



ASSOCIATION OF CONSULTING
ENGINEERS AUSTRALIA

SENATE INQUIRY INTO TAX LAWS AMENDMENT BILL 2009

- *SECTION 23AG OF THE ITAA (1936)*

JUNE 09

The ACEA's response to questions on notice from
the Senate Economics Committee hearing – held 10 June, 2009

ACEA SUBMISSION

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INTERNATIONAL COMPARISONS

1. United States of America

If you are a U.S. citizen or a resident alien of the United States and you live abroad, you are taxed on your worldwide income. However, the US citizen may qualify to exclude from income up to US\$87,600 of his/her foreign earnings. In addition, the individual can exclude or deduct certain foreign housing amounts. Individuals may also be entitled to exclude from income the value of meals and lodging provided by the employer.

American residents are able to access the foreign earned income exclusion if they satisfy the following criterion:

- The individual has foreign earned income
- The individual's tax home¹ for the period of work is in a foreign country
- The individual is a U.S. citizen
- The individual was physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months

Please note the following example supplies by the U.S. International Revenue Service (IRS):

EXAMPLE:

For several years, you were a marketing executive with a producer of machine tools in Toledo, Ohio. In November of last year your employer transferred you to London, England, for a minimum of 18 months to set up a sales operation for Europe. Before you left, you distributed business cards showing your business and home addresses in London. You kept ownership of your home in Toledo but rented it to another family. You placed your car in storage. In November of last year, you moved your spouse, children, furniture, and family pets to a home your employer rented for you in London.

Shortly after moving, you leased a car, and you and your spouse got British driving licenses. Your entire family got library cards for the local public library. You and your spouse opened bank accounts with a London bank and secured consumer credit. You joined a local business league, and both you and your spouse became active in the neighbourhood civic association and worked with a local charity. Your abode is in London for the time you live there, and you satisfy the tax home test in the foreign country.

Source: <http://www.irs.gov/businesses/small/international/article/0,,id=96822,00.html>

2. South Africa

The Exchange Control Department is responsible for the day-to-day administration of financial surveillance in South Africa. In terms of current Exchange Control legislation, the following categories of foreign assets or income would qualify as exempted for Exchange Control purposes, or which may have been exempted by means of a declaration being lodged with either the South African reserve bank (SARB) or an Authorised Dealer before 1 December 2003.

¹ Your tax home is the general area of your main place of business, employment, or post of duty, regardless of where you maintain your family home. Your tax home is the place where you are permanently or indefinitely engaged to work as an employee or self-employed individual. Having a "tax home" in a given location does not necessarily mean that the given location is your residence or domicile for tax purposes.

If you do not have a regular or main place of business because of the nature of your work, your tax home may be the place where you regularly live. If you have neither a regular or main place of business nor a place where you regularly live, you are considered an itinerant and your tax home is wherever you work. (international Revenue Service - www.irs.gov/businesses)

South African domiciled NATURAL PERSONS (i.e. individuals) may retain and invest abroad foreign assets (or income/capital gains thereon), which they have acquired on the following basis, subject to the prescribed formalities being completed:

4. Proceeds of foreign income or assets which accrued to individuals normally resident in South Africa, from a bona-fide foreign source, during a period whilst they were formally temporarily resident outside the Common Monetary Area ("CMA", which includes South Africa, Namibia, Lesotho and Swaziland), in terms of the provisions contained in section B.17 (A) and B.4 (I) of the Exchange Control Rulings. To qualify for the concessions in this particular category, the individual concerned should, prior to his/her departure from South Africa, lodge a signed prescribed declaration in writing with their local Authorised Dealer (effective from 26 January 1998 per SARB circular D.166 of 26 January 1998);

Source: Nedbank Exchange Control - <http://www.reservebank.co.za/>

3. United Kingdom

Effect of residence, ordinary residence and domicile

How much tax you'll pay on overseas income depends on where you are 'resident', 'ordinarily resident' and 'domiciled'.

Resident - if you're in the UK for 183 days or more in a tax year, you're a 'resident' for that year for tax purposes.

Ordinarily resident - if you're resident in the UK year after year you will normally be treated as 'ordinarily resident'

Domiciled - domicile is normally acquired at birth, but this is a general law concept covering a range of factors.

If you're resident, ordinarily resident and domiciled

You'll pay tax on the full amount - unless you're a seafarer and spend long periods abroad.

If you're resident and domiciled but not ordinarily resident

You'll pay tax on earnings from work you do abroad if you bring them into the UK.

If you work for an overseas employer and you do all your work in the UK, you'll pay tax on all your earnings.

