

Real Life Example - Illustration of the Costs of s.23AG Foreign Employment Earnings Exemption being Repealed

	Pre-Budget	Post-Budget				
	s23AG Exemption Applies (1)	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6
	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6
	Current assignment circumstances and tax implications	Current assignment circumstances and tax implications	An individual PAYG Withholding variation to nil is in place and LAFH food concession available	PRC tax payments structured as a loan fringe benefit with the loss of any foreign tax credits considered a debt waiver fringe benefit for FBT purposes	Real Life Example assignees are employed by a PRC entity and a PAYG Withholding Variation to nil is available for Real Life Example	Localise the Real Life Example assignees in PRC with a PAYG Variation to nil in place in Australia
CASH COMPENSATION						
Annual Base Salary	150,900.00	150,900.00	150,900.00	150,900.00	150,900.00	150,900.00
Vehicle Allowance	18,000.00	18,000.00	18,000.00	18,000.00	18,000.00	18,000.00
Housing and Utilities Allowance						60,000.00 (11)
International Assignment Allowance	90,540.00	90,540.00	90,540.00	90,540.00	90,540.00	28,056.36 (11)
Cost of Living Allowance	48,125.00	48,125.00	48,125.00	48,125.00	48,125.00	13,887.27 (11)
Total Gross Cash Compensation	307,565.00	307,565.00	307,565.00	307,565.00	307,565.00	270,843.64
Less: LAFH Cost of Accommodation in Beijing (5)	-	-30,000.00	-30,000.00	-30,000.00	-30,000.00	-30,000.00
Less: LAFH Additional food component (9)	-	-	-7,518.00	-7,518.00	-7,518.00	-7,518.00
Less: Hypothetical Tax	-97,639.15	-97,639.15	-97,639.15	-97,639.15	-97,639.15	-
		-127,639.15	-135,157.15	-135,157.15	-135,157.15	-37,518.00
Net Taxable Income for Australian Tax Purposes (2)	-	179,925.85	172,407.85	172,407.85	172,407.85	233,325.64
Add: PAYG Withholding (based on grossed up net taxable value) (3)	-	113,393.50	-	106,859.16	-	-
Gross Salary for Australian Tax Purposes	-	293,319.35	172,407.85	279,267.01	172,407.85	233,325.64
OTHER CASH COMPENSATION						
Add back: Accommodation costs (referred to above)	-	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00
Add back: Additional food component (referred to above) (9)	-	-	7,518.00	7,518.00	7,518.00	7,518.00
	-	30,000.00	37,518.00	37,518.00	37,518.00	37,518.00
Total Cost of Expatriate Cash Salary for Real Life Example	209,925.85	323,319.35	209,925.85	316,785.01	209,925.85	270,843.64
OTHER NON-CASH COMPENSATION						
Airfares (4)	24,000.00	24,000.00	24,000.00	24,000.00	24,000.00	24,000.00
Medical (6)	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00
Superannuation	13,581.00	13,581.00	13,581.00	13,581.00	13,581.00	13,581.00
Total Cost of Benefits	39,581.00	39,581.00	39,581.00	39,581.00	39,581.00	39,581.00
Total Assignment Package	249,506.85	362,900.35	249,506.85	356,366.01	249,506.85	310,424.64
Add: Tax liability in PRC (7)	83,056.24	157,267.99	83,056.24	84,145.34	103,833.53	84,521.45
Add: FBT on benefits (incl. FBT on PRC tax liability)	-	158,249.49	93,746.27	(10) 49,464.86	111,805.44	22,403.03
Add: Differential between Australian and PRC tax	-	-	-	-	-	974.97
Less: Foreign tax credits allowed (refundable to Real Life Example) (8)	-	-113,393.50	-57,549.26	-84,145.34	-57,549.26	-
Total Cost to Client	\$ 332,563.09	\$ 565,024.34	\$ 368,760.10	\$ 405,830.87	\$ 407,596.57	\$ 418,324.09
Cost increase due to s.23AG being repealed (Post-Budget)		\$ 232,461.25	\$ 36,197.01	\$ 73,267.78	\$ 75,033.48	\$ 85,761.00

*Exponential increase in assignee costs for Real Life Example' PRC project due to the repeal of s23AG. *Assignee must be willing to complete a personal PAYG Withholding Variation. *Willingness of Assignees to sign loan agreements. *Additional compliance as well as set up costs associated with establishing an entity in PRC. *Assignee responsible for PRC tax, therefore, no PRC tax cost for Real Life Example and no refund of PRC tax.

