Australian income tax. In Promesse's opinion, rather than gaining tax revenue, Australia will actually be considerably worse off financially because of the loss of foreign exchange earnings.

Note that Promesse is not making the point that any Australian working on a contract in the Gulf countries should be granted tax-exempt status. This would obviously not be appropriate because in some instances the salary could be set at an arbitrary level and the individual in that case could be seen to be avoiding tax. This is precisely why the exemption needs to apply only to a situation where a strong market discipline will automatically set the salary levels to an appropriate level.



Why fewer Australians will work in healthcare in the Gulf and why Australia should care.

Recommendation

Australian healthcare personnel should, as soon as possible, be exempted from Australian tax on their income from service in the healthcare sector in the Gulf. This will minimize the disruption to the healthcare authorities in the Gulf and thereby also minimize the damage to Australia's prospects for trade enhancement in the region.