AAMEG
Australia-Africa Minerals & Energy Group

The Case for Reviewing Australian Taxation of Expatriate Mining Industry Employees Deployed to Africa to Improve International Competitiveness - November 2015

Executive Summary

As part of 2009-2010 Federal budget measures, the Government repealed the exemption on certain foreign income contained in section 23AG of the Income Tax Assessment Act 1936. Section 23AG was introduced in 1986 in Act No 51 being the Taxation Laws Amendment (Foreign Tax Credits) Act 1986 with the intention of ensuring that income earned overseas by Australian residents wasn't subject to double tax, first in the country in which it was earned, and secondly in Australia. The section was designed to both simplify the tax treatment of foreign employment and be in the national interest for the largely Australian employers with offshore Australian employees.

Notwithstanding the outcome of Treasury's Post Implementation Review in 2013, which found that the "*The measure is meeting its original policy intent of removing an unwarranted tax exemption and providing equity in the treatment of taxpayers*," it is our submission that:

1. The repeal of section 23AG has had a detrimental impact on Australian employees, employers and related businesses that operate in Africa and rely on providing competitive Australian expertise; and

2. The repeal of section 23AG has resulted in a decrease in the amount of revenue collected by the Australian Taxation Office (**ATO**) due to the significantly lower number of expatriates working under such arrangements in Africa (and overseas).

The Australia-Africa Minerals and Energy Group (**AAMEG**) represents the Australian extractive industry operating in Africa. Our submission aims to frame the issue and provide examples of the reduced competitiveness of Australian businesses in this environment. This submission has had significant input from AAMEG member PwC. We have aimed to survey a range of our members to canvass the effects of this change on them. We have also been fortunate to have been aided by Globe 24-7, an international human resources consulting firm who have provided us with median salary data for expatriate professionals working in Africa. This research has reflected our expectations and previous submissions to you, and shows that Australian workers in Africa are still paid at a premium when compared to other nationals, however, the percentage of the overall workforce who are Australian resident is declining rapidly, with Australia total participation down 20% and South African participation up 50% in the past two years.

This submission also offers suggestions as to ways in which the situation could be improved, to the benefit of our business, employees and indeed the national interest at large. We have outlined the following four recommendations in more detail on page 13 of this submission:

Recommendation 1: Re-instate the exemption as it applied under the old s. 23AG.

Recommendation 2: Re-instate the exemption as it applied under the old s. 23AG but carve out or exclude certain "low income tax jurisdictions" where minimal amounts of in country tax will be paid.

Recommendation 3: Broaden the scope of s. 23AF to include work performed in a range of listed countries, including most African jurisdictions.

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Recommendation 4: Broaden the "remote area concession" in the FBT rules to include benefits rendered in African jurisdictions.

The Issue

Over the past 30 years, the Australian mining industry and the associated service providers have utilised home grown talent and expertise to develop and operate mines around the world. The expertise that has been delivered has enabled the significant growth of the industry and enhanced the reputation of Australians in the exploration, engineering, construction and operation of mining.

In developing these projects worldwide, the mining and service companies have utilised the talent available in Australia as well as repatriating Australian nationals from other global locations. From the service industries perspective, they employed hundreds of Australians on overseas sites to help deliver the mines including geologists, mining engineers, project personnel, construction personnel and commissioning personnel. The level of expertise available from the Australian talent pool, favourable economic conditions and tax legislation made their utilisation both technically advantageous and internationally competitive.

The deployment of this talent was typically on short term assignments, nominally 3 to 24 months due to the specialist skills required during different phases of projects and generally in remote or third world locations. These locations are difficult places to operate for various reasons including safety, making it problematic to transfer employee's families with them on assignment. Typically the employees were provided with accommodation and meals due to the remoteness of the sites and the difficulty in getting suitable accommodation. They were undertaken on a "single status" basis whereby the employee would go on assignment alone leaving his/her family in Australia but returning to them on a pre-agreed rotation (typically every 8 weeks for a 2 week break). The locations that mine sites are typically located in make it impossible for families to relocate with the employee. Further, having the family located in the nearest township is unattractive given the lack of facilities allowing the families to enjoy a reasonable quality of life such as schooling, health and safety. Although the location may not fit squarely within the ATO's view of 'remote' as the ATO started to publicise in November 2011, the layman would consider the standard of living to be remote.

