

8th June, 2009

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Submission in regard to

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

Schedule 1—Exemption of income derived from foreign service

Income Tax Assessment Act 1936 Subsection 23AG

Schedule 1 amends section 23AG of the *Income Tax Assessment Act 1936*, to limit its scope to foreign employment income derived by Australian resident individuals only in specific circumstances.

I am writing this submission as the wife of an offshore oil industry employee. It is necessary for me to write this, instead of my husband, as he is away at work just as he was when the amendments were announced. The changes to the Income Tax Assessment Act 1936 Subsection 23AG will have a huge effect on our family and fellow Expat Offshore Oil Rig Workers. This may effectively give the result of an almost fifty percent pay cut.

1. Period of Consultation

The Explanatory Memorandum for this Bill states “*The proposed amendments were announced by the Treasurer on 12 May 2009, as part of the 2009-10 Budget. Public consultation was undertaken but the consultation period was necessarily short so as to facilitate the introduction of this Bill into Parliament in the 2009 Winter Parliamentary sitting.*”

Most would not have had the opportunity to forward submissions as the time window was so short and many would have been away working and were not aware of the changes. This is viewed by some as a way to get the bill passed before many could object.

2. Taxation inequities

The Bill states “*The objective of the proposed amendment to section 23AG is to minimise the potential for inequity between individuals working in different countries, with different tax rates, and between individuals working overseas and individuals working in Australia.*”

That does not take into account what circumstances these different individuals work in. There are vast differences. You cannot compare an offshore oil industry employee with an Australian 9-5 employee who works a 40 hour week, goes home every night to their home and family, and enjoys their evenings and weekends off to participate in recreational pursuits.

Offshore expats work very long hours, usually a minimum of an 84 hour week, 12-14 hour days, 28 days straight, sometimes changing between day and night shift, always in dangerous and often in harsh conditions. They sacrifice time with family. My husband is not able to come home to us every night. Many parts of our lives are restricted. For example, it is impractical for him to participate in rostered sport, family time is difficult to arrange as he away so much and often he will have his roster changed or be called back to work early. He regularly misses Christmas, birthdays and special events. Whilst he has a period of rest and recreation when he does get home, that is shortened by the amount of travel time to and from the overseas location and there is usually a period of recovery, but often this is long as the physical and mental strain of such employment takes its toll. These restrictions impact on family members as well. My husband is away for more than 6-7 months of the year, and that is tough on a family. I cannot just call him to discuss something, in fact, unless it is an emergency I cannot call him at all. The tax exemption previously provided by 23AG helped in a way to ease and offset these hardships.

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It is not always that they wish to work overseas. For many to be able to work back in Australia the Government will need to look at the amount of Americans, Europeans and New Zealanders that hold the positions in Australia. Oil Rig contractors here in Australia have many overseas Expats on these floating facilities holding positions that could be filled by Australians.

3. Tax on worldwide income

The Bill also states *“The general principle that individuals who are Australian residents for tax purposes should pay tax on their worldwide income.”*

We spend several thousand dollars on a regular basis obtaining interpretations and rulings in regard to our income tax situation. We spent money just before the amendments were announced ensuring that we were complying with the rules only to now find that was money down the drain as is the Private Binding Ruling we have had and which would have remained in force until 2010 and the several thousand dollars this cost us.

Subsection 23AG often refers to Australians employed overseas by Australian companies, not foreign companies. From our experience foreign employers will not readily assist with their foreign employee’s taxation compliance requirements. They have neither the time nor inclination to do so. Their tax year differs from Australia as do their rules and requirements. They will not participate in Australia’s PAYG system. This will put an onerous task onto the expat, further complicated by currency exchange rates and now it would appear the fringe benefits amendments. Many offshore workers are still trying to deal with the proposed foreign income amendments and as such have not had an opportunity to address the proposed changes which will most likely also apply fringe benefits tax to their foreign employment. There has not been sufficient detail provided in this regard.

The offshore industry such as it is, is not a place where you can work until you retire at age 67. It is a very tough and harsh workplace, few benefits, and there is no job security - you can be terminated on the spot with no redress. Superannuation is often not paid and it seems the Australian government is now seeking to limit what can be contributed to superannuation by workers. You may ask then why do they do that type of work? Many could just sit at home on benefits but instead deserve our respect for being prepared to do the hard jobs so they can provide for their families and indeed provide an essential service.

From my point of view, I see how hard my husband and other offshore expats work. We are not seeking to not pay our way. We are asking that fair comparisons be made. Perhaps the scope for exemption can be broadened or lower taxation rates for these workers considered. It seems the harder we work the more is taken away from us.

4. Moving offshore

In our situation, we help to support an extended household but this will not be able to continue if our income is taxed as proposed. We spend the bulk of our income in Australia supporting local businesses and economy. Many offshore workers see the only avenue for them is to move overseas and become a resident for taxation purposes of another country. We are seriously considering this option as are many others that we know. If we and others are forced to move to another country all of that money will go with us and be lost from the Australian economy which will greatly negate any income tax that would be gained from the change to the taxation rules. Our children and their contributions may also be lost to Australia as they may forge their futures in another country.

The wider implications of the proposed amendments need to be considered more deeply than just the short sighted amount of income tax it will grab.

Yours faithfully,

Kerrie Jarvie