

**From:** Anthony Durling  
**Sent:** Monday, 15 June 2009  
**To:** Economics, Committee (SEN)

To Mr John Hawkins,  
Committee Secretary,  
Senate Standing Committee on Economics

**Ref: Submission opposing the proposed changes to Section 23AG of the Income Tax Assessment Act.**

Dear sir,

I oppose the intent of these changes on three main points

1. On the grounds that it will result in the loss of foreign capital which currently flows into the country via the salaries of Australians working overseas on a fly in fly out basis.
2. That the intent of these changes discriminates against individual persons not employed for charitable purposes or under certain government tasks.
3. That the test used to determine the residential status of an Australian citizen working overseas for the purpose of paying income tax discriminates against individuals on the basis of their marital status.<sup>1</sup>

I wish to make to the following comments to support my position in relation to the points above:

**Summary:**

The intention to remove the current 23AG ruling will not result in providing the Australian government with the \$ 675 million dollars of tax revenue over 4 years which has been put forward by Mr Swan. The truths are actually the reverse with the very real possibility that it will cost the county four times that over the same period and at the same time make Australian registered companies with off shore operations far less competitive than their foreign counterparts. These changes also discriminate against individuals working in the private sector as the changes do not include those working in government employ.

**Fair and Equitable Trade:**

The statement made by Mr Swan, that "Australians working overseas while residing in Australia, in a lot of cases pay little or no tax to the respective governments where they are employed" is correct. However most OSFIFO (off shore Fly in Fly out) workers would consider the lower level of tax to be a fair and equitable trade off between their working conditions, absence of benefits, long periods away from home and lack of recourse for unfair treatment or dismissal.

The majority of Australian OSFIFO's work in conditions that are far from pleasant. Long shifts, with the contractual norm being 12hr's and the reality being closer to 13 or 14hr's per day. This is topped off with extremely long rosters ranging from at best 16 days on 8 off, through to 12 weeks on 1 week off, depending on the industry and location. The majority of these rosters are worked straight through from the time they get to site until the time they fly out. There are no weekends off, no public holidays, no rostered days and no early knock off's.

OSFIFO workers are required to travel long hours to reach their work locations and more often than not this travel is in their own time. Travel to the country in which they work is normally around three days each way and in some instances can be up to a week.

OSFIFO workers do not share the same benefits that people working in Australia receive such as Employer superannuation contributions, time off for public holidays or leave loading.

OSFIFO workers unlike expatriate workers are generally on open ended contracts and as such can have their employment terminated without notice or recourse to any legal council, there is no penalty payout such as exists for most fixed term expatriate contracts. Benefits in the form of bonuses and contractual agreements can be removed/changed as the company sees fit in relation to economic climate or pressures.

#### **Current benefits to the Australian economy under 23AG:**

It would appear that the government and Mr Swans opinion is that OSFIFO workers do nothing to help the economy of Australia and as such are obviously a drain on the institutions set up for the benefit all Australian citizens. But nothing can be further from the truth. As Australian residence, OSFIFO workers return to Australia to spend both their rest break and their salaries. This results in the direct injection of foreign capital into the Australian economy. The net income of an expatriate worker is equivalent to 5 times that in Australian export goods to the economy as it represents net foreign capital not gross. OSFIFO workers in full time employment spend on average 66% of their life outside of Australia, this results in them having minimal to no impact on government funded systems. Most if not all OSFIFO workers provide their own medical coverage eliminating the need to draw on Australia's public health system. Under the current 23AG ruling any money earned by OSFIFO workers within Australia is effectively taxed at 48%, so were tax is paid it is at a far higher rate than any other Australian tax payer. OSFIFO workers also self fund 100% of their superannuation and are not permitted to claim any tax off sets on the 48% tax they are required to pay on moneys earned within Australia.

While OSFIFO workers generally pay a lower tax rate than their Australian counterparts their net wage is similar and in some cases lower because their gross wage is much lower. As most of the companies that OSFIFO's work for are Australian based, this enables these companies to pay less for skilled workers out of Australia and results in them being more cost competitive.

