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2 September 2016

The Hon Barnaby Joyce MP,
Minister for Agriculture and Water Resources
The Hon Luke Hartsuyker MP,
Assistant Minister to the Deputy Prime Minister
PO Box 6022
Parliament House
Canberra ACT 2600

Submitted by the online portal

Dear Sir

Working holiday maker visa review

Thank you for the opportunity to participate in the inquiry by the Department of Agriculture and Water Resources into the working holiday maker visa review.

Chartered Accountants Australia and New Zealand

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Executive summary

This submission mainly examines the income taxation issues associated with working holiday visas.

As noted in the Terms of Reference however, we acknowledge that the use of subclass 417 and subclass 462 visas (working holiday visas) raises a number of ethical and economic issues about the employment, and employment conditions, of non-residents of Australia working in Australia. It also raises issues about the utilization of unemployed or under-employed Australian workers, the appropriateness of the immigration mix between various visa types and Australia's refugee intake, as well as the role of labour hire firms.

This submission does not delve into these important and complex aspects of your review.

Our submission assumes that visas, either in the form of working holiday visas or a seasonal labour mobility visa, will continue to be made available.

Comparison of tax treatment

Our brief comparison of the tax treatment of working holiday visa holders in Australia, New Zealand, and Canada suggests that:

- Classifying backpackers as resident in Australia for tax purposes is overly generous,
- Classifying backpackers as non-residents and imposing a 32.5% rate on the first $80,000 of earnings would be 'uncompetitive' compared to other countries,
- A concessional, easy to comply with tax regime is warranted for backpackers, and
- There are learnings from Australia's tax treatment of participants in the seasonal labour mobility programme.

Residency status for income tax purposes

The main tax policy issue concerns the classification of working holiday visa holders as residents or non-residents for income tax purposes.

The difference in tax treatment of a resident or non-resident in relation to $18,200 of wages is significant: a resident would pay nil tax and a non-resident would pay $5,824 tax. Because of Australia's personal marginal tax rate scales, this difference in tax treatment continues up to the earning of $80,000 in taxable income. Taxable income above $80,000 in salary and wagers are taxed at the same income tax rate for both residents and non-residents, but residents are liable for the 2% Medicare levy whilst non-residents are not.

Determining residency is not always easy, particularly for people who are present in Australia for a period between 6 months and two years – which happens to be the same length of time for which subclass 417 (working holiday makers) and 462 (work and holiday maker) visas are generally issued and/or extended.

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In our opinion, the vast majority of backpackers would normally be classified as non-residents for tax purposes. Yet a quick skim through backpacker web sites indicates that numerous organisations (which are not registered tax agents) are suggesting that backpackers are not currently subject to tax in Australia and can obtain a refund for any Australian tax paid.

The government has indicated that it will legislate that holders of working holiday visas will be treated as non-residents and our submission proceeds on the basis that this aspect of the policy decision stands[1].

In our view, the tax aspects of the government's policy need a three pronged approach.

1. The non-residency of work holiday visa holders needs to be clarified the moment such individuals arrive in Australia.

2. Australian employers and labour hire organisations need electronic access to data about such visa holders which ensures that they are correctly categorized as employees and PAYG withholding is correctly applied when wages are paid. Chartered Accountants recommends that the Commissioner be empowered to set a backpacker tax rate appropriate to the particular circumstances.

3. The new policy is backed by effective education of stakeholders and enforcement by relevant regulators such as the ATO and Fair Work Commission.

1. On arrival clarification of tax treatment

On arrival clarification of the tax treatment of working holiday visa holders is essential.

We believe consideration should be given to the following as part of a revised model:

- Legislating the tax residency status of 417 and 462 visa holders.

  The visa holder would be a non-resident for tax purposes, and employers or labour hire companies would have electronic access to an ATO tax file number (TFN) look-up facility to verify this.

  Eventually, the non-resident status of such workers would be automatically verified by the ATO in real time under the proposed Single Touch Payroll system.

  There would be no change, from a tax perspective, to the employer's PAYG withholding obligations under this option (but see comments below regarding the withholding *rate*).

[1] See below however for concerns expressed to us by a number of Chartered Accountants in rural and regional Australia who were fearful about adverse local economic ramifications of the government's original proposal.

