

To:- Senate Economics Legislation Committee.
Att:- Committee Secretary

From:- Robert Mitchell

I would like to put forward my objections to the proposed changes to section 23AG of the Income Tax Assessment Act – Tax Laws Amendment (2009 Budget Measures No. 1).

I have attached a submission from one of my colleagues which I believe has already been presented and which I strongly agree with.

I myself have worked overseas for over 16 years since 1992, have always been a resident of Australia and Always filed a tax return, in addition I have always brought my earnings back into Australia as I feel it is in the best interest of the country.

If the proposed changes are passed I believe that the country will suffer for the decision, because the people who are doing as I am, and there are many of us will, depending on how the tax laws are changed.

1. Move out of Australia and take up residence in another country.
2. Cease to bring there earnings into Australia.
3. Cease there overseas employment, move back to Australia and either join the unemployment que or put someone else out of a job. The great majority of us are at an age 55 to 65 Years old that we will be unemployable.

Further to this we are also the people who encourage young Australians to do as we have done and thus ensure foreign income from this source keeps flowing back into Australia. If this stops even for a short time we will never get it back as the 3rd world countries (India and China in particular) will quickly fill the gap.

The young people who do continue to work foreign will be the ones most likely to live foreign and may never move back back to Australians, this will be a great loss as they are usually highly skilled and motivated individuals.

The only real advantage of working overseas is it pays well and that in most part is due to the Australian Tax system being the way it is. Other than that the rest is mostly bad.

1. Working in poor conditions, usually hard physical work in extreme climates.
2. Working in 3rd world countries.
3. Long travel times (which come out of your days off).

4. Being away from home and family for at least 7 months of the year.
5. Working 12 hours days and on call 24 hours a day.

I am sure that any member of the Government who has to travel extensively will agree with this. It is not enjoyable.

On top of this we do not get the benefits of living in Australia.

1. Government Guaranteed Super
 2. Public holiday pay
 3. Annual leave
 4. Workers compensation
 5. Protection from unfair dismissal.
- etc, etc.

On top of this 23AG will still apply to Government employees, "How is this fair" we are all members of the same country.

The only thing which I believe we should pay is Medicare and I for one would be more than happy to do so, even though I pay for a worldwide private Medical benefits scheme.

In closing let me say that I personally have brought Millions of dollars in foreign currency back to Australia which has I hope done some small part in reducing our foreign debt. I will continue to do so as long as this amendment does not pass.

If however the amendment does pass then I will look at other avenues. Knowing the mindset of the people in the same situation I know for a fact that the great majority will do likewise, which as I stated earlier have a negative effect on the Australian economy.

Regards

Robert Mitchell

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
VERSION - CONTROLLED COPY**

APPROVED BY: Brett Lorking

DATE: 28 May 2009

AUTHORISED SIGNATURE

DATE:

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0	28 May 2009	Nil	Nil

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6.0 REFERNECES
 6.1 Treasury Press Release No – 066 (Better targeting the income tax exemption for Australians working overseas)
 6.2 EXPOSURE DRAFT 2008-2009 (12/05/2009) Tax Laws Amendment (2009 Budget Measures No.1) Bill 2009 No. ,2009 (Greg Wood Treasury)

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 CONTENTIONS

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	-\$1800
Strata fees	-\$4,500
Council rate	-\$2000
Depreciations	-\$5000
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.