The foreign employment earnings exemption (with income tax rate progression), known as section 23AG, formerly provided an Australian tax exemption for foreign assignments where an employee engaged in foreign service for a continuous period of not less than 91 days and the employment earnings were subject to income tax in the host country. However the employees' salaries were typically paid in Australia, where they resided and typically had high fixed costs, as well as for use by their families.

From a tax perspective, the use of the Australian tax exemptions under section 23AG and 23AF enabled Australian employees to be deployed to remote foreign locations with skill shortages competitively when compared to other nationalities. However, the significant reduction in scope of these tax exemptions from 1 July 2009 made earnings on most overseas assignments taxable in Australia with credit. This coupled with the significant changes to the Living Away From Home FBT rules in 2012 impacting the tax costs of providing accommodation and other cost of living allowances etc has made the employment of Australians uncompetitive. While this tax incentive was in place, the services industry employed hundreds of Australians overseas. The recent changes to the tax

treatment have reduced this number to less than 15% of the previous numbers. It is now far too expensive to justify the use of Australian employees except in very limited situations.

Our latest research shows that in the past 2 years alone, the number of Australians working as expatriates in the African mining industry has decreased by approximately 20% compared to an increase of nearly 50% of expatriate labour originating from South Africa.

Australian mining / services companies today cannot compete against the international organisations and therefore they either do not win the larger contracts or, if they do secure this work, they employ foreign nationals on the overseas projects. The downside for Australia is three fold:

- Reduced repatriation of revenue for service providers as they cannot secure these projects;
- Reduced opportunity to transfer Australians overseas on a temporary basis, including loss of job opportunities and domestic spending of foreign earnings;
- Reduced net tax intake when the impact of the reduced GST revenues is offset against the greater personal income tax.

1. Introduction

The taxation of foreign earnings and non-cash benefits, triggered by the significant reduction in scope of the Section 23AG employment exemption in 2009, has had a substantial impact on the cost of sending Australians to work on overseas assignments.

Prior to the removal of this exemption, which had operated since 1986, Australian resident employees were exempt from Australian tax if (broadly) they were engaged in foreign service for a continuous period of not less than 91 days and the employment earnings were subject to income tax in the host country. The application of Section 23AG also permitted Australian employers an exemption from both the PAYG withholding rules and Fringe Benefits Tax (FBT) on non-cash benefits. The exempt income was still disclosed in the employees' individual income tax return and increased the average income tax rate which applied to their other taxable Australian income as well as offset income losses.

At the time of removing the exemption, the Federal Government stated the original intent of Section 23AG was to avoid double taxation but in practice, it had found that very little foreign tax was being paid and this was inconsistent with the principal that Australian residents are subject to tax on their worldwide income. In addition to this, there was a view the removal of this exemption would align Australia's taxation of overseas workers with the major jurisdictions such as the United States and United Kingdom.

While there is general agreement that Australian residents should pay their 'fair share' of tax, the complete removal of the exemption would appear to put Australia at the other end of the spectrum when considering other jurisdictions' approach to taxing foreign earnings.

For example:

- In the United Kingdom, residents will be exempt from UK tax on foreign earnings providing they work outside the UK on a full time assignment for at least one fiscal year and any visits back to the UK during the assignment average under 91 days per annum.
- In the United States, residents receive a foreign earned income exclusion if they work in a foreign location or locations for at least 330 full days during any period of 12 consecutive months. They can also claim the exclusion if they become a 'bona fide' resident of another country. The effect of this exclusion is that a portion of foreign earnings will be exempt from federal taxes.
- South Africa, offers a full exemption on foreign earnings if the South African resident works abroad for more than 183 days (60 of which must be continuous) in any 365 day period.

While not every jurisdiction offers these types of concessions, they often retain a competitive advantage over Australia though a combination of low tax rates and labour costs.

1.1 Tax Impact of the Legislative Changes on Australian Employers

The removal of the exemption means that foreign earnings are taxable in Australia. While Australian residents will be eligible to receive a foreign tax credit for any foreign tax paid (rather than payable as the law in this regard changed from 1 July 2008), Australia's comparatively high tax rates (39% for income in excess of $80,000 and 49% for income in excess of $180,000), means that a residual tax balance will generally be due in Australia for assignees working in foreign locations.