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- Legislating the inability of 417 and 462 visa holders to obtain an Australian Business Number (ABN)

  An ABN gives the holder a number of rights and obligations under the Australian tax system. Importantly, an ABN can (in practice) be used to represent to an employer or labour hire company (the payer) that the worker is self-employed and not subject to PAYG withholding[2].

  There have also been media reports indicating that the ABN registration system has been exploited by some visitors, and\or some labour hire organisations (i.e. "no ABN, no work" scenarios). The ATO is best placed to comment on the extent of this problem.

  A simple solution would be to simply make 417 and 462 visa holders ineligible for an ABN by data sharing between the Department of Immigration and Border Protection (DBP), the Australian Business Register and the ATO.

  Labour hire organisations would remain eligible for an ABN, but consideration should be given to more stringent arrangements requiring that they treat their backpacker workers as employees for tax purposes (i.e. the labour hire payments received by the workers would be dealt with under the PAYG withholding regime).

2. Electronic access to data about backpackers which ensures PAYG withholding treatment at a concessional rate

The proposed Single Touch Payroll regime could conceivably be designed to streamline the residency status of employees. However, the relevant legislation is still before Parliament and implementation is not likely to occur on a phased-in basis until 1 July 2018.

In the interim period, we suggest the Government discuss with the:

- ATO the feasibility of an electronic TFN look-up facility, or at the very least, a requirement that new employee declarations are more quickly checked by the ATO against DBP data.
- ABR the feasibility of a no-ABN policy for backpackers, using data linked to the DBP.

We note the representations which have been made by various Australian industry groups stating that the non-resident tax treatment of visiting workers will dissuade many from coming to Australia for short-term work (i.e. given the tax rate of 32.5% that applies on the first $80,000 of a non-resident individual's taxable income).

[2] Although PAYG instalments should apply to persons categorised as self-employed, the income tax law does not immediately issue an instalment rate to bring the self-employed into the instalment system. By the time an instalment rate does issue, backpacker workers are likely to have departed Australia. In any event, we doubt that backpackers would set aside funds to meet their instalment obligations and comply with the instalment regime. PAYG withholding is much more effective and efficient.

These groups assert that this in turn will lead to labour shortages in key industries such as horticulture and tourism.

Chartered Accountants ANZ has no economic or behavioural science data of its own to test such claims but we have received comments from CAs working in rural and regional Australia which strongly support these representations.

We note that the Seasonal Worker Program which began on 1 July 2012 (which built on the success of the earlier Pacific Seasonal Worker Pilot Scheme) attracts a 15% final withholding tax rate. This rate reflects the marginal tax rate that would usually apply to Australian residents earning a similar level of income to participants in the scheme. Eligible workers who have no other Australian income do not need to lodge a tax return.

In our view, a concessional PAYG withholding tax rate should be extended to visiting workers who work in specified industries or (if this categorization is too broad) for specified employers and the labour hire organisations which assist in obtaining the relevant workers.

The exact withholding rate would need to be determined based on Treasury, ATO and industry modelling which should take account of a range of factors such as:

- Revenue raised
- Compliance costs for regulators such as the ATO, and employers or labour hire companies
- Equality of treatment with Australian resident workers willing to undertake such tasks
- Comparisons with other jurisdictions which compete with Australia for visiting labour
- Behavioural decision-making by visiting workers, and the emphasis they place on holidaying v's work
- Regional relations and the assistance which Australia should extend near neighbours such as Pacific Island nations, Timor Leste etc

Within guidelines set by Parliament of relevant factors, the Commissioner of Taxation should be empowered to set a withholding rate appropriate to particular circumstances.

Based on our knowledge of current ATO technology and proposed improvements (such as Single Touch Payroll), we envision a model which would eventually electronically authorize eligible employers to withhold a lower percentage of tax for those backpackers whose TFNs attract a "coded" entitlement to such treatment (this code would be electronically communicated to the employer once the worker signs onto myTax and their data is linked to DPB). Alternatively, authorized employers or labour hire companies could be allowed to withhold at the lesser rate but would be subject to more regular ATO compliance reviews.

