Consultation
Fringe Benefits Tax (FBT) Reform living-away-from-home benefits

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Organisation

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Are you submitting on behalf of your Company
No

Do you want your submission to be confidential
No

Accessibility Statement
Yes

Submission files

Support files

Submission text
My submission is that the reforms the Australian Treasury is proposing will break international tax treaties in the transitional arrangements that are being proposed in relation to the ending of LAFHA? Please be clear this submission is NOT regarding the ending of the FBT allowance on LAFHA itself but the transitional rules related to it.

The quote below is from the Convention between the Government of Australia and the Government of United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains:

Article 25 states: ?Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected?.

In direct contrast, this quote is from the EXPLANATORY MATERIALS on LAFHA reforms, published yesterday by the Treasury:
(I have Highlighted the relevant parts I submit contravene the tax treaty)

?Transitional rules apply to permanent residents who have employment arrangements for LAFH allowances and benefits in place prior to 7.30 pm (AEST) on 8 May 2012. These employees will not be required to maintain a home in Australia and the concession will not be limited to a maximum of 12 months until the earlier of 1 July 2014 or the date a new employment contract is entered into.

Transitional rules also apply to temporary residents who are maintaining a home in Australia and have employment arrangements for living-away-from-home allowances and benefits in place prior to 7.30 pm (AEST) on 8 May 2012.?

I submit that this is ?more burdensome? for British nationals than it is for Australian nationals. From 1st July 2012 a temporary resident needs to show they maintain a primary home in Australia which they are required to live away from. Australian nationals have until 1st July 2014 to do the same and indeed the home they maintain during this time does not even have to be in Australia.

Also, the wording of the exposure draft actually makes a distinction between permanent and temporary residents:

30 Transitional?existing employment arrangements
(1) During the transitional period, you can disregard paragraphs 25-115(1)(b) and (e) of the Income Tax Assessment Act 1997 if:
(a) you are neither a temporary resident nor a foreign resident; and
(b) during the entire period:
(i) starting at the Budget time; and
(ii) ending on 30 June 2012;
your employment was covered by an eligible employment arrangement that was not varied or renewed.

I submit that this is discrimination based upon nationality and/or immigration status. The wording of the legislation clearly makes such a distinction. If you are Australian Citizen (or a permanent resident of Australia) there are parts of the tax legislation you are permitted to disregard. I submit that this is an exemption based upon nationality and immigration status and therefore breaks the tax treaty which exists between the two countries as Nationals of a Contracting State will be subjected in the other Contracting State to taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

Ian N Bissett
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