For employers who provide assignment salaries on a 'net-of-tax' basis, any residual Australian tax needs to be considered when arriving at the correct host country gross salary. As a result, this residual Australian tax will become an added cost to factor in when attempting to secure offshore work.

However the major tax 'hit' to employers is that the FBT exemption on non-cash benefits no longer applies.

The application of FBT to non-cash benefits, potentially gives rise to double taxation as the same benefits will typically be subject to income tax in the host country. As the resulting foreign tax credits cannot be used to offset FBT paid by the Australian employer, the FBT cost becomes an additional expense of the employee's assignment.

The additional cost to the Australian employer is equal to approximately 88% of the value of the non-cash benefit (subject to any reduction for FBT concessions).

Alternatively, if the Australian residents' remuneration is paid only by a foreign employer, no FBT will apply. Instead, the non-cash benefits will be subject to Australian income tax. While the Australian resident will be entitled to claim a foreign income tax offset, none of the expatriate tax concessions available under the FBT rules will apply. Therefore, the full value of the benefit could be subject to Australian income tax and would become an additional cost to the Australian employer.

In most assignment packages, the employee is provided with a Living Away from Home Allowance (LAFHA) which is intended to cover the cost of the employee's accommodation and food expenses. LAFHA is generally the most expensive non-cash benefit provided to employees while on

assignment. A significant amount is also spent by employers on flights throughout the assignment which are also subject to either FBT (without remote area exemption) or income tax.

While the significant reduction in scope of Section 23AG resulted in LAFHA being subject to FBT, the concessions available reduced its taxable value to nil which meant that in most circumstances, Australian employers didn't have to pay FBT on the provision of LAFHAs.

However, in October 2012, the rules surrounding the application of these LAFHA concessions significantly tightened. The result was that the concession could only be applied to the first 12 months of an assignment and only if the employee maintains a home for immediate use in Australia (unless the employee meets the stringent criteria to qualify as a Fly In Fly Out (FIFO) employee under the new legislation).

Generally the assignment conditions under which these employees are deployed is on a "single status" basis to remote or third party locations. Under these situations the company needs to provide the employee with accommodation and meals and these will normally be in construction camps for the remote locations. In addition, the employee is returned to his/her home location on a regular basis to spend time with his/her family. The current FBT legislation means that potentially all accommodation, living expenses and home flights are subject to tax. No other country that competes in the mining industry imposes this level of tax for overseas assignments.

While these changes significantly increased the cost of employing non-residents to work in Australia on 457 visas, they also increased the cost of sending an Australian to work overseas for a period of greater than 12 months by increasing the cost of providing the LAFHA by 88% once the 12 month period expired.

The example on the following page illustrates the impact the legislative changes have had on the cost of sending an Australian to work in a foreign location.

Africa - Illustration of the Costs of s.23AG Foreign Employment Earnings Exemption

	s23AG Exemption Applies (1)		no s23AG Exemption (1)	
	Scenario 1		**Scenario 2**	
	Current assignment circumstances and tax implications		***Current assignment circumstances and tax implications***	
CASH COMPENSATION				
Annual Base Salary	150,900.00		150,900.00	
Transport Allowance	18,000.00		18,000.00	
Housing and Utilities Allowance				
Hardship Allowance	90,540.00		90,540.00	
Cost of Living Allowance	48,125.00		48,125.00	
Total Gross Cash Compensation		307,565.00		307,565.00
Less: LAFH Cost of Accommodation in Africa (5)	-		*-30,000.00*	
Less: LAFH Additional food component (9)	-		-	
Less: Hypothetical Tax (13)	*-97,639.15*		*-97,639.15*	
				-127,639.15
Net Taxable Income for Australian Tax Purposes (2)		-		179,925.85
Add: PAYG Withholding (based on grossed up net taxable value) (3)		-		113,393.50
Gross Salary for Australian Tax Purposes		**-**		**293,319.35**
OTHER CASH COMPENSATION				
Add back: Accommodation costs (referred to above))	-		30,000.00	
Add back: Additional food component (referred to above) (9)	-		-	
		-		*30,000.00*
Total Cost of Expatriate Cash Salary for Employer		**209,925.85**		**323,319.35**
OTHER NON-CASH COMPENSATION				
Airfares (4)	24,000.00		24,000.00	
Medical (6)	2,000.00		2,000.00	
Superannuation	13,581.00		13,581.00	
Total Cost of Benefits		39,581.00		39,581.00
Total Assignment Package		**249,506.85**		**362,900.35**
Add: Tax liability in Africa(7)		83,056.24		157,267.99
Add: FBT on benefits (14)		-		158,249.49
FBT on on Africa tax liability (FITOs refunded)				
Add: Actual Australian taxes		-		113,393.50
Less: Foreign income tax offset allowed (refundable to Employer) (8)		-		*-113,393.50*
Total Cost to Employer		**$ 332,563.09**		**$ 678,417.83**
Cost increase due to s.23AG being repealed (Post-Budget)				**$ 345,854.74**