*Relying on the assignee to pay the foreign tax credit back to Real Life Example. *Assignee must not work back in Australia in order to vary PAYG Withholding to nil. *Administrative difficulty associated with recovering outstanding debts from assignees who may leave Real Life Example. *PRC tax cost is higher due to assignees being employed by a PRC entity. There is no time apportionment of PRC tax available. *Assignee would require an individual PAYG Variation to nil for a foreign tax credits.

*Cash flow implications for Real Life Example associated with paying both Australian and PRC tax throughout the year, with a limited amount of foreign tax credits available at year end. *The contract would need to be reworded to obtain FBT concessions for the additional (exempt) food component *Costs involved in administering the loan agreements and ongoing operation of the loan agreements. *Administrative burden lies with Real Life Example, however, a single variation application can be made to cover all assignees for all years of assignment. *If possible, a class variation may ease the administrative burden of individual variations for the assignees.

*If possible, a class variation may ease the administrative burden of individual variations for the assignees. *Potential ramifications for the assignee's personal financial situation/lending capacity etc. *Competitiveness of remuneration package in the market.

*Debt waiver will be subject to tax in both Australia and PRC. *PRC entity may be required to register for FBT. *Ability to attract and retain employees. *An Australian tax top up by Real Life Example may be required. This may be subject to FBT. *No FBT on PRC tax for Real Life Example.

(1) The above illustration has been prepared on the basis that the assignee is on a standard 28 days on, 7 days off rotation and would be eligible for an exemption on their foreign employment income in Aust under s.23AG (prior to the budget announcement to repeal the exemption).

(2) The above illustration has been prepared on the basis that the assignee did not receive a bonus during the financial year.

(3) The 2009 Australia resident rates of income tax have been used to calculate the Australian tax liability/PAYG Withholding.

(4) The cost of airfares has been estimated at AUD\$2,400 for a return ticket based on Real Life Example' average PRC flight cost for the past 12 months. The total cost of airfares has been prepared on the basis that the assignee will have 10 rotations into PRC during the financial year. The cost of one of the flights has been reduced by 50% for FBT purposes, as Real Life Example will be allowed such a concession for one flight per overseas employee per year (to their home location).

(5) Accommodation has been estimated at AUD\$2,500 per month (AUD\$30,000 per year), based on ORC data for a moderately expensive one bedroom apartment in Beijing. The calculation has been prepared on the basis that the assignee bares the cost of accommodation. Where the assignee is considered to be living away from home under the definition outlined in MT 2030, then the cost of accommodation will not be subject to income tax or fringe benefits tax.

(6) Medical costs have been quoted as AUD\$2,000 by Mondelphous.

(7) The tax liability in PRC has been estimated based on the 2008 PRC tax rates and standardised deductions. Where the assignee is employed in Australia, the PRC tax has been apportioned on a "time in country" basis. Where the assignee is employed in PRC (scenario 5 & 6) , PRC taxes have not been apportioned.

(8) Foreign Tax Credits (FTC) have only been allowed up to Australian tax payable on the assignees foreign sourced employment income.

(9) The assignee's remuneration has been reduced by the inbound additional food component for the weeks in which the assignee is present in China (approximately 42 out of 52 weeks). The additional food component for the 2008/2009 FBT year is \$179 per week in accordance with the ATO's TD2009/6. We have assumed for the purposes of this calculation that Real Life Example will amend the assignees contract wording for the 2009 financial year to ensure their eligibility for this FBT concession.

(10) This FBT liability represents a loan fringe benefit being provided to the assignee for the PRC taxes, for which the taxable value is equal to the value of the 2010 statutory interest rate being applied to that loan (i.e. $\$145,846.25 \times 5.85\%$). The liability also includes a debt waiver benefit which has a taxable value equal to the difference between the PRC tax liability and the foreign tax credit allowed in Australia (i.e. $\$145,846.25 - \$118,939.64 = \$26,906.61$) which would be borne by Real Life Example on behalf of the assignee. This figure also includes fringe benefits tax on the airfares and health/medical insurance.

(11) Allowances based on ORC data for 2008 provided by Real Life Example. The allowances have been grossed up at 45% for PRC taxes as the ORC allowances provided were net and will be subject to tax in PRC. A housing allowance has been provided in addition to the ORC allowances, as the COLA and hardship allowances are not designed to compensate the assignee for additional accommodation costs.

(12) We have assumed that Real Life Example would pay the differential between the Australian and PRC tax. The payment of Australian tax through the tax return will attract FBT.