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Manager

Philanthropy & Exemptions Unit

Personal and Retirement & Income Division

The Treasury

Langton Crescent

PARKES ACT 2600

Dear Sirs

RE Proposed changes to Living-Away-From-Home Allowance Tax Treatment

We are Public Accountants in Bondi Junction NSW. Many of our clients receive their income from the entertainment and film industry, with many being resident outside Australia.

On behalf of our clients we would like to contribute to the consultation on the proposed reforms to Living Away From Home Allowance Fringe Benefits.

Film Industry in Australia

The film and entertainment industry is inherently itinerant. A film production proceeds on a project basis, with a Development phase lasting between one and five years, a pre-production phase for one to two years, a Principal photography phase lasting from one month to one year, and a post production phase lasting up to two years.

With current developments in technology the pre-production and post production phases are becoming longer and more involved. Many production roles are drawn from a very limited worldwide skill base. Those experienced in particular production techniques will be contracted to a project for periods from just a few weeks to several years. The individuals involved will travel to locations all over the world to carry out their duties.

It is common practice worldwide to provide accommodation in the form of either a fixed weekly cash allowance or a reimbursement or an expense payment. The individual sometimes has a family who remain at home in the country of usual residence. Meal allowances are also common.

The Australian Government has a policy of encouraging film production in Australia. If this proposed change to LAFHA proceeds, many of the international film production personnel may choose not to come to Australia. Alternatively, film producers will increase their Contract Fee to compensate for the tax on their Accommodation and Meal Allowances. This would add to the cost of film production in Australia and may cause productions to locate elsewhere.

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Travel Allowance vs Living Away From Home Allowance

There are varying interpretations in the film industry of the distinction between a Travel Allowance and a LAFHA.

Under current legislation, a Travel Allowance paid to an individual is Assessable Income for the individual. The individual may substantiate the expense and claim an allowable deduction where applicable.

Conversely, a Living Away From Home Allowance paid to an individual is subject to Fringe Benefits Tax and substantiation is required by the Employer.

ATO Miscellaneous Tax ruling MT2030 provides some guidance on the distinction between Travel Allowance and LAFHA. Paragraph 38 advises that LAFHA is paid where the individual has taken up temporary residence away from their usual place of residence, where Travel Allowance is paid to a person performing duties in the course of performing a job. Paragraph 39 goes on to advise that Travel Allowance is paid for relatively short periods, except where travel is a regular incident of the occupation, eg entertainers.

In reference to the proposed changes, a safe harbour provision of a range of days away from usual place of residence could be included. If this is not possible in a Legislative framework then the Australian Taxation Office should consider a Ruling. Under general residency rules, 183 days is considered indicative of a change of residence. Other residency indicators are relevant and could be used in cases where 183 days was not determinative.

Discrimination against individuals under Double Tax Treaties

Under several of Australia's Double Tax agreements with other countries, Article 23 (Non-Discrimination) or equivalent provides that parties may not discriminate in taxation of residents of either country. This policy would clearly place a worker from Australia in a better tax position than a worker imported to Australia for a specific skill on a project. A foreign worker may consider applying for relief in accordance with Article 23.

In summary, the proposal in its current is detrimental to the Australian film industry. Both Federal and State Governments support the film industry with various tax incentives. This policy could discourage international film makers from bringing large scale projects to Australia. I am a member of the ATO Film Industry Partnership. This policy should be referred to this forum for further consideration and comment.

Should you require further information please do not hesitate to contact me

Yours faithfully

JENNIFER FINIKIOTIS
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