

International Assignment Services

Taxation of International Assignees Country – Australia

*Human
Resource Services*

*International
Assignment
Taxation Folio*



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Introduction – International assignees working in Australia

Australia's taxation laws are complex. Expatriates and business migrants alike need to be aware of the specific concessions and pitfalls for those whose employment arrangements and financial interests bring them to Australia's shores.

This folio is designed to help those individuals understand and comply with their tax obligations before they arrive in Australia, as well as afterwards. In addition, the folio provides an insight into the structuring of remuneration packages in respect of various tax concessions available where individuals are required to work away from their home country.

The folio is not intended to be a comprehensive handbook dealing with all the potential problems that an individual might face. Rather, it is a guide to the tax system designed to provide readers with an overview of the areas where problems may arise. Accordingly, readers should seek professional advice, particularly where unusual or complex situations are involved, before any action is undertaken.

Specific details of tax rates have been included in this folio as Appendix A.

The theme running through this publication is the importance of planning one's tax affairs before, during and at the end of the work assignment in Australia. At PricewaterhouseCoopers, we specialise in tax advice for business and individual clients. As a member of one of the world's largest accounting firms with offices in over 100 countries, we know the tax issues facing our international clients. Our personal tax specialists will be happy to give you a 'guided tour' through the range of services we provide.

Additional information can be obtained from any PricewaterhouseCoopers office or from your local PricewaterhouseCoopers Tax Partner. Please see Appendix E for further information.

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This document was not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

Menu

Step 1 – Understanding basic principles

The scope of taxation in Australia

1. Australia has both Federal and State Parliaments imposing taxes of various kinds. Federal revenues are raised largely through income tax, fringe benefits tax, customs and excise duties, and goods and services tax. Although the Federal Government imposes the goods and services tax of 10%, the revenue goes to the States. The States also obtain revenue from payroll tax, land tax, stamp duty on various documents and transactions, motor vehicle taxes and gambling taxes. Currently, there are no death or gift duties in Australia. The States do not impose a separate income tax.
2. Subject to certain exemptions, income tax is imposed on all residents of Australia whether they are companies or individuals, and the tax applies to worldwide income. Income tax is also imposed on Australian sourced income of nonresidents, although the liability may be reduced by the provisions of double taxation treaties entered into between Australia and various other countries. Former residents should be aware that Australian tax may still apply to a nonresident in respect of certain benefits from employee share plans or upon termination of employment where share plan benefits or termination payments are in respect of Australian employment.
3. A former resident might also be subject to capital gains tax (CGT) on any unrealised gains on CGT assets which are **not** “Taxable Australian Property”. Unless they choose to defer CGT until actual disposal of these assets, the individual is taken to have disposed of such assets for market value at the time they become a nonresident. This choice must be made at the time of lodging their Australian tax return for the year the individual ceases to be a resident. Note there are CGT articles dealing with the “choice rule” in Double Tax Agreements with Australia for the UK, USA and France.

The tax year

4. The Australian income year for tax purposes consists of the 12-month period ending 30 June.

Methods of calculating tax

5. An Australian resident's taxable income is computed as follows:

Gross income from all sources (but excluding any exempt income)	X
Add: Net capital gains	Y
Assessable income	X+Y
Less: Allowable deductions	Z
Taxable income	X+Y-Z

6. An individual is required to lodge an annual income tax return in Australia disclosing taxable income.
7. Tax payable on taxable income is calculated using a graduated rate scale (for individuals) or a specified single tax rate (for companies and certain other taxpayers). Details of these scales and tax rates are given in

Appendix A. Any tax offsets, rebates or foreign tax credits to which the taxpayer is entitled are then deducted from the tax otherwise payable.

Gross income

8. Gross income includes income from personal services (employment or business), bonuses, interest, dividends, rent, royalties, trust distributions, various other receipts, and certain net capital gains.

Exempt income (and non assessable and non exempt income)

9. Exempt income rules interact with other rules so that losses are offset against exempt income and in some very limited cases the exempt income is aggregated with taxable income to determine the rate of tax on that taxable income. The problem with “exempt income” is that it does not equate with “tax-free” income. The rules on non-assessable and non-exempt income (which is tax-free) specifically do not interact with the loss offset rules. Exempt income that is not subject to Australian tax includes:
 - Certain salary and wages directly attributable to a limited class of activities (usually government aid programs and defence force personnel serving overseas) which were earned overseas that are subject to tax in the country of derivation (refer to paragraph 2.2);
 - Non-cash fringe benefits provided by an employer to an employee (such as use of a car, accommodation, low interest loans, etc.). These benefits are generally exempt from income tax in the employee's hands, but the value of the benefit is taxed to the employer under the Fringe Benefits Tax (FBT) system (refer to paragraph 2.8);
 - Certain government pensions, scholarships and bursaries.

Net capital gains

10. Capital gains that have been derived on the disposal by sale, or otherwise, of CGT assets acquired after 19 September 1985 are generally included in assessable income (refer to paragraphs 2.33 to 2.39). Where an asset is held for at least 12 months only 50% of the net capital gain is assessable (refer to paragraph 2.35).

