

From: jeremy o'brien
Sent: Thursday, 4 June 2009
To: Economics, Committee (SEN)
Subject: Tax ruling 23AG

I have attached some very relevant points and figures, that will affect the many thousands of Australian workers involved in the offshore oil and gas industry. Special note can be made of 3.1.1 Revenue Administration. ie Will we get the benefits of paying Australian tax/double tax??

Kind Regards, Jeremy O'Brien

Tax Laws Amendment (2009 Budget Measures No.1) Bill 2009

MP's IMMIGRATION PRIVATE ENTERPRISE MISC

**Australian Residents Working Overseas and
Residing in Australia**

RESPONCE

**TITLE: CONSEQUENCES AS A RESULT
OF PROPOSED AMENDMENTS
TO 23AG**

**APPROVED & AUTHORISED NETWORK
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APPROVED BY: Brett Lorking

DATE: 28 May 2009

AUTHORISED SIGNATURE

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1.0 PURPOSE

To inform Government and Private enterprise of the Impact on Australian Expatriates and consequences of proposed changes to 23AG

2.0 FACTS

2.1.2 Treasury press release No 066 (better targeting the income tax exemption for Australian workers over seas)

2.1.1 Revenue: Treasury estimated (quote Press release No 006) that \$675 Million in the forward estimate will be received as Tax Revenue over 4 years

2.1.2 Revenue Administration: Mr. Greg Woods (Manager of International Tax Units The Treasury) on the 25th May 2009 @ 10:45 EST advised the following:

- If you are employed over sea by an Australian company you are be deemed as PAYG
- If your are employed over seas by a non Australian company you are NOT deemed as PAYG and your income will be considered GROSS
- The majority of over seas employees have employment contracts, they are not employed as Contractors or sub-contractors

2.1.3 Fair and Equitable: Currently the Australian Expatriate dose not have equity as follows

- No Entitlement to Government backed Superannuation scheme Employer contributions
- No Entitlement to Holiday leave, pay or loading
- No Entitlement to Sick leave
- No protection for unfair dismissal
- No Entitlement to Tax Minimization, where any money earned in Australia (at source) is taxed at the highest rate and gearing for tax minimization is negligible
- No Transition Period for Australian Expatriates to adjust Investments for Tax minimization to meet the changes to 23AG
- No Entitlement to Salary Sacrificing
- 23AG will still apply to Government Employees

2.1.4 Immigration: Australian Expatriates returning to work in Australia

- Mining Companies have Non Australian Expatriates employed and or residing in Australia
- A percentage of Australian Expatriates will return to Australia seeking Employment

3.0 CONTENSIONS

3.1.1 Revenue (2.1.1): The Government will not receive the expected forward estimate of \$675 Million over 4 years.

- Australians Expatriates taking up non residence status (30%)

(Table 1)

Potential Out Come as a Result of 30% lose of Expatriates foreign income & Tax revenue			
Lose of Foreign income spent in Australian economy over 4 year period	Lose of Tax Revenue over four years	Government forward estimate of revenue over 4 years	Combined loss of Revenue and foreign income spent in Australian Economy
-600,000,000	-202,505,000	675,000,000	-127,500,000

- GST as Lost Revenue must also be accounted for however given the differences in personal spending this figure has not been included
- **Expatriates remaining in Australia (50%)**

Currently approximately 50% of over-sea employees invest in property as a means of superannuation as they do not have the advantages of those employed within Australia who are members of a Government guaranteed super scheme. In many cases the investment properties are in the spouses name as they the over-sea employee does not have the tax benefits that are available to those employed within Australia. It follows then that the spouse will gear the property against income and when sold will pay capital gains tax.

As of 1 July 2009 the following is likely to happen

The spouse will transfer the property at market value to the over-seas employee. Given the current climate the capital (if any) will be minimal depending on when purchased, The over-seas employee will then gear the property against income earned which will in turn reduce taxable income. See example below.

Spouse purchased property in 2007 for \$550,000

1 July 2009 spouse transfers the property to over-seas employee for market value of 600,000

Gain is off-set by purchase and selling cost (stamp duty \$40,000, transfer cost \$800) reducing the gain 9,200. 50% concession gives a net capital gain of \$4,600.

(Table 2)

Rental received	\$23,500
Foreign income	\$150,000
Total	\$173,500
Investment deductions	
Interest	-\$64,800
Management	-\$1,800
Strata fees	-\$4,500
Council rate	-\$2,000
Depreciations	-\$5,000
Total Deductions	-\$78,100
Taxable income	\$95,400
Foreign tax credits	\$9,540
Australian tax payable	\$23,850

Based on the above example the average tax paid will be between \$20,000 and \$30,000. If this is multiplied by the 50% over-seas employees engaged in property investment the total revenue over the four years is \$95,400,000.