*Exponential increase in assignee costs due to the repeal of s23AG.

*Relying on the assignee to pay the Foreign income tax offset back to Employer

*Cash flow implications for Employer associated with paying both Australian and African tax throughout the year, with a limited amount of foreign income tax offsets available at year end.

Notes:

(1) The above illustration has been prepared on the basis that the assignee is on a standard 28 days on, 7 days off rotation and would be eligible for an exemption on their foreign employment income in Australia under s.23AG (prior to the budget announcement to repeal the exemption).
(2) The above illustration has been prepared on the basis that the assignee did not receive a bonus during the financial year.
(3) The 2009 Australia resident rates of income tax have been used to calculate the Australian tax liability/PAYG Withholding.
(4) The cost of airfares has been estimated at AUD$2,400 for a return ticket based on average flight cost. The total cost of airfares has been prepared on the basis that the assignee will have 10 rotations into Africa during the financial year. The cost of one of the flights has been reduced by 50% for FBT purposes, as Employer will be allowed such a concession for one flight per overseas employee per year (to their home location).
(5) Accommodation has been estimated at AUD$2,500 per month (AUD$30,000 per year), based on a moderately expensive one bedroom apartment in Africa. The calculation has been prepared on the basis that the assignee bares the cost of accommodation. Where the assignee is considered to be living away from home under the definition outlined in MT 2030, then the cost of accommodation will not be subject to income tax or fringe benefits tax.
(6) Medical costs have been estimated at AUD$2,000.
(7) The tax liability in Africa has been estimated based on estimated tax rates (circa 45%) and standardised deductions. Where the assignee is employed in Australia, the Africa tax has been apportioned on a "time in country" basis.
(8) Foreign Income Tax Offsets (FITO) have only been allowed up to Australian tax payable on the assignees foreign sourced employment income.
(9) The assignee's remuneration has been reduced by the inbound additional food component for the weeks in which the assignee is present in Africa (approximately 42 out of 52 weeks). The additional food component for the 2008/2009 FBT year is $179 per week in accordance with the ATO's TD2009/6.
(10) This FBT liability includes the African tax liability and fringe benefits tax on the airfares and health/medical insurance.
(11) Allowances based on Africa for 2008 provided by Employer. The allowances have been grossed up at 45% for Africa taxes as the allowances provided were net and will be subject to tax in Africa. A housing allowance has been provided in addition to the allowances, as the COLA and hardship allowances are not designed to compensate the assignee for additional accommodation costs.
(12) We have assumed that Employer would pay the differential between the Australian and African tax. The payment of Australian tax through the tax return will attract FBT.
(13) Hypothetical tax is the estimated Australian tax assuming a scenario where the employee was undertaking work in Australia only. This is common practice for expatriates.
(14) FBT is calculated on the African tax and benefits such as Airfares and medical (i.e. multiplied by FBT rate of 1.8692 * 46.5%).

Prior to the changes in tax legislation, the individual would have qualified for a full exemption from Australian income tax and FBT. However, with the concessions removed, the impact of Australian tax and FBT increases the total cost by approximately $345,000. In turn, this increases the costs that are payable by the employers as payroll tax, workers compensation and superannuation are all levied as a percentage of salary and wages.

To illustrate the impact these additional burdens make on the Australian mining community, we must look at the current variances in base salaries paid to expatriates from various regions of the world.

