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17th June 2009

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

Re: Hansard Report of Proceedings
on 10th June 2009
Senate Economics Legislation Committee
Accepting Submissions on the
Tax Laws Amendment
(2009 Budget Measures No.1) Bill 2009

Dear Sir/Madam,

I have read the above report and my comments are confined to the 23AG amendments.

On the 28th May 2009 I visited Mr. Greg Woods at Treasury to seek information. On 1st June 2009 I waited for debate for four hours in the House of Representatives Visitor's Gallery and from there I understood that the matter would start in the Senate on 15th June. I was unaware of the enquiry to take place on 10th June. Accordingly, I tender my apologies for the late submission.

My History with 23AG

I write on this matter because I believe that I have points to offer to the debate and on reading Hansard these serious points were not mentioned. I have utilised 23AG since its inception in 1986 - attached are enclosures how 23AG originated.

23AG was created as an exception - it had a particular purpose. The initial words highlight that an exception was being created;

- because there was a need
- that need is still there today
- confine it to that need

You will note that I have a Goulburn, NSW address and from that address I operate as a CPA, a sole practitioner with approximately 150 clients, of which probably 15 or so utilise 23AG extensively - quite a high proportion for a sole practitioner.

I have used 23AG in the financial management of several major Australian consulting companies, in specialist areas of forestry, agriculture, economic governance, health etc. One of my former clients, an Australian firm, Hassalls, originated in Goulburn and in 1974 were awarded the first AUSAID project - to establish a sheep farm in Korea.

From 1974 onwards I would have used 23AG - and its predecessor 23Q - on at least a monthly basis during those 35 years;

- for individual consultants / employees
- for consulting companies preparing bids for international aid projects
- frequently travelling overseas to negotiate Asian Development Bank (ADB) and World Bank (WB) contracts.

My Use of 23AG

1. To minimise the tender price quoted to ADB / WB of an individual member of a team being tendered for an aid project.
 2. To advise individual consultants, when they are seeking appointments or when they are preparing their Tax Return, of the advantages of 23AG.
 3. I have been associated with 23AG from its inception as an aid to win overseas projects gaining US Dollars for Australia, as an incentive to participate in an Australian aid program. It promoted Australian skill abroad, as it was originated by Trade and Foreign Affairs and is also used by AUSAID in its efforts to obtain consultants for its own projects at the cheapest price - knowing that their applicants may enjoy 23AG.
 4. On all the occasions that I have used 23AG it has been for an *aid* project, in a country being assisted by one of the international aid institutions, including AUSAID.
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5. I have never considered 23AG a tax dodge - rather the opposite. It is an incentive to work in a harsh environment.
6. There is no doubt it is discriminatory in the tax system. Any tax system is riddled with political incentives - taxpayers with, or without, Medicare, primary producers, sportsmen averaging - the list is endless. 23AG was instigated by the Department of Trade - not by accountants or tax agents.
7. In the last 30 years Australian has grown into the international consulting industry. In the last 10 years it has faced the most fierce competition from emerging professionals in secondary countries, now competing vigorously for places on projects that formerly would have been awarded to Australians.
8. In reviewing 23AG, the Committee should be aware of the structural changes in aid tenders and how Australians have been eased out of 12-24 month appointments, for the opposite structure. ie. inputs of 30-60 days, probably four months apart, over a period of two or more years.

This change in timing has caused a devastating downgrading of the use of 23AG - which requires 90 days, plus the 1/6 absence rule.

Over the last five years, rather than emasculating 23AG, I have thought it was time to review the timing structure. ATO has done this from time to time, to cater for the international pattern of shorter inputs, more widely spaced. This pattern means that a consultant has to have in hand two or three contracts at once, so as to get continuity of income - they face periods of no work. The same pattern and effect is applicable to the income of consulting companies.

9. My experience has always been linked to full-time professional consultants, either company or individual. These are the taxpayers most reliant on 23AG. A multi-faceted company with trading or predominantly Australian operations is not so affected by the strangulation of 23AG.

In Breach of the Australian Government's Commitment to International Aid

In all of the international aid projects that I have negotiated (from US\$1million - US\$10 million) there are clauses which specifically state that;

- the company holding the aid contract, and
- the employee / contractor working under that contract,

will be free of all taxes of any type whilst engaged on the project inside the recipient country. Those clauses are universal, and so they should be.

The aid budget of ADB / WB will effectively be used to bolster the revenue in-country, and thus the aid project identified as needy will be short-changed by siphoning off the taxes from those in the contract.

By abolishing 23AG as it is currently worded, *the Australian Government is contravening all these no-tax clauses*, in all the international contracts in use in the world today.

I can assure the Committee, from experience of vigorous negotiating, that the ADB will *penalise and eliminate Australians* from the bidding process.

