

Global Tax Update

AUSTRALIA

2021 budget announcements impacting assignees

The second budget during the COVID pandemic was announced in May. There were a number of measures which impacted on individuals, expatriates and employers of expatriates, some of which are briefly explained below.

Modernisation Of The Individual Tax Residency Rules

In 2019, the Board of Taxation released a report on the reform of the individual tax residency rules with a key recommendation of using 'physical presence' in Australia as the primary measure of residency. In line with this, and other recommendations in the Board of Taxation Report, the Government will replace the individual tax residency rules with a new modernised framework.

The primary test will be a 'bright-line' test where, a person who is physically present in Australia for 183 days or more in an income year, will be an Australian tax resident.

Those individuals who do not meet the primary test will be subject to secondary tests that depend on a combination of physical presence and measurable objective criteria.

The Board of Taxation recommend a day count test together with a new four factor test. The four factors referenced in the Report include:

1. The right to reside in Australia
2. Australian accommodation
3. Australian family
4. Australian economic connections.

It is still unknown how the secondary test will operate, however, it was the Board's recommendation that where two of the above four factors were satisfied, the individual would be a resident under the four factor test.

The change to the rules should make it easier for expatriates and employers to determine whether or not an individual will be considered a resident of Australia for tax purposes, and ensure the correct tax is being remitted to the authorities.

Personal Income Tax

The low and middle income tax offset ('LMITO') has been extended for a further year to the 2021-22 income year. The LMITO provides a reduction in tax of up to \$1,080 for those earning less than \$90,000 and will be received on assessment after individuals lodge their tax return.

Employers should consider the tax offset when performing the year-end gross up salary calculations for expatriates.

Superannuation

The Government is proposing to remove the \$450 per month minimum income threshold which determines whether employees have to be paid the superannuation guarantee by their employer.

This will begin from the first financial year after the proposed legislation receives Royal Assent. The superannuation guarantee refers to the minimum percentage of earnings an employer needs to pay into their employee's superannuation fund.

The superannuation guarantee is currently 9.5%, but will increase on 1 July 2021 to 10%.

Unless there is a Certificate of Coverage in place, or a superannuation exemption is available, a super obligation may arise for even one day of work in Australia. Further, employers should consider the increase in the superannuation rate and whether this will reduce expatriate's gross salary (and come out of the employee's gross remuneration package) or whether this will increase costs for the employer.

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Employee Share Schemes ('ESS')

Currently, under Australia's deferred taxing rules of ESS, an employee can, under certain

circumstances, defer tax until a later taxing point. The deferred taxing point is the earliest of four events, the main of which are:

- Cessation of employment
- In relation to shares - when there is no real risk of forfeiture and no restrictions on disposal
- In relation to options - when the employee exercises the option and there is no real risk of forfeiture and no restrictions on disposal.

'Cessation of employment' has been removed as a taxing point under the deferred taxation rules. However, the change will only apply to ESS interests issued to employees in the income years commencing after the amending legislation is passed.

This is great news for foreign companies where their domestic tax rules allow concessions for retired employees, with the proposed amendment likely to more closely align Australian's tax rules with the expatriate's home country rules. However, the cessation of employment deferred taxing point will still have to be considered for the next 10 years or so under pre-amendment ESS plans.

Although these changes have not yet been legislated, employers should consider how the measures may impact their expatriate programmes in Australia.

Australian Taxation Office Data Matching Programme

The Australian Taxation Office (ATO) has advised they will make use of data-matching programmes from the Department of Home Affairs in respect of passenger movements covering the 2016/17 – 2022/23 financial years.

The objectives of the data-matching programme are to:

- Promote voluntary compliance and increase community confidence in the integrity of the tax and superannuation systems
- Improve knowledge of the overall level of identity and residency compliance risks including registration, lodgement, reporting and payment obligations
- Gain insights from the data to help develop and implement administrative strategies to improve voluntary compliance, which may include educational or compliance activities
- Identify ineligible tax and superannuation claims
- Refine existing risk detection models and treatment systems to identify and educate individuals and businesses who may be failing to meet their registration, lodgement and payment obligations and help them comply

- Identify potentially new or emerging non-compliance and entities controlling or exploiting those methodologies.