3. Enforcing the tax treatment

To ensure that Australia's tax laws are complied with, greater co-ordination and exchange of information between government departments in real time may be required. We say "may" because we are not aware of the current procedures for data sharing amongst relevant government agencies.

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For the revised model to work effectively, there certainly needs to be high levels of cooperation between the ATO and the DBP.

Other design features of the new model could include, for example:

- Re-designing how work visas are applied for so that tax file numbers are issued simultaneously with the visa
- Enhanced work visa conditions, such as:
    - The establishment of a myTax account
    - The presentation of a passport as part of employer \ labour hire company on-boarding requirements
- Automatic checking and data sharing about the visitor's working activities whilst in Australia
- For employers and labour hire companies, insistence that worker payments be made into an Australian bank account (i.e. no cash in hand arrangements) as a condition of eligibility for lower PAYG withholding rates
- No income tax deduction for wages where the payer does not comply with the new model

We also understand that the regulators have already learned much about how the existing framework could be improved. For example, Operation Cadena, a joint project by DBP and the Fair Work Ombudsman, is working towards ensuring that 417 visa holders are being paid award rates and being provided appropriate working conditions. The ATO is also involved in this project.

Communication planning

The revised policy response regarding the taxation of backpackers will need to be communicated widely through many channels, but particularly through the social media channels widely used by this community.

In addition, the communication plan will need to extend beyond the 'usual' tax players in Australia and include foreign embassies, the Department of Foreign Affairs and industry bodies such as hostels, student organisations, hospitality and agricultural organisations, and migration/visa agents.

An advertising campaign about the tax consequences of working visas and risks of participating in the black economy, would also be helpful. Such an advertising campaign would need to be conducted both within Australia (aimed at employers, labour hire companies and backpackers) and overseas (aimed at potential backpackers).

Our detailed submission is attached.

I would be happy to discuss any aspects of our submission with you. I can be contacted on [redacted] or by email at [redacted]

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Yours faithfully,

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Detailed Submission

Contextualising this submission

The working holiday maker visa review has wide terms of reference. The terms of reference include examining:

- Exploitation of and protections for vulnerable workers, including evaluation of illegal labour hire practices and non-compliance with laws and regulations;
- Capacity to match employers with available workers, including regulatory arrangements in relation to the role of labour hire firms;
- Changes to the use of volunteer or unpaid labour
- Short term and long term agricultural and tourism labour needs
- Policies to attract unemployed Australians, including young Australians, into work in agriculture and tourism;
- Australia's exposure to changes in exchange rates, economic growth and employment rates in source nations which may affect Australia attracting seasonal and temporary labour
- Opportunities to expand supply of seasonal and temporary foreign worker for the agricultural sectors.

Some of these issues were considered in a March 2016 report by the Senate Education and Employment Reference Committee entitled "A National Disgrace: The Exploitation of Temporary Work Visa Holders".

In addition to the economic and ethical issues raised in the terms of reference, the interaction between the various visa types needs to be considered.

The above mentioned Senate report noted at 4.87 that:

> "The committee is disturbed by reports that the Seasonal Worker program is under-subscribed and is being undercut by WHM [working holiday maker] visa program. The WHM visa program is a poorly-regulated program, and the bulk of the evidence to the inquiry showed that the WHM visa program has been abused by unscrupulous labour hire companies in Australia with close links to labour hire agencies in certain south-east Asian countries."[3]

[3] Paragraph 4.87: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report

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Understanding the economic realities and needs, as well as the ethical dimensions of working holiday visas is essential, and a prerequisite, to consideration of the tax treatment of working holiday maker visas.

Our submission does not however delve into the economic and ethical dimensions of this inquiry nor does it evaluate all of the different types of temporary working visas. It is limited to an examination of the current taxation treatment of working holiday maker visas in Australia and includes an international comparison with the tax treatment accorded by other countries.

As such, our submission only partially addresses the following terms of reference for the inquiry:

- Australia's competitive position in attracting seasonal and temporary foreign labour, including ….comparative taxation on income earned, comparative superannuation or equivalent entitlements.
- Regulatory imposts on employers
- Consistent tax treatment between different classes of temporary work visa holders.