If you work partly in the UK, you'll pay tax on the part of your earnings allocated to that work. You usually allocate your earnings by looking at the number of days you work in the UK and the number of days working abroad.

If you're resident and ordinarily resident but not domiciled

If your employer's British or from the Republic of Ireland, you'll pay tax on all your earnings.

If your employer's not British or from the Republic of Ireland, and you only work abroad, you'll only pay tax on any earnings you bring into the UK. If you do any work in the UK you'll pay tax on all your earnings.

If you're resident but not ordinarily resident and not domiciled

You'll pay tax on any earnings from working overseas that you bring into the UK.

If you work partly in the UK, you'll pay tax on the part of your earnings allocated to that work. You usually allocate your earnings by looking at the number of days you work in the UK and the number of days working abroad.

If you're not resident

You'll pay tax only on your earnings for work done in the UK.

If you work partly in the UK, you'll pay tax on the part of your earnings allocated to that work. You usually allocate your earnings by looking at the number of days you work in the UK and the number of days working abroad.

Double taxation relief

Foreign countries may stipulate that income must be taxed according to their marginal tax rate in the host country. However, if it has a double taxation agreement with the UK you won't normally have to pay the same tax twice. The UK has double taxation agreements with many countries. These aim to ensure that the same income is not taxed twice. The UK has a double taxation agreement with Australia.

Source:

http://www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/LeavingOrComingIntoTheUK/DG_10027480

THE ACEA'S MEMBERSHIP

The Association of Consulting Engineers Australia (ACEA) is an industry body representing the business interests of firms providing engineering, technology and management consultancy services. There are over 270 firms, from large multidisciplinary corporations to small niche practices, across a range of engineering fields represented by the ACEA. The following organisations comprise the ACEA's **large firm** membership base:

- 1) Cardno Pty Ltd
- 2) Arup Pty Ltd
- 3) MWH
- 4) Sinclair Knight Merz (SKM) Pty Ltd
- 5) Aurecon Australia Pty Ltd
- 6) SMEC Australia Pty Ltd
- 7) Norman Disney & Young
- 8) AECOM Australia Pty Ltd
- 9) Hyder Consulting Pty Ltd
- 10) Beca Pty Ltd
- 11) Parsons Brinckerhoff Australia Pty Ltd
- 12) Coffey International Ltd
- 13) GHD Pty Ltd
- 14) Hatch Associates Pty Ltd
- 15) Golder Associates Pty Ltd
- 16) URS Australia Pty Ltd
- 17) Kellogg Brown and Root Pty Ltd

THE ACEA’S EXAMPLE CONSULTING ENGINEERING FIRM

The ACEA has referred to a large firm in both its submission to the Senate Economics Committee, as well as within the evidence presented at the Committee hearing held on 10 June 2009. The following information from that firm was requested:

<i>For the year ended 30 June, 2008</i>	
Total revenue	\$99,093,000
Pre-tax profit	\$10,373,000

The ACEA’s example firm estimated that the proposed legislative amendment could add in excess of \$5 million to either the firm’s costs, or that of their employees’. Econometric estimation was utilised by a team of financial professionals from within the firm to ascertain this figure. Although the figure is an approximation, the ACEA has been advised it will be very close to the exact figure.

EMPLOYEES CURRENTLY OPERATING OVERSEAS

There are over 270 firms represented by the ACEA with a total of some 45,000 employees. According to the ACEA’s company records, 10,545 of these employees are currently working overseas.

INCOME OF OVERSEAS WORKERS

The salaries of overseas workers employed by ACEA member firms vary substantially. The same firms also employ engineering professionals of varying experience and expertise to participate on projects in foreign countries. The ACEA’s independent research indicates that the average graduate employee salary for a civil engineer in 2007 was \$52,961 p.a. The research also indicated that the average per annum salary for a senior principal engineer was \$219,177 p.a.

It is important to note that the onset of the global recession has had a dramatic effect on the extent of Australia’s export opportunities. The consulting engineering industry certainly hasn’t proven immune to this. Given the recent trend in international building and construction projects being shelved, coupled with an overall decline in private sector investment around the globe; demand for Australian consulting engineering exports has decreased. This is certain to have placed downward pressure on wages paid to Australian residents working abroad.

The supply of international projects has diminished, particularly evidenced by the halt in Middle Eastern building and construction. The result is increased competition for international tenders. Competing firms will no doubt seek to tender on tighter margins with a greater emphasis on price when bidding. International markets are now far more price-competitive. Therefore, despite the fact that the ACEA’s 2008 survey results are not yet available, it would be wise to assume that wages across the industry will have either remained largely unchanged, or have diminished.