Allowable deductions

11. Allowable deductions include expenditure incurred in the production of assessable income or in carrying on a business for the purpose of producing assessable income (not being of a private, capital or domestic nature), depreciation, various special allowances, and carry forward losses. Personal home loan interest is not an allowable deduction.
12. Entitlement to tax deductions will usually depend on compliance with evidentiary rules as well as the technical provisions of the tax law.

Rebates of tax or tax offsets

13. The amount of income tax payable may be reduced by certain rebates or tax offsets available to resident individual taxpayers providing certain conditions are met. Rebates and tax offsets include:
 - Dependent spouse rebate (available in only very limited circumstances);
 - Spouse (without dependent child or student), child-housekeeper, or housekeeper rebate;
 - Superannuation contribution, annuity and pension rebates;
 - Private health insurance tax offset;
 - Medical expenses rebate;

- Education tax offset;
- Low income earner tax offset.

Family Tax Benefit (FTB)

14. FTB is a payment provided to families by the Family Assistance Office to help raise dependent children. FTB has 2 parts, Part A and Part B and from 1 July 2009 can only be claimed as a direct fortnightly payment through the Family Assistance Office (FAO). For prior years FTB could be claimed through the tax return. FTB can only be claimed by persons who are considered resident of Australia for social security purposes and is subject to various income tests. Temporary residents of Australia on 457 visas are not able to claim FTB but may claim spouse rebates. Access to FTB and related benefits are restricted such that only those persons (or couples) with an Adjusted Taxable Income of not more than A\$150,000 may qualify.

Foreign income tax offsets

15. Except for certain salary and wage income earned overseas, income and capital gains derived by a resident taxpayer from sources outside Australia are subject to Australian tax. From 1 July 2008, a new foreign income tax offset system applies to allow offsets for foreign taxes paid by a taxpayer on an amount included in assessable income for that year. The offset to be allowed for foreign taxes paid is the greater of A\$1,000 and the foreign income tax offset cap. In broad terms, the cap is calculated as the difference between the Australian tax payable on taxable income and the Australian tax payable on taxable income after excluding foreign income (and certain deductions). Any excess foreign taxes are not able to be carried forward. Transitional rules apply to excess foreign tax credits carried forward from the year ended 30 June 2008.

Record keeping

16. Taxpayers are required to self assess taxable income. Although details of the calculation of taxable income are generally not required to be lodged with the taxpayer's return, certain record-keeping requirements are imposed. In general terms, records are required to be maintained for a minimum of five years. Please also refer to comments regarding substantiation in paragraph 2.11.

Husband and wife

17. There is no provision for a joint return to be lodged by a husband and wife, i.e., each spouse is individually assessed. In normal circumstances, income-producing assets held in joint names will be assumed to be held 50/50 and income apportioned accordingly.

Also, the Australian Government has introduced new rules removing differential treatment of same-sex couples and their children from Commonwealth laws. Consequently, in many areas of taxation law, the definition of a spouse now includes both opposite sex de-facto and same sex de-facto couples (from 1 April 09 for FBT purposes, and from 1 July 2009 for income tax and other related purposes).

Resident status

18. For Australian tax purposes, foreign individuals living and working in this country will be categorised as either 'resident' or 'nonresident'. The imposition of tax on an individual will differ in numerous ways depending on whether resident or nonresident status applies. The most fundamental distinction is that a resident will be subject to Australian tax on all worldwide income. A nonresident is taxed in Australia only on income that has a source in Australia and certain employment benefits that are in respect of, or relate to, a prior period of Australian employment.

Tests for determining resident status

19. Leaving aside the possible application of a tax treaty (see below), 'resident' status will apply where the individual:
- Resides in Australia;
 - Is domiciled in Australia (unless the Commissioner of Taxation is satisfied that the permanent place of abode is outside Australia);
 - Has been present in Australia, continuously or intermittently, for at least 183 days in the income year, unless the Commissioner is satisfied that the usual place of abode is outside Australia, and no intention exists to take up residence in Australia; or
 - Is an 'eligible employee' for the purposes of legislation relating to the superannuation entitlements of Federal public servants.

The application of the above tests will depend on the facts of each case.

20. In practice, an individual entering Australia on a permanent residence visa will be treated as resident from the date of arrival. For an individual entering Australia on a temporary residence visa, the position is less clear. The primary consideration in determining resident status in this case will be whether the person can be said to reside in Australia during the income year.
21. According to a ruling issued by the Australian Taxation Office, in determining whether an individual resides in Australia, the Commissioner of Taxation looks at whether an individual's behaviour is consistent with residing in Australia. Broadly, the Commissioner considers that individuals present in Australia for at least six months will exhibit behaviour consistent with residing here, and will be considered residents of Australia for taxation purposes.
22. An individual present in Australia for less than six months may also be a resident of Australia, having regards to their intention and behaviour. This may be relevant for persons entering Australia for an extended employment contract, but who decide to leave after spending only a short time in Australia. Further, an individual entering Australia for less than six months who later extends their stay beyond six months may be regarded as a resident for tax purposes from their arrival date, so long as their behaviour has been consistent with residing here during the entire period.
23. Where further guidance is needed to determine whether an individual exhibits behaviour consistent with residing in Australia, the following factors may be considered:
- Intention or purpose of visit;
 - Family and business/employment ties;
 - Maintenance and location of assets;
 - Social and living arrangements;
 - Period of physical presence in Australia.
24. Even if the Commissioner of Taxation considers a person a resident of Australia for tax purposes, a tie-breaker provision in the relevant double taxation agreement may override that conclusion, in order to treat the assignee as a tax resident of the home country. This will alter the tax consequences arising in Australia.