It is estimated that records relating to circa 670,000 individuals will be obtained each financial year. The data that is accessed will be electronically matched with certain sections of ATO data holdings to identify taxpayers that can be provided with tailored information to help them meet their tax and superannuation obligations, or to ensure compliance, with taxation and superannuation laws.

Data items include:

- Full name
- Personal identifier
- Date of birth
- Gender
- Arrival date
- Departure date
- Passport information
- Status types (visa status, residency, lawful, Australian citizen).

The increased focus on data matching will enable the ATO to focus more closely on the residency status of individuals, especially during the COVID-19 pandemic period whereby individuals have been limited in their travel and might have been 'forced' to remain in Australia longer than originally anticipated.

These COVID-19 refugees may well have triggered taxation and superannuation obligations that were otherwise unforeseen and certainly unintended.

In addition, overseas employers should also be aware they need to track employees coming to Australia, and potentially take steps to manage unforeseen Australian tax obligations.

Two scenarios that would trigger tax implications for Australian employees and foreign employers of Australians include:

- 1. Employees:** Australians working overseas for extended periods are typically not taxed in Australia on their overseas income. However, if that person frequently returns to Australia, for example because their family has remained here, then Australia may seek to tax all of the overseas income. The ATO will now have ready access to data to determine how frequently the person has been in Australia. Australians working in low or nil tax countries (i.e. UAE, Singapore and Hong Kong) are particularly impacted.
- 2. Employers:** Australians who are usually based overseas for work may decide to return to Australia to ride-out COVID and work in Australia remotely for their overseas employer. Extended periods spent working in Australia could result in the employee being subject to income tax in Australia on the salary, which is paid by their overseas employer. The overseas employer also has employer tax obligations, such as income tax withholding from the salary, superannuation, fringe benefits tax and payroll tax. Further, the employee

may cause the overseas employer to have a taxable presence in Australia, notwithstanding it does not have a registered business in Australia. The actions of the employee may have ramifications for the employer, and we are aware of cases where the employer does not know where its employees are working, so the employer tax obligations and potential penalties for failure to comply are sleeper issues for the employer. However, the ATO will be armed with information, which may surprise some employers.

BDO Comment

Data matching is not a new issue and one well within the capabilities of authorities around the world. Comparison of immigration and tax data for example, can easily reflect any discrepancies and data provided for one part of government could easily be used by another.

Australia is but one country with such ability. For example, Belgium will use information gathered for LIMOSA declarations (containing information for the Belgian social security authorities for social security purposes such as the identification of the worker, the employer or the self-employed worker, as well as on the period of posting/work, the type of the services rendered, the place of work, the weekly working time and the work schedule) to assist in the detection and prevention of tax fraud. By examining the data, the tax authorities can determine whether or not a foreign company or enterprise can be considered to have a permanent establishment or a fixed base as defined under the applicable double taxation treaty (DTT), or a "Belgian establishment" as defined in the Belgian income tax code. Although the mere presence of a Belgian establishment will not automatically give rise to taxation in Belgium (after all, there is no taxable permanent establishment under the

DTT, if there is one), the company or enterprise will have to comply with certain tax obligations.

Employers and employees alike need to be aware that it is certain that other countries will follow in their ability and willingness to match data gathered from a variety of sources.

UK

Social Security/NIC updates

It appears that many European countries are now taking the view that if employees are temporarily performing activities in their country due to the COVID situation, no registration of the foreign employers is required and no AI's need to be requested from the home country. This special agreement ends 30 June 2021 and from 1 July, AI's will be required (or the social security position reviewed) if employees continue to work remotely from their home office in a country other than that where their employer is located.

This is contrary to previously published advice, however, Belgium, Slovakia, Ireland and Germany are following the above so this is worth taking into account.