The following discussion of the tax issues of working holiday visas assumes that a decision has been made that working holiday worker visas or some other form of seasonal worker visa, are desirable.

Determining residency

For Australian taxation purposes individuals can be classified as residents or non-residents.

This classification is determined annually and a person may be one or the other during an income year (or for part of a year). In addition to being a resident or a non-resident for tax purposes, a person can also be a temporary resident – see **Appendix A**.

A resident is defined in section 6 Income Tax Assessment Act 1936 as a person, other than as company, who resides in Australia and includes a person:

(i) whose domicile is in Australia, unless the Commissioner is satisfied that the person's permanent place of abode is outside Australia;

(ii) who has actually been in Australia, continuously or intermittently, during more than one-half of the year of income, unless the Commissioner is satisfied that the person's usual place of abode is outside Australia and that the person does not intend to take up residence in Australia; or

(iii) who is a member of certain superannuation schemes.

Resides in Australia

Taxation Ruling TR98/17 sets out the Commissioner of Taxation's view on how to determine whether or not someone resides in Australia – the common law approach to residency. In broad terms, the Commissioner's interpretation of resides is that six months is a considerable time when deciding whether or not an individual's behaviour is consistent with residing in Australia.[2] In looking at a person's behaviour, one needs to consider various aspects of the individual's life - including their living arrangements, business and family ties to Australia, physical presence in Australia, ownership of assets, nationality and citizenship, location of bank accounts and intention and purpose of presence. The behaviour needs to indicate that there is a degree of continuity, routine or habit that is consistent with residing in Australia.

Example 9 in TR98/17 portrays how these tests apply to a common backpacker situation. For ease of reference it is reproduced below.

> *Janine Edgerton is a British national who has longed to spend twelve months 'down under'. After saving for years, she takes twelve months leave from her work and departs for Australia on her twenty-fourth birthday. Although she travels with considerable savings, her intention is to spend at least part of her time working. She has obtained a restricted working visa enabling her to work for no more than three months with one employer.*
>
> *Through a contact in Australia she is assured of work in Perth for the first three months. After that period, she decides to travel to the east coast via Adelaide. She spends a month in Adelaide where she works for two weeks and continues her journey to Melbourne.*
>
> *Once there, she meets some friends from back home. After working for a further three months, she decides to spend the balance of her time in Melbourne and uses her savings for living expenses. To keep costs down, she leases a house with two other friends. At the end of her twelve months in Australia, she returns to the United Kingdom.*
>
> ***Decision: non-resident***
> ***(Refer paragraph 47 for guidance.)***
>
> *Although Janine obtains work, by travelling from place to place she has not established a pattern of habitual behaviour, even though she is physically present in Australia for twelve months and she co-leases a house. Janine's main purpose for being here is to have a holiday and she is merely supplementing her savings by working.*

The ATO web site provides two further examples along similar lines.

- ***Example: Australian resident for tax purposes***

  Kate is from Ireland and has a working holiday visa. She stayed in Sydney for most of the 12 months she was in Australia.

  Kate had a one week holiday travelling up the east coast just after arriving in Sydney, and another two week holiday at Byron Bay. She spent the last three weeks of her stay in Australia travelling around Western Australia.

  Kate lived in share accommodation at one location for four weeks in Sydney and share accommodation at another location in Sydney for ten months. Kate's name was put on the lease and she made a part contribution to the bond.

  Kate worked in coffee shops and restaurants throughout the whole period she was in Sydney. Kate joined a library, the Irish club and a water polo club while staying in Sydney.

  Kate's behaviour during the time spent in Australia reflects a degree of continuity, routine or habit that is consistent with residing here. Kate is considered to be an Australian resident for tax purposes.

- ***Example: Foreign resident***

  Lars lives in Munich and is granted a 12 month working holiday visa. He plans to return to Munich, and resume his career as a carpenter, after his 12 month working holiday in Australia.

  Lars arrives in August 2015 and has five different jobs while he travels around Australia, visiting every capital city during his 12 month stay. He stays in no place for longer than two months.

  Lars only works for seven of the 12 months he is in Australia as he is primarily here to see as much as he can, picking up carpentry work to supplement his funds as he travels.