The impact of tax treaties

25. Australia's tax treaty arrangements with certain other countries contain special rules for determining the jurisdiction to tax specified types of income. Most treaties contain 'tie-breaker' rules which seek to overcome

situations where an individual is treated as resident of both Australia and the other tax treaty country. The determination of resident status under these tie-breaker rules overrides the operation of the general resident status tests referred to earlier.

26. A list of countries with which Australia has signed comprehensive double taxation treaties is set out in Appendix B.

Australian tax implications of resident status

27. For individuals, the tax implications of resident status can be summarised as follows:
- Residents are subject to tax on worldwide income and taxable capital gains (although a foreign income tax offset is generally available to take account of tax paid on taxable income and gains from foreign sources);
 - Tax payable by residents is calculated by reference to a more concessionary tax rate scale than that applicable to nonresidents. The relevant tax scales are set out in Appendix A;
 - The various tax offsets or rebates mentioned in paragraph 1.13 are available only to residents;
 - Medicare levy is payable only by residents. The levy is 1.5% of taxable income;
 - Further, resident individuals who are high-income earners (i.e., married with adjusted taxable income over A\$146,000 or single with adjusted taxable income over A\$73,000 for the tax year ended 30 June 2010) who do **not** have private patient hospital insurance in a registered Australian fund are required to contribute a further levy of 1% of taxable income (in addition to the 1.5% levy). An exemption from the Medicare levy is available to expatriates meeting certain requirements (refer to paragraph 2.41 - 2.42 for further information);
 - Residents may be subject to an accruals taxation system in respect of investments in certain foreign trusts, controlled offshore companies (refer to paragraphs 8.5 - 8.7) and interests in certain foreign investment funds and foreign life assurance policies (refer to paragraphs 8.8 - 8.11).
28. The following chapters dealing with the taxation of a resident's employment and investment income will further illustrate some of the tax implications of resident status under Australian tax law.

Australian tax implications of nonresident status

29. The tax implications of an individual being regarded as a nonresident for Australian tax purposes are summarised in Step 7.

Temporary residents

30. From 1 July 2006 an exemption applies for temporary residents in respect of all personal income (ordinary and statutory) which is sourced outside of Australia. However, all employment income worldwide to the extent it relates to the period of the visa will be assessable income. Temporary residents may disregard all CGT events in respect of CGT assets which are not "Taxable Australian Property". In addition the accruals taxation rules under the Foreign Investment Fund rules, Controlled Foreign Corporations rules and the Transferor Trusts measures do not apply.
31. In general, a temporary resident is a person who holds a temporary visa and does not have an Australian spouse (married or de facto). An Australian spouse is a person who is either an Australian citizen or a permanent resident. Under new rules from 1 July 2009, "spouse" includes both "opposite-sex couples" and "same-sex couples". A temporary resident includes New Zealand citizens who are a Special Category Visa (SCV) Holder. Note that New Zealand citizens who are Protected SCV Holders do not qualify as temporary residents. All New Zealand citizens should seek advice to determine which category they are in.

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32. A person can be a temporary resident indefinitely and will not cease to be a temporary resident until the date of grant of permanent residency. Upon ceasing to be a temporary resident (i.e. becoming a permanent resident) all CGT assets which are not Taxable Australian Property are deemed acquired at their market value. When a temporary resident departs Australia, the CGT deemed disposal rule does not apply.
 33. The CGT “five-in-ten” year rule is abolished from 6 April 2006 although persons eligible for this rule and resident of Australia on that date may continue to apply this rule. The rule does not apply beyond 5 April 2011
 34. It should be noted that contributions by employers to foreign superannuation funds (i.e. pension funds) are ordinarily subject to FBT (see 2.8) and are a non-deductible expense. Where the employee is a Temporary Resident, a specific exemption from FBT applies to foreign pension contributions. Foreign nationals, desirous of supplementing their foreign pension entitlements should seek advice on “salary sacrificing” remuneration into a foreign pension fund (see paragraph 3.39)

Taxes arising from death

35. Australia abolished both Estate Duty and Gift Duty in 1979. For Capital Gains Tax purposes, death is (with one exception) not a “CGT event” and any CGT assets passing to a beneficiary are deemed acquired on date of death for the deceased person’s cost base. Special rules apply where the CGT asset was acquired by the deceased person prior to introduction of CGT on 19 September 1985 and where a CGT asset (which is not an interest in Australian real property) is acquired by an Australian resident from a foreign estate trust. In both cases, the CGT asset is deemed acquired at market value on the deceased person’s date of death. Where a CGT asset (which is not Australian real property) is inherited by a non-resident beneficiary, CGT will apply as at date of death (this is the exception above) and the gain or loss will be reported in the deceased person’s final tax return.
36. Inheritances can often involve the transfer of superannuation entitlements to beneficiaries either directly or indirectly (through an estate distribution) .Where the entitlements are from a “complying Australian superannuation fund, no tax is payable provided the recipient was “dependant” at the date of death of the superannuant. A rate of tax of 16.5% applies to non-dependant recipients and can be 31.5% from certain Government funds. Where the entitlements are from a non-resident pension fund, the rate of tax payable by a resident recipient can be as high as 46.5% and because of the nature of foreign pension funds and their treatment under Australian tax rules, there may be exposure to tax on the entire amount. Advice should always be sought where foreign superannuation (pension) entitlements may pass to an Australian resident individual.
37. Trusts created on death present their own special taxation issues, particularly in cross-border situations for persons who either reside in, or have assets in Countries which have Death Duties. Advice should be sought before coming to Australia in respect of Wills, inheritances and the appointment of executors PRIOR to arrival. Contact points are:

Rohan Geddes, Partner (Tel: [61] (2) 8266 7261, Email: rohan.geddes@au.pwc.com)

Tony Halcrow, Director (Tel: [61] (2) 8266 7279, Email: anthony.halcrow@au.pwc.com)

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38. Estate planning is becoming more important for Australians with foreign assets, or who may inherit such assets from overseas estates. Pensions are problematic and proper advice should be sought from specialist estate planning partners and directors. PwC does have a multi-disciplinary practice and incorporates a Law Firm specializing in cross-border estate matters.

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Menu

Step 2 – Understanding the Australian tax system

Taxation of employment income

39. A resident individual's worldwide employment income will generally be subject to Australian tax, regardless of whether or not the income is remitted to Australia.
40. Prior to 1 July 2009, it was possible for a resident to be exempt from Australian tax on foreign employment income where the individual was engaged in continuous foreign service outside Australia for a period exceeding 90 days. However, foreign employment income was not exempt in Australia if the earnings were exempt in the foreign country only because of:
- A Double Tax Agreement (DTA) or law giving effect to a DTA;
 - The foreign country not taxing employment or personal services income (e.g. Saudi Arabia); or
 - A law or international agreement dealing with privileges and immunities of diplomats, consuls or people connected with international organisations.

Special rules applied to determine the period of foreign service (i.e., to take account of such things as home visits and personal travel whilst abroad). If an individual derived both exempt employment income and taxable income, tax on taxable income was calculated by applying a notional average rate of tax payable on the sum of exempt and taxable income.

From 1 July 2009, the Government introduced new legislation limiting the availability of the above exemption. Foreign earnings derived on or after 1 July 2009 from foreign service performed on or after 1 July 2009, are no longer exempt except where these earnings are directly attributable to a specific class of activities and which satisfy the other existing conditions in s23AG of the ITAA 1936 outlined above. These activities are generally Government supported activities. Note that deferred bonus amounts paid on or after 1 July 2009 that relate to qualifying foreign service to 30 June 2009 may still be exempt from tax under this rule. Advice should be sought on payment of deferred bonus amounts where this exemption could potentially apply.

41. Employment income is taxable on derivation. Generally salary and wages are taxable on a cash basis (i.e., in the year in which it is received by the employee). However, special care is required in structuring deferred compensation plans to ensure that the same amount is not subject to tax in more than one jurisdiction and if so is not taxable at different points of time.
42. Employment income subject to tax includes base salary, wages, allowances (other than living-away-from-home allowances), commissions, director's fees and other cash remuneration such as bonuses and profit sharing payments. Stock option plans are discussed at paragraph 3.38.
43. A living-away-from-home allowance which meets certain criteria, paid by an employer to an employee to compensate the employee for the additional costs of living away from home, is generally treated as a fringe benefit and not taxable in the employee's hands. Instead, the Fringe Benefits Tax rules will apply (refer to paragraph 2.8).

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44. An exact reimbursement of expenses (i.e. on an acquaintance basis) by an employer is not an allowance and is not assessable. A reimbursement of this type will also be disclosed under the Fringe Benefits Tax rules (refer to paragraph 2.8).

Services performed in and out of Australia

45. Where an individual first arrives in Australia part way through an income year, employment income attributable to services performed after arrival in Australia will be liable to tax in Australia. In these circumstances, the individual may be required to lodge a return of income with both the Australian revenue authorities and the revenue authorities in the home country, depending on the home country's tax laws and the applicability or otherwise of a double taxation agreement.

Fringe benefits

46. Fringe benefits are not taxable in the employee's hands. Instead, a separate tax collection procedure applies to fringe benefits, with the tax known as Fringe Benefits Tax (or FBT) levied on the employer. FBT is payable with respect to benefits paid by both the Australian and overseas company relating to the Australian assignment. However, so as not to discourage the movement of individuals posted to work in Australia, there are numerous FBT exemptions and concessions for benefits which relate to employment re-locations. These exemptions are extremely important in planning your move to Australia and are discussed in Step 3.