2015 Expatriate Salary Benchmarks African Mining Industry					
Grade	General Group	South Africa	Europe, Middle East	North America	Australia
2	General Management	$ 264,000	$ 263,040	$ 263,800	$ 335,861
3	Manager Operations	$ 180,133	$ 187,855	$ 185,611	$ 212,424
4	Function Manager	$ 150,000	$ 136,595	$ 138,578	$ 174,000
5	Function Lead, Supt, Senior Professional	$ 113,498	$ 137,494	$ 107,117	$ 161,698
6	Supervisor, Professional, Trainer	$ 94,087	$ 73,740	$ 82,464	$ 123,471
7	Semi-Professional, Operators	$ 65,610	$ 56,381	$ 67,216	-

Expatriate benchmark net salaries paid in USD, at 50th percentile at June 30 2015

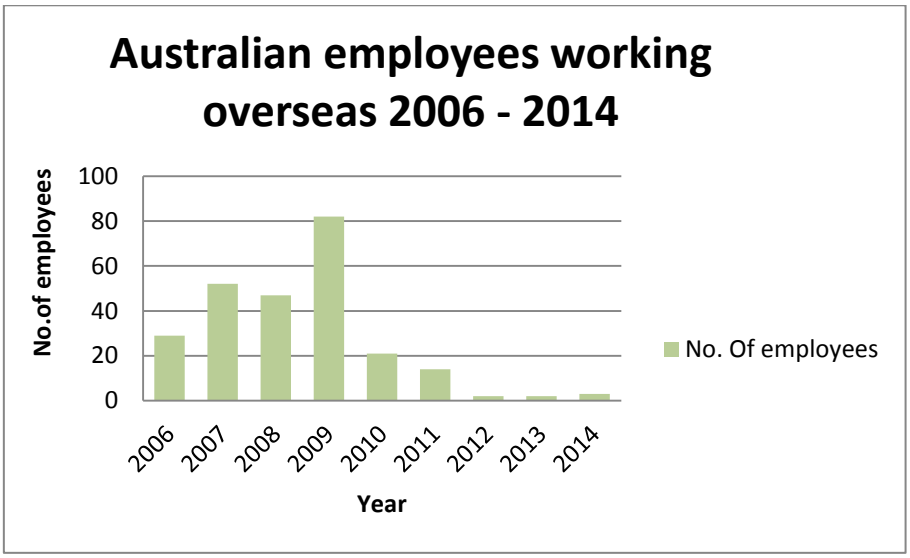
Australian expatriate salaries are significantly higher than all other nationalities working in the African mining industry. Whilst the intention for Australian companies to employ Australian workers overseas remains, the imposed tax burdens simply make it economically unviable meaning these companies are forced to employ non-Australian workers if they want to continue operating in Africa.

One of our members, AMEC Foster Wheeler, is just one example of how this has affected their business.

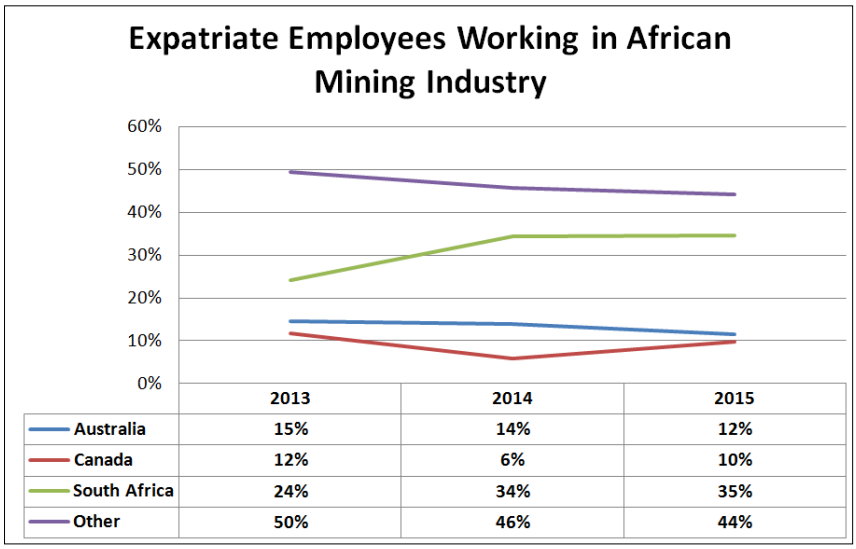
Since 2006, AMEC Foster Wheeler has executed a number of offshore projects which require Australian based staff to work overseas for extended periods.

The graph below illustrates the number of Australian employees that were deployed to work on overseas projects for them in the period 2006 – 2014 and clearly shows that projects executed prior to the abolition of 23AG were staffed by a high number of Australian employees.