  Lars is not an Australian resident for tax purposes. Although he is in Australia for more than six months in the year ended 30 June 2016, he is considered a foreign resident for tax purposes as his usual home is outside Australia

In the examples given above, all the backpackers only expect to be in Australia for less than a year, they spend time travelling in Australia and return to their home country. Yet their tax treatment is different. Needless to say, this is very confusing.

Domiciled in Australia and no permanent place of abode outside of Australia

There are three types of domicile – domicile of origin (the domicile of your father), domicile of choice (an act and intention to select a new jurisdiction as your permanent home) and domicile of dependency (normally for those who cannot legally make a choice e.g. children or unsound mind). This limb would usually be irrelevant to backpackers.

Present for 183 days in Australia and no permanent place of abode outside of Australia and no intention to take up residence in Australia

There have been three recent AAT cases[4] regarding backpackers and this limb of the residency test. In all three cases the backpackers were found to be non-residents. In deciding these cases, it was stated that:

> "While the Parliamentary intentions are not always relevant to examine it is worth noting that the various qualifications to the 183 day rule were enacted by Parliament "in order that there may be no danger of treating as residents persons who are purely visitors": Explanatory Notes on Amendments contained in the Income Tax Assessment Bill 1930 to amend the Income Tax Assessment Act 1922-29, page 11. Thus, overseas visitors on holidays or working in Australia who are in Australia for more than 183 days would not be residents during their stay under this test, as they would usually have a usual place of abode elsewhere and would not have an intention of taking up residence in Australia."

Member of certain superannuation schemes

[4] Koustrup and Commissioner of Taxation [2015] AATA 126 (6 March 2015); Jaczenko and Commissioner of Taxation [2015] AATA 125 (6 March 2015); Clemens and Commissioner of Taxation [2015] AATA 124 (6 March 2015)

This limb is in practice irrelevant to backpackers.

Understanding of the residency provisions in the tax law is poor

Australian tax law is confusing, especially for people who are coming from a country with often a different language, different legal system and different culture.

Unfortunately it appears that certain advisers and\or organisations may have added to this confusion by touting that they can obtain tax refunds for backpackers. Such practices may be extensive given the government estimated in the Budget papers that applying the law in the appropriate manner would generate at least $540 million over the forward estimates.

Alternative methods of taxation

There are several alternatives available to the Government.

Firstly, it could clarify the residency status of those on working holiday visas by enshrining in legislation that they are non-resident for tax purposes.

Secondly, it could extend the existing seasonal labour mobility programme. In some ways this is a half-way house between taxing a person as an Australian resident or as a non-resident of Australia. Under the seasonal labour mobility programme, citizens of particular countries can enter Australia for a period of seven months under a particular 416 visa to work in specified industries with approved employers for a period of 14 days to 6 months. Participants in this visa category have a final withholding tax deducted at 15% from their wages and they do not have to lodge an income tax return. Employers are unable to claim deductions for wages if they do not collect or remit the withholding tax. The registration of employers also ensures that labourers are correctly paid and working in appropriate conditions

There are also enforcement issues. If the Government was to proceed with its announcement, or any other alternative taxation arrangement, then enforcement mechanisms would need to be considered.

Greater co-ordination between government agencies required

At present, people leaving Australia can lodge an income tax return form and state that they are resident and have tax refunded to them. The amount of tax refunded is usually relatively small. For example, one backpacker web site states that you can get back around $2,600. These amounts are too small for the ATO to chase if they are subsequently found to be have been inappropriately claimed

To lodge a tax return form and obtain tax refunds or tax-related benefits, a person needs a TFN. Currently the TFN does not have any link to a person's residency status for tax purposes. Nor, under the self-assessment system, does the ATO usually check a person's residency status.

Given that visa holders will need to have a tax file number (TFN) to legally obtain work without having tax withheld at the highest marginal tax rate, it would make sense for the tax file number application form to be completed simultaneously (or as part of) the visa application. Then when the visa is approved, the tax file number could be issued, and a notification could be sent to the ATO that this tax file number is associated with a 417 or 462

visa. Thus, for PAYG withholding purposes and when the income tax return is lodged, the appropriate residency status for tax purposes would be known.

