Dear Sir/Madam

In light of the proposed changes to LAFHA and in particular the discrimination towards foreign residents, I would like to have some clarification on the transitional period. The transitional period supposedly applies to any foreign resident who maintains a home in Australia. Correct me if I am wrong but if I had been doing so, I would have been in complete breach of my right to claim LAFHA. As previously agreed, I could claim LAFHA until I showed an intention to remain in Australia which could have been demonstrated by purchasing an Australian home. Furthermore, Australian workers do not need to maintain a home in Australia to be eligible for the transitional period. This would then mean they shouldn't even be claiming LAFHA if they have are not even living away from their home? These new reforms discriminate against me as a foreign worker, and as a UK national I would like make a complaint as this is in breach of the tax treaty Australia holds with England.

"In respect of the *Tax Laws Amendments (2012 Measures No.3) Bill 2012: deducting expenses for living away from home* exposure draft (the "Exposure Draft"), proposed provisions in relation to *Transitional – existing employment arrangements* are in breach of the UK/Australia Double Taxation Convention (the "Convention") applicable to both income tax and fringe benefits tax, incorporated into Australian domestic law through the International Tax Agreements Act 1953.

Article 25.1 of the Convention, 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.

According to the ATO:

Article 25 (Non-discrimination) is included to protect nationals of one country from tax discrimination in the other country.

According to the HMRC explanatory memorandum:

…this Article provides that neither country shall impose discriminatory taxes (or requirements) on the nationals, permanent establishments and enterprises of the other.

In respect of existing LAFHA arrangements until July 2014, as set out in the Exposure Draft, "temporary residents" and "foreign residents" (which includes UK 457 visa holders) will be subject to an additional restriction to which Australian permanent residents will not be subject – namely the requirement to maintain a dwelling in Australia – in breach of the non-discrimination clause.

The result is that on 1 July 2012, UK nationals already working in Australia on 457 visas under LAFHA arrangements, will overnight see a decrease in their take home pay of up to 40% and possible immediate financial ruin, whereas the Australian Government has seen fit to put full transitional arrangements in place for Australians with existing LAFHA arrangements.

In his justifications, it is entirely disingenuous for the Treasurer (and those under his authority) to continually suggest that all 457 visa recipients of LAFHA are highly-paid executives. The Temporary Skilled Migration Income Threshold is $49,330, compared to the average Australian full-time salary of $68,791(Q3 2011).

It is unacceptable for the Treasurer to continually suggest that foreign workers (including UK nationals) who receive LAFHA are "rorting" (Australian slang, meaning "cheating" or "defrauding") the system. The ATO website currently advises UK expatriate employees on 457 visas that they are entirely entitled to claim LAFHA if eligible under existing arrangements:

Examples of employees on appointments of finite duration who will generally be living away from their usual places of residence are foreign nationals employed in Australia (expatriate employees)... In the case of expatriate employees having to reside in Australia for the term of their employment, each year we publish a tax determination outlining what we consider a reasonable food component.

The proposed discriminatory transitional arrangements, based on the Treasurer's disingenuous and offensive characterisation of UK nationals claiming LAFHA in line with ATO guidance, breach Australia's obligations under the Convention and conflict with its International Tax Agreements Act 1953. Existing Australian domestic law and treaty obligations require that the transitional LAFHA arrangements applicable to July 2014, must be applied to UK nationals working in Australia on 457 visas in the same way as they will apply to Australians.

In view of the Australian Government's failure (in breach of its own guidelines on public consultation) to demonstrate how previous consultation responses to the Assistant Treasurer's November 2011 consultation paper on LAFHA reform have been taken account of in the Exposure Draft (which responses explained *inter alia* that the Australian Government should not leave UK nationals who are tied into existing employment contracts and financial arrangements in Australia, to overnight financial ruin), I have had to take the necessary measures to take this argument further should the breach of law continue beyond June 30.

I look forward to hearing from you soon.

Best Regards,

Chris Downs