Following the removal of 23AG in 2009, these numbers decreased significantly reflecting the difficulties they encountered in sending Australians to work on their overseas projects.



While there are a number of other contributing factors including a general slowdown in the commodities sector, the repeal of 23AG has adversely impacted the ability of this company (and others) to compete and execute offshore projects using Australian personnel. In the past 2 years alone, the number of Australians working as expatriates in the African mining industry has decreased by approximately 20% compared to an increase of nearly 50% of expatriate labour originating from South Africa.



	2013	2014	2015
Australia	15%	14%	12%
Canada	12%	6%	10%
South Africa	24%	34%	35%
Other	50%	46%	44%

This reduction is even more alarming considering the strength of the USD in the past 2 years against the AUD. With 95% of mining companies paying expatriate salaries in USD, this should have made working offshore for an Australian an even more attractive proposition however we continue to see this downward trend due to the tax burdens placed on expatriate workers.

It is our view that the additional costs that have been imposed on Australians through the removal of the exemption has had the impact of driving behaviour which has been detrimental to our businesses and tax receipts overall.

Anecdotally, it has been suggested by our members that the following measures have been taken (among others) as a means of mitigating the impact of this concessional repeal:

- Substitute Australian based employees with personnel from UK, South Africa, Canada, China and Philippines etc. These alternative country nationals come at a cost advantage driven mainly by their lower personal tax but the downside is that these workers are not always trained or experienced at the same level as Australians therefore putting these companies who operate offshore at risk. Australian standards in the mining industry are world class but unfortunately this is not shared by all countries and the cost to bring these personnel to Australia for training or orientation is prohibitive. The preference is always to employ people who know and understand the Australian way, but even in light of this, the total cost to employ keeps Australian expatriate labour uncompetitive;

- Setup or acquire organisations in these lower taxing countries to undertake some of the work required to complete the assignment or project. This is particularly so for companies undertaking works on African projects where a number of Australian companies have acquired businesses in South Africa to tap into this cheaper pool of resources. It is a direct substitute for Australians doing the work for South Africans; and

- Get Australian employees who want to work overseas to break Australian tax residency. Many expatriates permanently move out of Australia to take advantage of better tax treatments in countries such as Singapore, UK, South Africa, Mauritius etc. resulting in the Australian Government missing out on any tax receipts and all personal expenditure. If the median salary of an expatriate Australian General Manager is equivalent of $430,000 AUD, then he is now spending that $430,000 in another country.

All of these legitimate efforts to remain competitive harm Australia skills development and impose additional, unnecessary costs on Australian businesses.

2. AAMEG survey of views from industry participants

Following the initial meeting of AAMEG and Treasury on 3 February 2015, we have sought information from our members and industry in general in order to assist our discussions in respect of the negative impacts outlined above. As part of this process, 21 AAMEG members and industry participants responded to an initial survey, asking broad-ranging "yes-no" questions in respect of the impact of the 2009 and 2012 tax changes (such as, "has the cost of sending Australian resident employees overseas increased?" *Refer to Attachment A for an overview of these questions, and the responses provided*). From this process, we were able to contact respondents to gain some further insight in response to the initial questions raised (including asking the questions as requested by

Greg Cox, Treasury, in his email dated 11 February 2015. *Refer to Attachment B for an overview of these questions*).

We provide below a summary of the key themes which came to light from the survey and subsequent discussions:

- Since 2009 there has been a definite increase in the cost of sending Australian employees overseas (71% of survey respondents stated that the cost of sending Australian employees overseas had increased since 2009, refer to Question 3 in Attachment A). The majority of employers could not quantify this amount, due to varying aspects such as different overseas tax rates (and therefore differing tax "top-up" payments), individuals being subject to different marginal tax rates (and therefore different PAYG withholding amounts), and many other factors impacting the costs of the business. However, 100% of the survey respondents that stated that their business had experienced an increase in the cost of sending Australian employees overseas noted that the additional tax burden of sending Australian employees overseas, was a key factor in the increase in cost of sending Australian employees overseas.

- Many employers surveyed no longer employ Australians to work on overseas assignments, preferring to use local residents or foreign workers, even if this means it may not necessarily provide the best or most efficient outcome for the employer (with 81% of respondents stating that over the past 5 years they had experienced a significant decrease in the proportion of Australians to non-Australians being deployed overseas, refer to Question 2 in Attachment A). The difference in cost is a key driver in this regard. Many employers believe that Australian employees have "priced themselves out of the international market" due to the increased tax liabilities they face from working overseas, thereby prompting them to demand a higher salary.