The negotiating officers in the Consulting Services Division of the ADB are very knowledgeable of the tax treaties and whether or not the negotiating party before them will be paying tax back in their home country.

They must be so vigilant because they would be *allocating donor country funds* back to the Australian Government if they employed an Australian. They are acutely aware of the differences between 23AG and 23AF. There is a formula, with several components, for paying individuals in a tender and you must adhere to that formula and justify your figures. They have a rate database on every consultant they have ever engaged.

The Committee should be briefed by a Treasury official to ensure that Australia does not breach its international obligations on reciprocal aid agreement conditions.

The competition to win contracts internationally is so fierce that there will be a bias against Australia by the ADB negotiating team. In fact, I believe that ADB would be in breach of its charter to grant a contract to any Australian entity, knowing that Income Tax would flow back to the Australian Government - particularly as the 23AG amendment so precisely targets the international aid institutions.

Australia will appear to be trying to grab money off international aid recipients in the third world.

Other Uses of 23AG

From the Hansard, there were debates raised re: backpackers etc. I submit to the Committee that such Taxpayers were never intended to gain incentives from 23AG. It was also never intended for executives assigned to New York, London or Tokyo for six-month assignments. In my view, they are abuses, read into the wording of the Act.

Correction is simple - confine 23AG to aid projects and even discriminate by country. There is already in the Rulings a list of practically every place in the world. Simply asterisk those available for 23AG.

23AF / 23AG

The enquiry was told of the difficulties of 23AF. I endorse all those remarks. 23AF has never been changed since it was written in 1988. It has its uses - but rarely. It is outmoded.

The most clumsy feature of 23AF, if you are successful to get a project number, is that for every dollar you spend on expenses you have to bring back a docket to Australia. No docket, no claim. It is quite the opposite with 23AG which has a 'no substantiation' limit if you stay within ATO limits - a very sensible and reasonable approach.

Is it reasonable to ask a \$250,000 a year executive to collect and retain every docket obtained overseas during a nine-month assignment? When they are working 10 hours a day, six days a week, to achieve a report on which their professional reputation exists?

Inequity on Taxable Amounts

In the arithmetic of tax rates on a figure, it must be realised that in aid projects a consultant is paid a fee - not a *wage*.

With 23AG now changed, it means that the consultant will pay tax on a much higher base than his counterpart located in Australia. The overseas worker will hit the marginal rate every month, because their fee contains built-in allowance for sickness, holidays, long service, no-work periods and insurance that they themselves must personally pay.

To apply Australian tax rates to a fee base is inequitable and there appears to be some debate that there should be equity between people on tax rates paid. The inequity discussed by the Committee is no different to the sole business operator in Australia who works inside a partnership or company structure, and thus pays less tax, instead of trading as a Sole Trader, even though they are marketing exactly the same product and gaining from the community exactly the same sales turnover.

In Summary

In reading Hansard I was disappointed that a lot was said about irrelevant matters. The crux is that 23AG is a discriminatory feature.

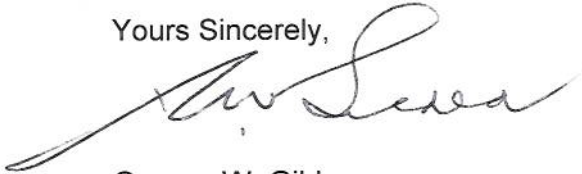
23AG has a purpose, so refine it to preserve its original intended use - for genuine professionals on international aid projects.

It is a great thrill to win a contract against fierce international competition, knowing that you are going to bring back to Australia hundreds of thousands of US Dollars and you have projected Australian skill onto the world stage.

Follow On

This submission has been rushed in the time available and I apologise for its omissions. Up to 30th June I am under extreme pressure to lodge Tax Returns for a variety of clients, but if needed after that I would be pleased to offer any further assistance to the Committee. I believe that I have more expertise in the usage of 23AG than most accountants because of my frequent trips overseas to negotiate relevant contracts.

Yours Sincerely,



George W. Gildea

List of Attachments

Throughout the attachments I have enclosed, it is noticeable that the emphasis is on export trade enhancement - not on tax saving. It is to be noted that 23AG is not a main subject significant section. It is only a deviation procedure from the main purpose Section of International Double Taxation and relief for aid industry participants.

23AG is a practical procedure changed frequently by ATO Rulings and it could easily be specifically confined to the aid industry to uphold Australia's international commitments.

1. 23AG Start Up - 1986 - Explanatory Memorandum. Note Clause 8.
 2. ATO Ruling TR 92/14 - International Agreements (see also ATO - ID - 2006/240-241)
 3. Commentary on 23AG - CCH - August 1991
 4. 23AF Conditions for Applications
 5. 23AF 1988 - Promotion by Trade
 6. 23AF Start Up - 1980
 7. 23AF - Taxpayer Commentary on Start Up 1980
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