This will reduce loss in revenue to -\$32,100,000.

We acknowledge that the remaining 20% not yet accounted for will further reduce this loss. However it is reasonable to assume that they will engage in some form of tax minimization. That is, the governments expected revenue clearly will not be obtained. Further, the impact this will have on the economy as a whole will be significant particular in the current climate where the government is encouraging communities to stimulate the economy with cash flow. In addition, there is not only the likelihood that the revenue will not be achieved but concerns that the government may actually be in a deficit as a result of this new measure.

3.1.1 Revenue Administration Ref Sec 2 (2.1.2):

- **If employed over seas by a NON Australian company** you will not be deemed as PAYG for Australian Tax purposes. This being the case how will the following be administered for Australian citizens working as Expatriates
- **Will a fair and reasonable ruling be tabled** to ensure the following:
 - Government Super guarantee for Employers contribution be available
 - Worker's Compensation be available
 - Holiday and sick leave be available
 - Salary Sacrificing be available
 - Unfair dismissal safety net

3.1.2 Fair and Equitable Ref Sec 2 (2.1.3)

- **Currently under the 23AG** rule the Australian Expatriates operate with in a fair and equitable system with their Australian counterparts, where:
 - Australian Expatriates do not have the entitlements their Australian counter parts do Sec (2.1.2)
 - Australian Expatriates take greater investment risks by injecting millions of dollars in foreign currency into Australian real estate to make up the short fall for the lack of Government super guarantee for employers contribution
 - Australian Expatriates have no opportunity to minimize Tax on any income earned or invested in Australian
 - Australian Expatriates Inject Mutable Millions of foreign dollars into the Australian economy and spend only 5 months of the years in consuming/utilizing Government utilities
- **Changes to 23AG** will not be fair and equitable to Australian Ex-Pates where:
 - They will NOT be considered as PAYG "ref dot point 2"(2.1.2) and if a ruling is not tabled to ensure the following is implemented then this will result in and unfair an un-equitable balance between the Australian Expatriates and their Australian counter parts
 - No Entitlement to Government backed Super guarantee for employers contribution

- No Entitlement to workers compensation
 - No Entitlement to Holiday's, pay and loading
 - No work safety Net for unfair dismissal
 - No Entitlement to Salary Sacrificing
 - No transition period for Australian expatriates to adjust investments, where currently they have invested in accordance with the 23AG ruling. Families will be forced to sell off assets and in extreme cases maybe faced with bankruptcy
- **23AG will still apply to Government Employees** and charitable organization
 - Where is the Fairness in this
 - If treasury feel 23AG is unfair why do they not remove the ruling all together
 - If 23AG is to be retained for fairness it should only apply to charitable organizations

3.1.3 Immigration sec 2 (2.1.4)

Australian Expatriates returning to Australia

- Currently Australian Expatriates endure hardship to work over seas:
 - Travel can take up to a week to place of employment and returning to place of residence which is considered to be time off. More often than not at some point of the journey you are placed on airlines that are black listed by the International Aviation Governing bodies
 - The countries they are assigned to and conduct their tours can be politically unstable where armed escorts are often required to and from their place of employment
 - Disease is prominate in most location and currently 90% of the operators require Expatriate Employees to take medication to combat the onset of illness and minimize the symptoms of diseases such as Malaria, These medications do have side effects.
- **Non Australian Ex-Pates working/rotating/residing in Australia**
 - Given the hardship Unfair and Un-equitable circumstances that will arise from the changes to 23AG there will be a percentage of Australian Expatriates returning to Australia for Employment:
 - Non Australian Expatriates working in Australia will be at risk of loosing their position to a returning Australian Expatriates
 - A precedent exists from the 1990's where a Company was informed by the Australian Immigration Dept that the Non Australian Expatriate was to vacate the position and Australian resident was placed into the position

4.0 CONCLUSION

It would appear that 23AG in its current state is Fair and Equitable. The current flow of foreign currency into the Australian economy on an annual basis is in the Millions in the form of spending and investments. This injection of foreign currency is in line with the current Governments policy of stimulating the lagging economy, Should the changes to 23AG reach "Royal Decent" the flow of foreign currency into the economy will be severely eroded by Australian Expatriates relocating over seas as Non Residence and those whom will return to Australia for employment will utilize tax minimization to the point where they can become almost revenue neutral.

The forward estimate by treasury of \$675 Million over 4 years will not be achievable and dependant on the way in which the Australian Expatriates conduct themselves there is the possibility that the Treasuries forward estimate may become a Liability to the Australian Tax Payers.