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21st May 2017.

Dear Sir/Madam, I write in response to the Treasury invitation for submissions in respect of the Fringe Benefits Tax (FBT) Reform living-away-from-home benefits consultation.

This legislation particularly affects my family because I accepted an offer to transfer to Australia with my employer on a 457 visa in March 2011. The provision of LAFHA was pivotal in our decision to accept the offer as an affordable move for our family.

I am a project manager specializing in Program Management of water infrastructure programs. I previously worked with Scottish Water (a government owned utility) and, on the basis of the techniques & experience I had gained, I was asked by my company if I would be willing to transfer to Australia to work with SA Water (a government owned utility) and apply the expertise gained in Scotland in respect of innovative and efficient means of procuring and delivering large capital programs. This expertise is for the benefit of the customers and owner of SA Water (the South Australian government).

I would like to state first and foremost that my main objection to this legislation relates to the timing rather than content. We understand that a Government may change tax policy & legislation from time to time.

However the further clarification released by Treasury subsequent to the Budget statement indicates that the proposed legislation intends to discriminate against Temporary Residents by excluding them from access to transitional relief afforded to permanent residents and is most concerning.

You must surely appreciate that individuals and families are locked into unbreakable employment, housing and other contracts which require a reasonable period to be changed without causing significant hardship? This is the case for my own family.

I am not an expert of tax law, however I note that this discriminatory approach may indeed be illegal on the following basis:

- 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

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immigrant status. As such it does not comply with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

- 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*".

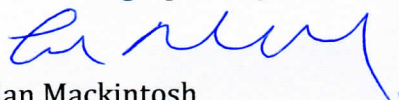
The draft is an infringement of the human rights of the temporary foreign worker community on the grounds of indirect racial discrimination based on nationality and immigrant status. As such it is not in Accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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.



Alan Mackintosh