- Some of the survey participants were mining companies (i.e. businesses that did not pitch for tenders in overseas jurisdictions). Accordingly, these participants were largely indifferent as to the impact of the tax concession changes to the business's ability to win work overseas, or result in that business losing work overseas in the last 5 years (this is evident in the responses to Questions 4 and 5 of the survey in Attachment A – only 43% of respondents stated that the 2009 and 2012 changes had affected their ability to win work overseas, and 52% of respondents stated that they had not lost any work overseas since 2009). In fact, we found that the mining services companies were mostly affected by the changes as opposed to the mining companies themselves (i.e. it is the mining services companies who compete for tenders overseas as opposed to the mining companies themselves hence the mining companies' responses to Questions 4 and 5 being No or N/A).

- Of the mining services companies, 100% of survey participants noted a decrease in the success rate of being awarded tenders in Africa. The primary reason for this was cost, with a significant factor in higher cost being due to employee costs.

- All respondents to the second survey (refer to Attachment B) stated that it was very common for Australian expatriate employees to request tax relief once the 2009 tax concessions were no longer available. Whilst a number of employers surveyed have not significantly altered their employment arrangements for Australian resident employees being sent overseas as a result of the tax concession changes (36% of respondents stated they had experienced a change in the way they structured employee arrangements, whilst 64% said they had not), *all* employers (i.e. 100%) have noted an increase in employee costs,

primarily arising from the requirement to cover additional tax liabilities incurred by the employee working overseas.

- None of the industry participants surveyed were able to access the remaining tax concessions under sections 23AG and 23AF of the Income Tax Assessment Act 1936.

- Of the survey participants that have employed Australian residents overseas in the past 5 years (81% of respondents, refer to Question 1 in Attachment A), all of them noted that a significant number of Australian resident employees working for their business now based themselves overseas so as to render themselves non-residents for tax purposes, due to the higher marginal income tax rates imposed by Australia coupled with the lack of tax concessions made available from working overseas.

- Of the survey participants that employ Australians overseas, 100% of them stated that increasing the salaries of Australian employees, as opposed to providing benefits (that may be subject to FBT), is not seen as a viable alternative. Firstly, employers cannot afford the increased cost, and secondly, in the majority of cases where taxable benefits are provided, they must be provided due to the working conditions (such as working on construction sites) and local climate and standard living. These employers are finding that employees do not feel incentivised to go overseas due to the uncompetitive tax outcomes.

- Of the mining services based companies that responded to the survey, all (i.e. 100%) respondents noted that a number of mid-tier / development professional jobs which historically were filled by Australian employees – historically considered the most qualified to do such jobs given the Australian-based experience obtained by them – are now being filled by foreign employees. This is as a result of the increased cost of sending Australian employees overseas.

3. Recommendations

The significant reduction in scope of the Section 23AG foreign employment exemption, coupled with the tightening of the FBT concessions for LAFHA have put Australian companies at a competitive disadvantage when attempting to secure international work. While there are other 'non-tax' factors contributing to this non-competitiveness, we are of the view the current application of the tax rules requires further review with the objective of developing a more concessionary and administratively less burdensome approach to the taxation of foreign earnings.

Recommendation 1: Re-instate the exemption as it applied under the old s. 23AG.

Given the increases in costs that we have outlined above, it is apparent that Australian companies have become uncompetitive on global tenders to the extent that Australian labour is used. The use of Australian labour, while comparatively expensive, is generally of a high standard. As such, both foreign and Australian employers use Australian labour as a competitive edge, particularly for highly skilled positions. The removal of the general s.23AG exemption has reduced employment opportunities for Australians and tax receipts for the Government as business income from overseas projects has fallen. The ATO's 2014 Project DO IT which allowed taxpayers to report previously undisclosed foreign income, suggests there remains uncertainty by Australian residents as to what they need to report in relation to foreign income.

Recommendation 2: Re-instate the exemption as it applied under the old s. 23AG but carve out or exclude certain "low income tax jurisdictions" where minimal amounts of in country tax will be paid.