Tax deductions for employees

47. An employee is entitled to claim tax deductions from employment income for most expenses incurred in deriving that income. Common deductions would include such items as membership fees of a professional or trade union body, Australian charitable donations, subscriptions for technical or work-related publications, on-the-job travel expenses (excluding home to work travel), and, in some cases, self-education expenses. Deductions are also available for depreciation of equipment used in employment activities (e.g., a computer). An outright deduction is available for equipment that costs up to A\$300.
48. Employees are not entitled to tax deductions for most types of entertainment expenditure, even where the employee is provided with an entertainment allowance. Other expenses for which an employee is **not** eligible for a tax deduction include:
- Travel costs of an accompanying spouse or family member whilst on a business trip (subject to very limited exceptions);
 - Club subscriptions;
 - Car expenses incurred by an employee relating to a vehicle supplied by the employer for the employee's private use; and
 - Personal superannuation contributions (but may be subject to a tax offset rebate in very limited circumstances).

Substantiation rules

49. Eligibility for tax deductions will, in most cases, depend on the employee's compliance with the 'substantiation rules'. Broadly, these rules require that written evidence of expenditure is maintained by the employee to verify the entitlement to a tax deduction. Special substantiation rules apply to expenses associated with the use of an employee's own car for work purposes, and also apply to expenses incurred whilst travelling on business overseas or travelling within Australia for more than five nights in a row. A detailed outline of the substantiation rules is not provided in this folio. However, our PricewaterhouseCoopers personal tax specialists are able to provide information on this topic, including details of the type of information which should appear on receipts, etc., in order to satisfy the tax authorities.

Payment of tax on employment income

50. A 'Pay-As-You-Go' (PAYG) system operates to collect tax on employment income. Under the PAYG regime, tax is deducted by the employer from the employee's remuneration and the tax remitted to the Australian Taxation Office (ATO). The rate at which PAYG tax is withheld by the employer will depend on whether the employee has complied with various procedural requirements. In particular, an employee is required to quote a tax file number to the employer in order to avoid the withholding of tax at the highest personal tax rate. Details on the tax file number system are given in Step 4.
51. As noted above, Fringe Benefits Tax is payable by the employer with respect to benefits provided, and these benefits are not assessable to the employee. However, the employee is issued with a PAYG payment summary at year end which discloses salary and wage remuneration, PAYG deductions which have been remitted to the ATO and the value of certain reportable fringe benefits received from the employer. Whilst fringe benefits are not assessable to the employee, they are taken into account in calculating the following:
- Medicare levy surcharge;
 - Deduction or rebates for personal superannuation contributions;
 - Superannuation contributions; and
 - Higher education loan programme (HELP) repayments.
52. While the PAYG system is easily applied where the employee is paid from an Australian payroll, there are practical difficulties for both the Commissioner of Taxation and the employer where the employee remains on an overseas payroll. In practice, where there is an agreement by the nonresident employer to meet the tax liability of the employee in relation to their salary and wage income (i.e. under a Tax Equalisation agreement) and pay any fringe benefits tax that may result from this agreement, the nonresident employer can lodge an application for PAYG withholding to be varied to a nil amount. If the variation to nil is accepted by the ATO, the nonresident employer is not required to make PAYG withholding in respect of the employee working in Australia. See paragraphs 3.19 to 3.24 generally.

Investment income

53. For many individuals transferred to work in Australia, the most complex tax problems requiring attention will be those relating to investments maintained in both the home country and acquired in Australia. With careful planning and good advice before and during the transfer to Australia, these problems can usually be satisfactorily resolved. Note however from 1 July 2006 most foreigners would fall within the temporary resident rule and the foreign sourced personal income would be free of Australian tax.

Word of warning

54. The Australian tax law contains quite complex rules on the way in which residents are taxed on offshore investments. A summary of the rules relating to such investments is given in Step 8. It is essential that up-to-date and detailed advice on the tax treatment of Australian and offshore investments be obtained before moving to Australia.

Interest

55. Resident individuals are subject to Australian tax on all interest income derived from anywhere in the world. For Australian sourced interest income, the interest is simply included as assessable income in the individual's Australian tax return, with a tax deduction allowed for expenses incurred in deriving the interest (e.g., certain bank charges and Government duties). A withholding tax on domestic interest payments by financial institutions and certain other investment bodies will apply to investors who fail to quote their tax file number to the financial institution in the manner required by the Commissioner of Taxation. Under this

system, tax will be withheld on the interest distribution at the highest personal tax rate (plus Medicare levy). For further details on tax file numbers, see Step 4. Note that all Australian financial institutions are required to report (via the TFN system) interest and dividends and trust distributions, to the ATO for electronic matching against personal tax returns, etc. Any discrepancy will likely result in the issue of audit assessments and interest/penalty charges.

56. Foreign sourced interest income is also included in assessable income, with a credit granted for foreign tax (e.g., interest withholding tax) imposed by the country of source. Note that from 1 July 2008 the rules relating to claiming foreign tax credits have changed and the quarantining rules have been abolished thereafter.