#### **Ramifications of the removal of 23AG:**

A number of negatives for the Australian economy will result from the removal of 23AG.

The first and most obvious impact will be the sudden exodus of OSFIFO workers who currently live and spend their off shore income in Australia. These people will move off shore becoming bonafide expatriates taking their income with them. Further to this the ATO has implemented new standards by which an individual is to be assessed as being a resident for tax purposes in Australia. These changes state that if you own assets in Australia such as a house or other property this can be taken into consideration by the ATO in determining if an individual is required to pay income tax to the ATO. This will only compound the loss to the Australian economy by encouraging these same overseas workers to not only move their income spending off shore but also the monetary value of their properties & assets. Based on an average take home wage of \$100,000 it will take less than 1700 of these individuals to decide to move their incomes off shore before MR Swan's expected \$675 Million is cancelled out.<sup>2</sup>

As for those OSFIFO workers who have families and homes in Australia and will not be in a position to move off shore there will be two options left open to them. The first is to resign and move back to Australia. The result of this will again be the loss of foreign dollars flowing into the country, which is something that is desperately needed to boost the economy in the current economic climate or so the government tells us.

The second option opened to them is to put up with paying the higher tax. However there are a number of down sides to this also. The first being the large majority of Australian OSFIFO's work for Australian based companies. These companies are going to be faced with the real problem of either increasing salaries to cover the increased tax if hiring out of Australia, or cease hiring Australian workers all together. Both of these options result in negatives gains for the Australian economy. Increasing salaries by up to 35% to cover the Australian tax will simply make Australian owned companies less competitive and result in less foreign income from these companies. Hiring foreign national as opposed to Australians to staff these operations will result in less job opportunities for Australians who would otherwise be bringing their foreign earned income into the country.

Mr Swans intention to balance up the tax books of Australian OSFIFO workers who pay little or no tax to the government of the country in which they work has one other catch which has already been rumoured. No foreign government is going to sit back and charge Australians working in their country, little or no tax while the Australian government receives 34% from these very same individuals. As indicated it has been rumoured in a number of countries that if the Australian government passes the bill to remove the 23AG ruling from its OSFIFO workers they will increase their tax charges to meet the Australian tax rate. This will result in a net gain to the ATO of \$0.00 from Australian overseas workers once the rebate for foreign tax has been paid back. In addition to this under the current 23AG ruling because Australians working overseas do not derive an income that is taxable in Australian they are not entitle to any rebates on work related expenses. However once the 23AG ruling is removed they will be allowed to claim not only the full amount of foreign tax but also any other work related claim their Australian based counterparts are entitled to such as tax offset through

superannuation contributions. So where a foreign government charges an amount equal or greater than the ATO levy the return to the Australian economy will be -\$0.00.

**Recommendations:**

The intended changes to section 23AG is not in the best interest of Australia or the Australian people it can only result in loss to the Australian economy and cause greater hardship not only for those who will be immediately impacted by it but also by those who will have to make up the massive short fall in tax revenue as a result. It discriminates against the private sector and the tests used to determine if an individual is a resident for tax purposes may be in breach of the sexual discrimination act 1984.

I would ask that the changes to section 23AG of the income tax assessment act 1936 be rejected on the grounds that it is not in the best interest of the Australian people.

1. Reference to the sexual discrimination act 1984 on the basis of marital status.
2. According to the Australian Bureau of Statistic there are currently 890,000 Australian expatriates residing and working overseas. The figure of 1700 OSFIFO being willing to move their place of residence off shore represents less than 0.2 % of this number. Given such a low percentage, 1700 could be considered an extremely conservative figure and would in reality be far higher than this. The result being that this point alone without taking any of the other outcomes into consideration, will create a revenue loss to the economy many times greater than the expected gain that the removal of 23AG is expected to achieve.