In order to mitigate the negative consequences of the repeal of s. 23 AG, re-instate the provision but, in order to alleviate concerns about specifically low taxing jurisdictions,
implement the change whilst including an exception to the application of the rules in relation to certain "low income tax jurisdictions". This could be coordinated with corporate tax law.

Recommendation 3: Broaden the scope of s. 23AF to include work performed in a range of listed countries, including most African jurisdictions.

Another option could be to broaden the exemption provided in s. 23AF, by broadening the definition of "Eligible project in national interest" to apply to the operation of Australian businesses in Africa. In obtaining approval to apply the exemption, employers could be required to submit a report on how they intend to leave a legacy in country. The Australian Government's aid program is 'to promote Australia's national interests through contributing to economic growth and poverty reduction' (http://aid.dfat.gov.au/makediff/Pages/default.aspx). Further, the Government wants to; *'We will use more of Australia's aid funding to expand trade in our region, create jobs, build skills, boost incomes, reduce economic insecurity, and empower women and girls. The aid program will contribute to Australia's broader economic diplomacy efforts to deliver greater prosperity for Australia, our region, and globally. We suggest that employers of Australian tax residents can assist in this goal by creating jobs locally and having them trained to Australian standards.'*

Further, in order to reduce the administrative compliance burden and to provide certainty to Australian businesses who must participate in a competitive tender process, allow for the projects to be prima facie approved to operate under this section, rather than subject to ministerial approval. This is consistent with the policy aims of the Australian government in assisting African states not only through aid, but through trade.

Recommendation 4: Broaden the "remote area concession" in the FBT rules to include benefits rendered in African jurisdictions.

Many assignments take place in relatively inhospitable surroundings on the African continent. In many cases, particularly for employees on rotational assignment, "benefits" as defined in the Fringe Benefits Tax Assessment Act 1986 are not benefits in the ordinary sense. Employees working in many overseas countries suffer hardships that Australian employees do not suffer. In our view for example, it is not reasonable to ask an employee to buy or lease a new car in a foreign location in addition to the car they maintain back in Australia. Additionally, safety concerns often mean that premium accommodation must be procured in order to provide a standard of living and safety approaching that which an employee would experience living in Australia.

For the reasons stated above, as well as the difficulty in extracting the information on value of benefit from foreign operations, benefits consumed or enjoyed in a foreign country should be exempt from FBT.

Attachment A – Survey questions asked of AAMEG members and industry participants, and responses

1. Over the past five years, have you had Australian resident employees deployed overseas?
2. Over the past five years, have you seen a change in the proportion of Australian vs non-Australian resident employees deployed overseas?
3. Has the cost of sending Australian resident employees overseas increased?
4. Have the changes to s. 23AG (tax concessions for Australians overseas) and the FBT / Living away from home allowance affected your ability to win work overseas?
5. Have you lost any work overseas since the tax law changes?
6. Would you be happy to be contacted for a telephone call to discuss any of your answers given?

Survey questions – Responses

	Yes	No	N/A
Question 1	**81%**	19%	0%
Question 2	**81%**	14%	5%
Question 3	**71%**	5%	24%
Question 4	**43%**	38%	19%
Question 5	29%	**52%**	19%
Question 6	**86%**	14%	0%

Note: Survey based on responses from 21 AAMEG members

Attachment B – Additional questions asked of AAMEG members and industry participants

1. How many projects (and how many employees) do you have currently working overseas?
2. How long do your Australian employees typically work on your overseas projects? (Please indicate total deployment length as well as how often the employees return to Australia)
3. On average, how many tenders (per annum) would your company/group be asked to pitch for which involved sending Australians overseas? In relation to these tenders, how many have you won (and lost) per annum?
4. Has the number (and/or ratio) of tenders you have lost increased or decreased since 2009?
5. What was the main reason/s for your response to the question above?
6. Do you currently have any projects that qualify for an income tax exemption under section 23AF or section 23AG of the Income Tax Assessment Act 1936?
7. Are any of your projects eligible for the remote area FBT exemption?
8. Have you had to change the way in which you structure the employment arrangements for Australians you send overseas in order to make it more cost effective since the 23AG changes in 2009 and FBT/LAFHA changes in 2012?
9. Can you quantify the impact of the 2009 amendments to section 23AG of the costs of doing businesses overseas for you?
10. Would you find it difficult (possible) to attract staff to work overseas if you increased their salary but did not provide other benefits such as housing (which may incur FBT)?