Rental income

57. Rental income commonly arises because an individual rents out their offshore residence whilst working in Australia. Alternatively, other rental property investments may exist in the home country or may be acquired upon arrival in Australia. Once again, the individual's status as a resident will mean that all rental income will be subject to Australian tax.
58. For Australian sourced rental income, no tax is deducted at source, and the gross rental receipts are included as assessable income in the individual's tax return. A deduction for expenses incurred in deriving such income will be allowed (e.g., interest on funds borrowed to acquire the property, depreciation of furnishings, cleaning costs, local council rates and, in some cases, amortisation of the actual rent-producing building itself). Where these deductions exceed the rental income, the resultant loss may be offset against the individual's other income.
59. The Australian tax treatment of foreign sourced rental income has been simplified with the introduction of the new foreign losses rules which apply from 1 July 2008 to abolish the distinction between separate classes of foreign income and the rules around foreign loss quarantining. In effect, an individual combines both foreign and domestic deductions reported on their tax return. Broadly, the rental income will be assessable, and expenses relating to the derivation of that income will be allowed as a tax deduction. Where the combined deductions exceed assessable income, the excess is a tax loss and applied against assessable income of a future income year.
60. An Australian withholding tax liability of 10% may arise in respect of interest paid by an Australian tax resident to a nonresident lender (subject to any DTA exemption – see Australia's DTAs with the United Kingdom and the United States). This includes interest paid to an overseas lending institution for payment of a mortgage on an overseas home. Note that where the individual qualifies for the temporary resident exemption, any foreign sourced rental loss will also **Not** be deductible from 1 July 2006.

Dividends

61. Dividends received by shareholders are treated differently, depending on the source of the dividend. Resident individual shareholders are entitled to an imputed credit by way of a tax offset for 'franked' dividends received from Australian companies. Put simply, a resident company will be able to pay a franked dividend if it has paid Australian tax on the profits from which the dividend arose. Because tax has been paid on the company profits, the imputation credit for individual shareholders is designed to remove an element of double taxation by reducing the shareholder's tax liability by the amount of company tax attributable to the dividend.
62. Conversely, where a resident individual receives an 'unfranked' dividend (i.e., a dividend from company profits which have not borne Australian tax), the dividend is assessable in the shareholder's hands, and no imputation credit will be available.

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63. Generally, foreign sourced dividends received by a resident individual shareholder are included in assessable income. If the expenses associated with earning these dividends (e.g., interest on funds borrowed to acquire the shares, etc.) do not exceed the amount of the dividend, Australian tax will be payable, with a credit allowed for any foreign withholding tax paid on the dividend (refer to paragraph 1.15). From 1 July 2008 where the relevant deductions exceed the foreign sourced dividend income, the resultant loss may be offset against worldwide income.
 64. Foreign dividends paid from income which was previously attributed to a taxpayer under the special rules relating to controlled foreign companies and investments in certain foreign investment funds (refer to paragraphs 8.5 - 8.11) are exempt from tax.
 65. Special rules apply where foreign sourced dividends are received by a resident corporate shareholder. PricewaterhouseCoopers can assist any reader requiring advice on these special rules.

Self-employment income

66. Profits from a trade, business, profession or vocation derived by an individual are assessable. The individual is able to claim a deduction for expenditure incurred in gaining or producing the income or which is necessarily incurred in carrying on a business for the purpose of gaining or producing the income (not being expenditure of a private, capital or domestic nature). Entitlement to a deduction for certain motor vehicle or travel expenses will, however, depend on satisfying the particular record keeping requirements of the substantiation provisions.

Partnerships

67. Australian tax law adopts a 'look through' approach in determining the income that a partner derives from partnership activities. This means that a resident partner will be taxed on the relevant share of partnership income, regardless of whether the partnership operates in Australia or overseas (however, the partner will be allowed a tax credit for foreign tax paid in respect of assessable income which is "double-taxed").
68. A resident partner is treated as owning a proportionate interest in each asset owned in the partnership, irrespective of the location of the asset. On disposal of a partnership asset acquired after 19 September 1985 the resident partner will be treated as having disposed of the proportionate interest in the asset and will be required to pay CGT on any resultant gain (conversely, a capital loss may be available).
69. Where the partnership makes a loss, the resident partner will be entitled to claim a tax deduction for a proportionate share of the loss.

PAYG installments on investment and business income

70. In relation to certain types of investment and business income, tax may be payable during the year in advance of determining a taxpayer's final tax liability, i.e., a means of ensuring that as far as possible, all income is taxed in the year in which it is earned. PAYG installments are paid by those individuals in receipt of 'installment income' (income from which PAYG withholding has not been deducted). PAYG installments are calculated by the Commissioner of Taxation and are usually payable by quarterly installments, but certain specified taxpayers will be eligible to make a single annual PAYG installment of tax. A credit is allowed for PAYG tax when the actual tax liability for the year is ascertained by assessment.

Capital gains

71. Some capital gains are treated as ordinary income and are subject to income tax at normal rates. Other kinds of capital gains or losses are taxable under the capital gains tax (CGT) system.

