18 May 2012

The Manager
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The Treasury
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Dear Sir/Madam

The Australian Treasury has announced changes to Australian taxation which will affect many foreign nationals, namely the changes to LAFHA, the Living Away from Home Allowance. Apparently the Treasury has become concerned at the amount of tax revenue "lost".

I would remind you that this system has enabled employers to offer tax free payments to cover both accommodation and living expenses to foreign temporary residents in Australia on E457 Visas, by treating such payments as non-taxable fringe benefits. Under currently prevailing tax legislation, the fact that an E457 temporary residence visa holder is "living away from his normal place of residence " (ie his prior foreign address, to which he plans to return at the end of his E457 visa validity) has been adequate ground for entitlement to the LAFHA benefit.

This enabled Australian employers to attract foreign nationals to come and work in Australia, for a lower total remuneration package than if these payments were included in taxable (assessable) income.

For example, someone currently being paid $50,000 annually by their employer as a LAFHA benefit, would pay $23,250 annually in tax on this if it were to be included in their taxable income, which is what is now proposed.

Should this have been treated as taxable income in the hands of the employee from the start, then in order to attract such foreign employee with the same take home pay, employer should have had to pay far greater total remuneration, in the additional amount of $93460 annually, along with an additional $8410 into Superannuation, ie a total of $101,870 per annum. Should this have been treated as a taxable fringe benefit, then the employer should have had to pay to Treasury an additional $23,250 in tax.

I put it to you that Australian employers have benefited far more than their E457 visa workers have from the LAFHA system.

The proposed treatment via taxation in the hands of the employee now means that such an individual will be approximately $2000 per month worse off, if this change to taxation is indeed to be imposed by the ATO on July 1, 2012. Summarily, and with no transitional arrangements for those who currently receive such benefits.

It is most unfortunate that the Australian Treasurer, Mr Wayne Swan, has seen fit to accuse individuals of “rorting” the tax system by claiming ever-increasing benefits annually under this system. What he fails to acknowledge is that (a) it is employers who both offer the LAFHA benefit to prospective E457 visa employees, and then administer it; the employee has no ability to claim the benefit himself, and (b) it is thus Australian employers who are “rorting” the system, as they are able thereby to offer a lower total remuneration package to attract expatriates to work in Australia, and (c) of course there are more and more E457 visa-holders in Australia than previously, as this country desperately needs foreign workers to staff its mining and resources boom, let alone to provide services throughout the Australian economy. It is also most unfortunate that Mr Swan and his staff believe that employees on E457 temporary residence visas will be able to renegotiate their terms and conditions of employment with their employers. The employees in this situation have no voice and no bargaining position : I have indeed attempted such negotiation and have been rebuffed by my employer, on the basis that it is not the company’s responsibility to “shield employees from changes in national taxation law”. I can imagine this will be the overwhelming case.

Thus for Treasury to bring in this summary change to taxation, without making some sort of transitional arrangement, is extremely unfair, and not remotely in keeping with the Australian reputation for fair dealing.

At the very least, I wish to register a protest – not only for myself, but also on behalf of all foreign nationals residing here on E457 temporary residence visas and affected by this change in taxation regulations - with regard to this manifestly inequitable treatment of foreign Nationals who have come to work here, and to contribute their skills, experience and effort to the development of the Australian economy, ON THE FINANCIAL BASIS OF THE AFTER-TAX REMUNERATION THEY WERE LEGALLY OFFERED (INCLUSIVE OF LAFHA BENEFITS) BY AUSTRALIAN EMPLOYERS, AND THEREFORE WERE FULLY ENTITLED TO ACCEPT, AND TO EXPECT TO CONTINUE FOR THE DURATION OF THEIR EMPLOYMENT, and who do not deserve to be treated in this most unfair fashion by the Australian Government. The Treasury needs to be reminded that these E457 visa holders perform valuable services to the Australian economy, and should not be singled out for discriminatory penalisation in this fashion. If the Treasury wishes to change the law, so be it, but a transition period or alternative arrangement (such as requiring the employer to pay fringe benefits tax and to continue to provide the employee with the same take-home pay each month as before), is only fair to those who have already come here and have undertaken commitments and legal obligations (eg residential and business leases, asset purchase and rental arrangements, mandatory private schooling fees etc), based on receiving a benefit legally offered by their employers.

I suggest that this is neither an equitable nor an ethical way in which to achieve a Budget surplus.

Kindly reconsider this proposal, and introduce some transitional arrangement for the affected E457 temporary residents. Make the employer responsible for FBT on the amount currently paid as LAFHA. This is an equitable middle ground, and will encourage these affected E457 visa holders to congratulate themselves on the

choice they made to come and work here in this just and fair society that is Australia, and perhaps, just perhaps, to stay for ever.

Yours sincerely,

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