Easy circumvention also needs to prevented

Currently – and despite the best efforts of regulators – it would seem to be possible for foreign persons to enter Australia:

- Without applying for a work visa and then apply for a TFN; or
- With or without a work visa but then apply for an Australian Business Number (ABN) and use it to obtain contracting work; or
- With or without a work visa and work for cash in hand in the black economy.

Tax file numbers (TFNs)

Information provided to the ATO in a tax file number application by a **non-resident** is already compared to information held by the DBP. To ensure that a TFN that is issued is not available for use by people who do not have a valid work visa, consideration should be given to 'tagging' such TFNs so that when they are used for employment purposes they attract the non-resident tax rate. This could be particularly effective when combined with the implementation of the Single Touch Payroll initiative as the input of the TFN by the employer into the system could result in the ATO system advising what tax needs to be withheld. TFNs that are issued to a person who has a working holiday visa could also be "tagged".

The TFN application form for Australian **residents** requires at least one primary document as proof of identity. A primary document is an Australian passport, Australian full birth certificate, Australian citizenship certificate or an overseas passport. The fact that a person is relying on an overseas passport should trigger an enquiry by the ATO to the DBP as to the entry status of the applicant. Once again the TFN could be appropriately tagged to indicate that the person is a non-resident for Australian tax purposes.

CA ANZ recommends that the ATO consider how the TFN can be 'tagged' that the recipient is either a temporary visa holders or a holder of a foreign passport. Such linking would enable the ATO to trigger additional inquiries when key tax events happen, such as starting a job or lodging an income tax return. It could also enable the ATO, through the proposed single touch payroll system, to inform future employers of the TFN holder of the correct withholding rate.

It is noted that should the individual's tax residency change, then the onus would be on the individual to inform the ATO so that the 'non-resident' tag associated with the TFN could be removed.

Australian Business Numbers

An ABN gives the holder a number of rights and obligations under the Australian tax system. Importantly, an ABN can (in practice) be used to represent to an employer (payer) that the worker is self-employed and not subject to PAYG withholding.

There have also been reports indicating that the ABN registration system has been exploited by some visitors, and\or some labour hire organisations (i.e. "no ABN, no work" scenarios).

A simple solution to the problem would be to make 417 and 462 visa holders ineligible for an ABN using data sharing between the DBP and the Australian Business Register.

Labour hire organisations would remain eligible for an ABN, but would be subject to strict licencing regulations requiring that they treat their workers as employees such that the payments which the workers receive would be dealt with under the PAYG withholding regime.

Working in the black economy

This is always a difficult area to police regardless of the residency status of the individual worker.

It is unlikely that any enforcement activity in this space will collect tax from backpackers, as they would have moved on, either in Australia or overseas. Targeting those who employ people in the black economy is normally more effective from an ATO standpoint.

The Tax Administration Act 1953 already provides that failure to withhold tax from an employee payment is a strict liability offence. If the Commissioner chooses not to prosecute, an administrative penalty may be imposed equal to the amount that should have been withheld or paid.

Consideration should be given to increasing the penalties applicable to employers or labour hire companies who knowingly engage in the illegal cash economy. This accords with the harsher penalties applicable under the seasonal labour mobility programme. Employers are not allowed a deduction for salary and wages that have not had the appropriate amount of PAYG withholding tax deducted and remitted.

The United Kingdom has recently released a consultation paper entitled "Tackling the hidden economy: conditionality". This paper proposes that licences for business operations or access to business services would become conditional upon the business being registered for tax. It is postulated that "introducing tax registration as a condition of access to some essential business services or licences would help to normalise tax registration and make it more difficult for businesses to continue trading in the hidden economy." It is aimed at ensuring that the social contract between all members of society in maintained.

In this context, particularly if it considered that utilising the existing seasonal labour mobility programme is appropriate, the tagged TFNs identifying the holder as a non-resident and the registration of an employer under the seasonal labour mobility (SLM) programme could result in the following scenarios:

- Non-resident TFN holder applies for job with **non-registered** SLM employer – tax is deducted at 32.5%
- Non-resident TFN holder applies for a job with a **registered** SLM employer – tax is deducted at say 15%.