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72. Under the CGT system, capital gains are recognised on the disposal by sale, gift or otherwise of CGT assets acquired after 19 September 1985. Thus, for CGT assets acquired on or before that date, the CGT system will generally have no application. Disposals by way of gift are taken to be disposed of at fair market value.
73. In calculating capital gains arising on the disposal of a CGT asset the following rules apply:
- Where the asset was acquired prior to 11.45am AEST on 21 September 1999 and disposed of after 11.45am AEST on 21 September 1999 and was held for at least 12 months, the individual has a choice of how to include the gain in assessable income. The individual can elect to either:
 1. Include the full amount of the gain, with allowance for inflation to 30 September 1999, or
 2. Include 50% of the amount of the gain, without allowance for inflation;
 - Where the asset was acquired and sold after 11.45am AEST on 21 September 1999, and was held for less than 12 months, 100% of the gain is included as assessable income;
 - Where the asset was acquired and sold after 11.45am AEST on 21 September 1999, and was held for at least 12 months, 50% of the gain (without allowance for inflation) is included as assessable income;
 - No tax rate averaging relief applies to capital gains derived from 21 September 1999.
74. All kinds of assets fall within the CGT system. For example, plant and equipment used in carrying on a business, foreign currency, land, shares, and personal-use items such as furniture and collectables are regarded as assets, as are rights under an employment contract. Assets held outside of Australia also fall within the CGT rules.
75. Exemptions or concessional tax treatment apply (subject to certain requirements) to gains from the disposal of the taxpayer's main residence, superannuation and life assurance policies, motor vehicles, and low-value personal-use items (but not antiques, jewellery, etc.). Gambling and lottery winnings are also exempt.
76. Capital losses on the disposal of an asset are offset against capital gains arising in the same year or are carried forward indefinitely to be offset against future capital gains. Capital losses are **not** deductible from ordinary income.
77. Special rules apply where a person becomes a resident or ceases to be a resident of Australia. These rules should be carefully considered by individuals transferred to work in Australia because of deeming provisions, which seek to bring within the CGT regime certain assets acquired prior to becoming a tax resident of Australia. For further details refer to paragraphs 3.32 and 6.9.

Medicare levy

78. A health insurance scheme, known as Medicare, currently operates in Australia. The Medicare health scheme generally entitles all eligible persons to:
- Free or subsidised treatment as a public patient in a public hospital;
 - Free or subsidised treatment by a general practitioner (GP), medical specialist or optometrist;
 - Subsidised prescription medicines through the Pharmaceutical Benefits Scheme (PBS).
79. Generally, only citizens and permanent residents of Australia and New Zealand citizens are eligible for Medicare enrolment. However, some temporary residents such as those in Australia on employment-related visas (depending on the class of visa), refugees, participants of the Skilled Transfer Scheme etc., are entitled by way of an eligible visa
80. Further, citizens from countries with which Australia has a reciprocal health agreement may also be eligible. Australia currently has reciprocal health agreements with:

- Finland;
- Italy (limited application);
- Malta (limited application);
- Netherlands (limited application);
- New Zealand (limited application for visitors only);
- The Republic of Ireland (limited application);
- Norway;
- Sweden;
- United Kingdom; and
- Belgium

81. Medicare is funded through the tax system and is imposed as an additional levy on taxable income. The current rate of Medicare levy is set out in Appendix A. Certain low-income earners and Social Security recipients are exempt from the levy. In addition, an exemption from the levy is granted where the taxpayer is deemed not eligible for Medicare benefits. As noted at paragraph 1.27, certain high-income earners subject to Medicare levy may also be required to pay an additional 1% surcharge or more depending on their level of income where no private patient hospital insurance is held with a health fund registered in Australia.

Lifetime Health Cover

82. The "Lifetime Health Cover" scheme was introduced on 1 July 2000. The scheme rewards early and long-term health fund membership. Under the scheme, registered health funds are required to set different premiums based on the age of each particular member when he or she first takes out hospital cover. Individuals taking out hospital cover at an early age will pay a lower premium throughout their lives relative to people who join later in life. An individual must join a registered health fund prior to age 30 to lock in the lowest premium rate. Special rules apply to expatriate individuals in determining their eligibility for concessions and exemptions. Detailed information is available from your PricewaterhouseCoopers representative.

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Step 3 – What to do before you arrive in Australia

General

83. Depending on the particular circumstances of the individual, the tax regime in the home country and the existence or otherwise of a relevant double taxation treaty (see Appendix B), a wide range of taxation matters may need to be considered before an individual moves to Australia. Examples of some of the issues that should be considered are discussed below.

Visa application

84. Current Migration Regulations provide for the sponsorship of expatriate employees on either a temporary or permanent basis to work in a business in Australia. There is also provision for an overseas company to send an employee to Australia to establish an Australian branch or subsidiary of that company.

Temporary residence

85. There are three steps for a business sponsoring staff to Australia for temporary residence. The first step involves the company obtaining business sponsorship status with the Department of Immigration in Australia. Sponsorship status is the accreditation required enabling a business to sponsor foreign staff to work in the business as temporary residents.

Business sponsorships remain valid for 24 months from the date of approval or until the number of positions permitted under the sponsorship are used. Thereafter, both a nomination and visa application must be approved each time an assignee is required.

The nomination application relates to the position to be filled. Details of the nominated position need to be provided to the immigration authorities, including a job description (to confirm that the job is sufficiently senior and/or skilled), salary details (the salary must be above a minimum amount set by government) and the proposed length of the employment of the nominee in Australia. This may be from three months to four years. The final step involves the expatriate lodging an application for a visa.

