

WHY TAXBACK.COM HAVE CHALLENGED THE AUSTRALIAN BACKPACKER TAX

WHAT IS THE BACKPACKER TAX?

In January 2017, the Australian government introduced a new tax which directly targeted the thousands of young workers that enter the country each year on working holiday (417 or 462) visas.

In short, the new law removed an entitlement for backpackers to earn any tax-free income in Australia. Instead, working holidaymakers were taxed at 15% from the first dollar earned.

As a result, backpackers were taxed at a higher rate than Australian residents.

Backpackers are a critical source of seasonal labour for many rural industries in Australia and the new tax has made it harder for them to find workers at peak times of need.

Reversing the tax will be a boost to efforts to attract backpackers to perform much-needed picking and harvest work, especially when Australia emerges from COVID-19.

HOW WERE WORKING HOLIDAYMAKERS TAXED BEFORE THE BACKPACKER TAX?

Prior to the introduction of the Backpacker Tax, working holidaymakers were taxed in a similar manner to Australian citizens and were entitled to earn up to \$18,200 tax-free in Australia.

Where a backpacker earned more than \$18,200, a tax rate of 19% applied to their earnings from \$18,201 up to \$37,000. Anything earned above this amount was taxed at 32.5% (on earnings up to \$87,000).

However, in January 2017, this tax-free threshold was removed for backpackers only. Today, unlike Australian citizens, working holidaymakers are taxed at 15% from the first dollar they earn.

WHY HAS TAXBACK.COM CHALLENGED THE BACKPACKER TAX?

Australia has tax treaties in place with many of its major trading partners. Almost all of these tax treaties contain a non-discrimination clause that prohibits unequal tax treatment for the citizens of these countries.

In 2018, Taxback.com challenged the validity of the Backpacker Tax in the Federal Court of Australia, asserting that the tax is discriminatory and in violation of the tax treaty agreements that Australia has signed with eight countries.

The legal action against the Backpacker Tax was initiated on behalf of working holidaymakers from the eight countries in question - the UK, the US, Germany, Finland, Chile, Japan, Norway and Turkey.

WHAT HAS HAPPENED TO DATE?

In October 2019, the Australian Federal Court in Brisbane ruled that the Backpacker Tax was invalid.

The Federal Court outlined that the tax could not be applied to citizens of the UK, the US, Germany, Finland, Chile, Japan, Norway and Turkey.

The Court found that the tax breached the non-discrimination clauses that are built into the tax treaties, which Australia has signed with each of these eight countries.

However, in August 2020, the Australian Tax Office (ATO) were successful in their appeal of the Court's findings.

The challenge to the Backpacker Tax has now moved to the Australian High Court and a final decision on the matter is anticipated in September.

WHAT WILL HAPPEN NEXT?

Taxback.com are seeking the removal of the Backpacker Tax for citizens of the eight affected countries. Achieving this will ultimately mean that working holidaymakers from these countries will be entitled to a significant Australian tax refund.

HOW WOULD A SUCCESSFUL CHALLENGE AFFECT BACKPACKERS?

Should Taxback.com be successful in our challenge of the Backpacker Tax, this will undoubtedly be positive news for countless backpackers around the world.

It is anticipated that the initial ruling will affect roughly 40 per cent of the backpackers who have visited Australia in recent years.

Tens of thousands of backpackers from eight countries (UK, the US, Germany, Finland, Chile, Japan, Norway and Turkey) who have worked in Australia since 2017 will likely be entitled to significantly larger tax refunds than they would have been under the Backpacker Tax.

Taxback.com will also seek further clarification from the ATO as to whether the ruling will affect the future taxation of backpackers from other countries.

Taxback.com will support backpackers with their tax refund applications. Where working holidaymakers have previously filed a tax return, our team will work to amend their documents and ensure they receive their maximum refund amount. We will also support first-time filers in claiming their Australian tax refund.

Upon a successful ruling in this case, we would encourage all of our partners to reach out to their customer base and share news of the result as they may be entitled to substantial refunds.