



CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

6 August 2015

Mr Tom Reid
General Manager
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

Email: taxlawdesign@treasury.gov.au

Dear Mr Reid,

Better targeting of the Zone Tax Offset

Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) welcomes the opportunity to make a submission on the exposure draft of Tax and Superannuation Laws Amendment (2015 Measures No.#) Bill 2015: Better targeting of the Zone Tax Offset (ED) and the accompanying explanatory material (EM).

Chartered Accountants ANZ is made up of over 100,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over. Our members are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business. We focus on the education and lifelong learning of members, and engage in advocacy and thought leadership in areas that impact the economy and domestic and international capital markets.

We are represented on the Board of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

Submission

From a policy perspective, restricting access to the Zone Tax Offset (ZTO) is consistent with the Chartered Accountants ANZ **submission to the Joint Select Committee's Inquiry into the development of Northern Australia**. We recommended a review of the ZTO and as part of that review, consideration of whether the offset should be structured to support more permanent migration, with greater benefits obtained by those who physically reside in the remote location for longer periods.

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Recommendation 14 of the Standing Committee report - *Cancer of the bush or salvation for our cities? Fly-in, fly-out and drive-in, drive-out workforce practices in Regional Australia* – also asked the “Commonwealth Government to review the ZTO arrangements to ensure that they are only claimable by permanent residents of a zone or special area”.

We note the draft EM (see paragraph 1.12) states that the “restriction will link eligibility for the ZTO with the definition of FIFO employee contained in section 31E of the FBTAA 1986 [*Fringe Benefits Tax Assessment Act 1986*]”. Section 31E deals with the ‘Fly-in fly-out and drive-in drive-out requirements’ and is written in terms which apply only to an employee. Similarly, the definition of ‘normal residence’ – an expression also to be inserted into the new provisions – is defined in section 136(1) FBTAA 1986 by reference to an employee.

The point we are making is that, once again, the tax law is creating different outcomes which depend upon whether the individual taxpayer is an employee or a contractor (self-employed person).

It would seem to us quite feasible for a ‘genuine’ contractor and the hiring company to agree to a contractual condition requiring the payer to fly the contractor into and out of the remote location. Perhaps however the ATO data on taxpayers who claim the ZTO and are fly-in fly-out (FIFO) or drive-in drive-out (DIDO) workers indicates that the majority are in fact employees and it is not considered necessary to address the situation of individuals who are not employees. We would be interested in hearing back from Treasury whether there is any intention to include individual contractors. If the measure is to be confined to employees the rationale for this should be mentioned in the EM in terms of the impact of the new measure.

Also, the linking to definitional terms found in a separate Act (the FBTAA 1986) masks this issue of the employee relationship needed for the ZTO exclusion to apply for those who do not check the definition and assume ‘normal residence’ to have its every day meaning.

The insertion of a tax resident requirement in proposed section 79A(2AA) goes largely unremarked in the EM – it is hidden in the many legislative references provided at paragraph 1.11. This particular amendment should be explicitly referred to and highlighted in the EM, given that some FIFO arrangements in remote Australia now involve workers from countries in the Asian region.

Although not a tax issue, the 2015-16 income year start date may be regarded as unfair if, as part of wage bargaining, the availability of the ZTO was taken into account by the parties as part of their negotiations.

Finally, and admittedly outside the scope of comments requested on the ED, the Government might take the opportunity presented by the introduction of this legislation into Parliament to clarify its stance on whether it will use legislative powers to overturn the Full Federal Court decision on FIFO employee travel benefits in **John Holland Group Pty Ltd v Commissioner of Taxation [2015] FCAFC 82**.

If you wish to discuss our submission or have any further queries, please contact me via email at: michael.croker@charteredaccountantsanz.com; or telephone (61) 2 9290 5609.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael Croker".

Michael Croker
Tax Australia Leader
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