Additionally, HMRC commented on the fact that the UK-Norway and UK-Swiss bilateral agreements don't have any provisions for multi-state workers. They have advised the following:

Both the social security Conventions the UK has with Switzerland and Norway provide for an exception to the general rules on which legislation is applicable, where this is in the interest of the worker. As it is clearly in the interest of the worker to be subject to only country's scheme at a time, we would encourage any worker who is carrying out an activity as an employed or self-employed person in the UK, and either Switzerland or Norway, to apply for an exception to ensure that they only pay into one countries' scheme at a time.

USA

Impact to individual taxpayers under the American Rescue Plan Act

In March 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARPA). The ARPA provides additional relief to individuals who continue to be impacted by the COVID-19 pandemic, and includes the following provisions related to individual taxpayers:

- Additional economic impact payment and recovery rebate credit
- Partial exclusion of unemployment compensation received in 2020
- Child tax credit expanded for 2021
- Child and dependent care credit enhanced and refundable.

Economic Impact Payment And Recovery Rebate Credit

Under previously enacted legislation, eligible individuals were granted a 2020 recovery rebate credit that was advanced to taxpayers

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based on their 2018 or 2019 income. The actual credit, however, is determined based on 2020 income. Two rounds of economic impact payments have already been disbursed to individual taxpayers.

The ARPA grants eligible individuals a third refundable tax credit of \$1,400 for single filers and \$2,800 for joint filers, plus \$1,400 for each dependent of the taxpayer. The ARPA credit is for the 2021 tax year; however, the rebate amount is advanced based on 2019 income, or 2020 income, if the 2020 tax return has already been filed. The credit begins to phase out when the single filer's adjusted gross income (AGI) exceeds \$75,000, or when the joint filers AGI exceeds \$150,000. The credit completely phases out when a single filer's AGI exceeds \$80,000, and when a joint filer's AGI exceeds \$160,000.

An eligible individual for the third economic impact payment does not include a non-resident alien or an individual who may be claimed as a dependent on another taxpayer's return.

Unemployment Income

For the 2020 tax year, a taxpayer may exclude up to \$10,200 of unemployment compensation from gross income if the taxpayer's modified adjusted gross income (MAGI) is less than \$150,000. The income limit applies to all filing types and there is no phase out. For joint filers, the income exclusion applies separately

to each filer. Taxpayers filing a Form 1040-NR are not allowed to exclude unemployment compensation for their spouse. This exclusion applies only to the taxpayer's Federal income tax filing. State taxation of unemployment compensation varies State by State and should be reviewed for each applicable State.

Note: Since the ARPA was signed into law, some taxpayers may have already filed their 2020 Federal income tax return and included the unemployment compensation that was paid to them during 2020. The Internal Revenue Service (IRS) has advised taxpayers who have already filed their 2020 return to not amend their return. The IRS will issue additional guidance regarding this issue. For individuals who haven't filed yet, the IRS is providing a worksheet for paper filers and is working with the software industry to update current tax software to account for this change.

Child Tax Credit

Under the ARPA, the child tax credit amounts and eligibility requirements for the 2021 tax year have been expanded. The credit is increased from \$2,000 to \$3,000 per qualifying child (\$3,600 for children under six years of age). The definition of a qualifying child has been expanded to include a dependent child who has not reached age 18 by the end of 2021. For a taxpayer who has a principal place of abode in the US for more than one-half of the

tax year, or for a taxpayer who is a bona fide resident of Puerto Rico for the tax year, the credit is fully refundable.

The additional \$1,000 credit amount per qualifying child (\$1,600 per qualifying child under six years of age) begins to phase out when a single filer's MAGI exceeds \$75,000 (\$150,000 for joint filers).

After application of the phase out rules for the temporarily increased credit amount, the remaining \$2,000 of credit is subject to the phase out rules under existing law (\$200,000 for single filers and \$400,000 for joint filers).

Child And Dependent Care Credit

The child and dependent care credit has also been expanded for the 2021 tax year. For taxpayers with one qualifying individual, the maximum credit is increased from \$1,050 to \$4,000. Taxpayers with two or more qualifying individuals have a maximum credit of \$8,000 (increased from \$2,100).

The credit begins to phase out when the taxpayer's AGI exceeds \$125,000 and the credit is refundable for taxpayers who have a principal place of abode in the US for more than one-half of the tax year.

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