

Fringe Benefits Tax (FBT) Reform living-away-from-home benefits 16/05/2012

I would appreciate that urgent consideration be given to the below matter. I ask for an urgent review and intervening measures to be taken in connection with the draft legislation relating to the Living Away From Home Allowance. This is for the following reasons:

- The draft legislation contravenes the Tax Treaty between the United Kingdom and Australia
- The draft is an infringement of the human rights of the temporary foreign worker community on the grounds of indirect racial discrimination based on nationality and immigrant status. As such it does not comply with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011
- The draft legislation is 'unAustralian' with potential for negative PR and consequential negative economic impact.
- Unfair Society - Not the level playing field promised to 457 Visa holders.
- Potential for significant negative economic consequences through lack of highly scrutinized and objective impact analysis.

UK Australia Tax Treaty

I believe that the exposure draft relating to reform of LAFHA benefits contravenes the Tax Treaty between the UK & Australia. The government is currently looking to legislate this into Australian law and so this requires urgent attention.

For fringe benefits tax, the convention has effect in respect of fringe benefits provided on or after 1 April 2004.

On The ground of Non-discrimination

Article 25 (Non-discrimination) is included to protect nationals of one country from tax discrimination in the other country. This is the first non-discrimination article to be included in an Australian tax treaty that gives taxpayers private rights of appeal. The Article does not preclude either country from applying its anti-avoidance rules (including thin capitalisation measures), research and development concessions, consolidation rules or capital gains deferral rules.

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"*.

There has been much confusion in the UK temporary foreign worker community who have budgeted their existing financial commitments based on receiving LAFHA. The transitional measures for existing arrangements mentioned in the draft legislation (i.e. rules not taking hold until July 2014) would have allowed this community enough time to make new plans (arrange new leases,

fly home, move to a different state which does not charge school fees for public schools etc.). However, verbally the treasury has said that any transitional period will only apply to people who maintain a home in Australia that they are living away from. This is not the case for most UK temporary workers and effectively discriminates against them based on the fact that their usual residence is in the UK. It is understood that a similar treaty is in place between the US and Australia and similar circumstances may apply.

The draft is an infringement of the human rights of the temporary foreign worker community on the grounds of indirect racial discrimination based on nationality and immigrant status. As such it is not in Accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

From the Australian Human Rights Commission Website

'It is racial discrimination when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular race, colour, descent, national or ethnic origin or immigrant status.'

This is called 'indirect discrimination'

The impact of the discrimination would be that instead of a two year transition period until July 2014, all temporary foreign workers would have their LAFHA benefit removed as of July 1st 2012 in many cases resulting in their income falling significantly below their committed outgoings. These are people who contribute to the Australian economy and who have made financial commitments such as rental contracts and bank loans in good faith. Although on the surface the rule applies equally to all parties, it constructively/indirectly discriminates against anyone not maintaining a primary home in Australia.

The draft legislation is 'unAustralian' with potential for negative PR and consequential negative economic impact.

Are these really the values that Australia intends to display to the international community?

What about Mary? The woman who fell in love with Australia via Oprah Winfrey and moved to Sydney from the US and then made financial commitments based on LAFHA now being subjected to discriminatory rules and consequential financial ruin.

Is this potentially the biggest PR disaster in the history of Australia?

Unfair Society - Not the level playing field promised to 457 Visa holders.

As it stands the rules would leave temporary foreign workers not receiving a transition period open to the majority of Australians claiming LAFHA (by virtue of the fact that they have permanent residency and that as Australians the home that they primarily live away from is in Australia). It would also leave foreign workers paying the same rates of tax as citizens who are not maintaining

two homes but with the added disadvantage of not qualifying for the majority of state benefits (in NSW state schools charge fees, education, child and health benefits do not apply).

How does this provide a level playing field for all? How is this a “fair go” Australia?. To the foreign worker community subjected to the immediate impact of these rules this language just doesn’t ring true.

Potential for significant negative economic consequences through lack of highly scrutinized and objective impact analysis.

Current discussion amongst temporary foreign workers talks of the disbelief that such discrimination can exist in a developed country and a level of distaste in the lack of ethics on display here. Many temporary workers will chose to leave either because they can no longer afford to stay but many others will do so in disgust at the way they have been treated and the lack of worth placed on them by the Australian government. What does that mean to Australia in economic terms? Do the numbers even add up?

The Henry report makes specific mention of the need for a transitional period in its recommendations around changes to FBT rules

“The transition to the new arrangements would require the renegotiation of remuneration packages for employees currently receiving fringe benefits. Collecting FBT fortnightly through the PAYG withholding schedules (rather than quarterly installments) may require some level of smoothing to minimise fluctuations in tax payments. To facilitate these processes, a lead-in period of at least two years should be provided before any changes take effect.”

Why did the Henry report recommend this transitional period. No mention is made here on nationality or a group with a specific immigrant status. Has there been due diligence on this?

Is there a reason why it is felt that the transition rules should apply to the permanent resident community but not a to the foreign worker community or is it simply that their inability to vote makes them a softer target for a hit and run tax grab by the Treasury? Has the Treasury provided suitable arguments why such a transitional period would not be necessary here? They certainly have not done so in the public domain. Why?

The recent history of this draft is deeply worrying. What was referred to as ‘interesting ideas’ from a workers union rep in the Tax forum of October 2011 were turned around in less than 60 days into an announcement of reform by the treasury at MYOE. To which there has been no subsequent disclosure of submissions from the consultation period or impact analysis of these measures. Why have the submissions made by major tax consulting firms and businesses been kept out of the public domain so far? It feels like a closed doors policy is in operation here and that the reforms are being forced through under the ‘class war’ headline “rich foreign execs rorting the tax system.” The fact is that where such examples do exist those execs are often just as likely to be Australian as from overseas.

The significant majority of people claiming LAFHA are hardworking families whether they be Australian or from overseas who are just trying to make ends meet. Why is this not acknowledged anywhere in the rhetoric around these reforms? Why the need to so highly politicize aspects which

should be looked under with a high degree of objectivity due to their potential for negative impact on the Australian economy.

If passed the legislation will likely have a major impact on real estate prices, the ability of Australia to retain and attract new talent from overseas and to maintain competitiveness in the global economy. Key projects will be impacted. There appears to be little to no analysis in the public domain and so subject to scrutiny that would cast light on the short mid and long term impact of this legislation. The budget only factors in tax revenue gained and there are no projections around existing tax revenue streams lost or further opportunities missed when foreign workers leave Australia to move to better paid jobs in societies that paint a better picture of fairness.

The lack of clarity here means that these reforms have the potential to generate completely the opposite effects to those presented in the budget and should be grounds for a review. Slaying the dragon of the economy and waging a class war is being used as a mask to disguise the social injustice and potential economic self-harm of this draft legislation.

I came to Australia expecting a fair go. This draft legislation to me represents the moral compass of Australia and will determine whether I stay or go.

Regards

Keith Dixon