

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Subject: Inquiry into the Tax Laws Amendment (2009 Budget Measures No. 1) Bill
2009 – Section 23AG

Dear Sir,

We write in reference to the proposed amendments of the current taxation laws of Australian residents living and working overseas.

One of our clients owns and operates a mining services company in the Pacific Islands. This company employs up to 70 people, both locals and expatriates. The expatriate component is predominantly Australian but is a mix of nationalities from France, England, New Zealand, South Africa and Zimbabwe.

The contracts of employment for these expatriate workers are open ended and some have been there for more than 3 years. These individuals are subject to local tax at tax rates of 15-40% in this country.

Previously, under Section 23AG the income of these people was then exempt from Australian tax effectively preventing a “top up” of tax to the higher Australian tax rates.

Our client's concern with the proposed changes is that for the Australian expatriate employees not having the tax exemption under Section 23AG this will cause undue hardship to those individuals employed by the company.

Some have already resigned citing an unwillingness to work in hardship conditions in this country without the benefit of the tax concession and others are considering their position.

This may also cause the company to incur additional costs to compensate some of these employees for the tax change (in order to retain these skilled individuals) or to hire replacement employees from other countries with more favourable tax regimes than Australia. In fact our client has already started to recruit from other countries to cover the current and future expected resignations.

However, the cost of compensating the employees for the additional tax cost is prohibitive and the contracts the company has negotiated in this country provide no scope for increasing the income from the contract resulting from increased employee costs. Therefore, the company may have no option but to hire non-Australians for this work.

Also, these employees are faced with the complex task of determining their tax residency status.

Where they can be considered non-residents then there is no issue until they return to Australia at a later time and then have to prove this status to the Tax Commissioner.

If the individual is determined to still be an Australian resident for tax purposes 2 things will occur:

1. Due to the individual receiving no benefit for the hardships of living and working overseas (as they no longer receive the tax exemption under section 23AG) they may resign and return home to a struggling Australian economy as unemployed citizens.
2. If the Australian resident decides to remain in his / her offshore employment they will request compensation for the additional tax incurred. This will in turn lead the management of both foreign and Australian companies operating overseas to question the economic viability of hiring Australian residents over people from other countries. Our client for example has commenced recruitment campaign of additional staff from South Africa, Europe, Canada and New Zealand in anticipation of the potential fall out if this Bill is passed.

If the individual is determined to be or decides to make life changes to become a non-resident for tax purposes Australia will experience the following:

1. No tax revenue whatsoever as the individual is then a non-resident
2. No future benefit of foreign earned income or savings into the Australian economy.

Simply, the proposed changes will have an immediate (detrimental) effect on Australian jobs both internationally and domestically. The long term the stimulus of foreign earned income both saved and disposed of in Australia will be lost.

Our client believes this to be short sighted view on the potential tax revenue gains of these changes and the Australian Government has not carefully thought through the repercussions of both additional unemployment and lack of opportunities overseas which will far outweigh the perceived tax revenue projections.

With this we ask that the Senate inquiry make a recommendation vote against any changes to section 23AG of the Income Tax Assessment Act 1936.

Yours Sincerely

Roger Penman
Principal
WHK Horwath