If an audit finds that the registered SLM employer or labour hire company has engaged workers in the illegal cash economy or outside the parameters of the new model, the employer or labour high company could be banned from participating in future SLM arrangements for a specified period and closely monitored through the joint efforts of the ATO, the Fair Work Commission and ABP.

To dissuade backpackers from participating in illegal arrangements, greater emphasis should be made of the fact that any injuries would not be covered by the employer's insurance and usually such arrangements result in the payment of under the award wages and the non-payment of superannuation.

International comparison

Below is a brief summary of how various countries tax people who have a working holiday. Our review of indicates that countries which are encouraging working holiday arrangements include Canada, New Zealand and Japan. The main distinguishing feature is the tax rate that is applied.

Technically Australia should be applying the 32.5% non-resident tax rate, but in reality there is a practice of treating backpackers as if they were residents and imposing a nil tax rate on the basis that earnings are below the tax-free threshold applicable to resident taxpayers.

In contrast:

- New Zealand imposes a 10.5% tax rate for the first $14,000 earned plus a 1.39% ACC levy (comprehensive no-fault personal injury cover); and
- Canada imposes a variety of rates, depending upon the province in which the worker provides services. We have selected Ontario for ease of reference and that province applies a 20.05% rate plus super at 4.95%. .

Appendix B contains a schedule of the various tax rates.

Appendix A -Temporary resident

Section 995-1 ITAA 1997 defines temporary resident. It states that:
"you are temporary resident if"

(a) you hold a temporary visa granted under the Migration Act 1958; and
(b) you are not an Australian resident within the meaning of the Social Security Act 1991; and
(c) your spouse is not an Australian resident with the meaning of the Social Security Act 1991.

However, you are not a temporary resident if you have been an Australian resident (within the meaning of this Act), and any of the paragraphs (a), (b) or (c) are not satisfied, at any time after the commencement of this definition [which is 1 July 2006]"

The Migration Act provides that a temporary visa is a visa to travel to and remain in Australia:

- during a specified period
- until a specified event happens or
- while the holder has a specified status.

Broadly an Australian resident for the purposes of the Social Security Act is a person who resides in Australia and is an Australian citizen, the holder of a permanent visa or a protected special category visa holder.

The ATO web site states that:

- If you are an Australian resident for tax purposes and meet the requirements to be a temporary resident, the temporary resident rules mean:
  - Most of your foreign income is not taxed in Australia except income earned from employment performed overseas for short periods while you are a temporary resident. This income is subject to income tax and would still be declared in your return for the year in which you earned it. Where you paid tax in a foreign country, you may be entitled to claim a foreign income tax offset when you lodge your tax return.
  - If a capital gains tax event occurs on or after 12 December 2006, a temporary resident is not liable to capital gains tax (nor is treated as having made a capital loss) unless the asset is 'taxable Australian property'.
  - If a capital gains tax event (such as the sale of an asset) occurred between 1 July 2006 and 12 December 2006, a temporary resident was not liable for capital gains tax (nor was the temporary resident treated as having made a capital loss) unless the asset had a 'necessary connection with Australia'. Special rules apply to capital gains on shares and rights acquired under employee share schemes
  - Interest you pay to foreign residents (for example, foreign lenders) is not subject to withholding tax.
  - Controlled foreign company record keeping obligations are partly removed

- If you are not an Australian resident for tax purposes and you qualify as a temporary resident you will generally not be affected by these rules - unless you acquired shares or rights under an employee share scheme

Appendix B

	Australian Residents	Australian Non-resident	Australian Seasonal Labourer	New Zealand	Canada *
Tax rate	Nil to $18,200 19% excess to $37,000	32.5% to $80,000	15%	10.5% to $14,000 17.5% excess to $48,000	20.05% to $41,536
Tax return needed?	Yes	Yes	No	Yes	Yes
Superannuation required?	Yes	Yes	No	No	Yes for CPP 4.95% with basic exemption of $3,500.
2% Medicare levy	No if $20,896 or less Partial if between $20,896 and $26,121** Yes if over $26,121	No	No	Yes 1.3% ACC levy	No

* Canada has income taxes at both a Federal and Provincial level. These numbers are for the province of Ontario for 2016.

** 10% of excess over $20,896