86. It is possible to stay longer than first planned and those requiring a new visa go through the same process - there is no other way to obtain an "extension". Nominations and visa applications may only be processed if the company's sponsorship status is still valid. If the sponsoring business is not operating in Australia, applications for each step must be lodged at Australian diplomatic missions abroad. Where the business is operating in Australia, all applications are lodged and processed in Australia, even in cases where the applicant is outside Australia.
87. Businesses sponsoring 457 visa holders are subject to monitoring by officials to ensure compliance with undertakings made to government. The checking will include such things as meeting obligations in paying staff. It also can be an opportunity to check employers against compliance with immigration law and with the Australian compulsory superannuation regime. Significant penalties for non-compliance exist.

Permanent residence

88. Companies may also sponsor an expatriate for permanent residence in Australia under the Employer Nomination Scheme. The application is divided into two parts - the employer nomination and the personal visa application.

The nomination

89. The Department of Immigration must be satisfied that the company is operating as a business entity in Australia, is of good corporate standing having a satisfactory staff training record. There must also be a genuine need for a paid employee in the position nominated, and the occupation itself must be listed on the Gazetted occupations list.
90. There is a requirement that unless exceptional circumstances apply, the applicant is under 45 years of age and has vocational English language skills.
91. An additional criterion of the nomination application is that the appointment be for a fixed term of at least three years and that there is nothing expressed in the employment agreement excluding the possibility of renewal beyond three years.

Personal application

92. The second stage of the process relates to the personal permanent residence application. The personal application deals with the individual's qualifications and work experience as it relates to the "skilled" nature of the nominated position, as well as health and character screening.
93. It is also a requirement that the applicant meet any one of the following threshold criteria:
- Earn a base salary of AUD\$165,000 or more (exclusive of superannuation, benefits and bonuses); or
 - Hold a relevant temporary visa, and have worked full-time in the occupation to which the appointment relates in Australia for at least the period of 2 years immediately before making the application; and have worked with the nominating employer for at least 1 year immediately before making the application; or
 - Have their skills assessed by the relevant authorities in Australia and possess at least 3 years relevant work experience immediately before applying.
94. This permanent residence application may be lodged in Australia or at the overseas post where the applicant resides (if the applicant is outside Australia).
95. Unlike the sponsored temporary residence, which requires the visa holder to work only for the sponsor, once the application is approved the permanent visa authorises the holder to remain in Australia indefinitely and unconditionally.

Other visa options

96. Apart from employer-based sponsorships, there are other temporary and permanent residence visa categories, which permit work in Australia. As the legal and policy requirements and procedures for applications regularly change, interested persons should seek advice from visa and immigration specialists before deciding which visa category would suit their circumstances. The right sort of application, which is also well prepared, may make all the difference between approval and rejection by the Department of Immigration and Citizenship or the relevant immigration officials in Australian diplomatic missions abroad.

Structuring the remuneration package

97. Some companies will offer their employees a complete 'expatriate' remuneration package for working in Australia. In addition to regular salary, commissions, bonuses, etc., the employer may compensate the employee with a number of overseas allowances and benefits for the additional costs of living away from the home location. Alternatively, the employer may provide the employee with a gross remuneration package, and the components of the package (up to an agreed amount) are left to the employee's discretion.
98. A decision may also be required as to whether the remuneration be paid in Australian currency or the currency of the home country. This may be important if there are significant fluctuations in exchange rate. It should be noted that where and how the remuneration is paid does not affect the liability to tax for an individual resident of Australia, who is assessable on income from worldwide sources.
99. In any event, it is essential that all relevant taxation issues are considered prior to determination of the remuneration package. In particular, the Australian FBT law contains numerous concessions and exemptions which, if borne in mind at the time of negotiating a remuneration package, may provide the employee with concessionally taxed benefits without increasing overall costs to the employer. Some examples of the components which may make up an expatriate package and an overview of the treatment of each component for Australian tax purposes are set out in Appendix C.
100. Any contract of employment should be reviewed by an Australian taxation adviser prior to finalization. This is important for purposes of identifying possible questions of residency and putting in place appropriate remuneration packages, particularly living-away-from-home benefits.

Tax reimbursement plans

101. A tax reimbursement program is usually provided by employers to their employees to compensate for the increased tax burden which may be incurred on an overseas assignment. The tax reimbursement program may consist of either 'a tax protection plan' or a 'tax equalisation plan'.
102. A tax protection plan guarantees that an employee's total tax liability will not be greater than the tax liability that would have been incurred if the overseas assignment had not been accepted. If the employee's actual tax liability is subsequently less than what would have been the case if the employee had remained in the home country, the **employee** retains the tax 'windfall'.
103. On the other hand, a tax equalisation plan ensures that the employee's tax burden will be the same as if they had remained in the home country. If the tax in the overseas country is greater than that which would have been incurred in the home country (usually referred to as the 'hypothetical tax liability'), the employer reimburses the excess. If the tax in the overseas country is less than the hypothetical tax liability, the **employer** retains the benefit.
104. Both plans require the calculation of the employee's hypothetical home country tax. The hypothetical tax is generally calculated on a base salary and other base remuneration, as if the employee had remained in his or her home country.
105. Some companies will offer their employees tax reimbursements on total income including investment income, while others will only offer reimbursement to the extent that the tax relates to employment income. The liability, therefore, of the employee and the employer will depend upon the particular company's tax reimbursement policy.
106. FBT (refer to paragraph 2.8) will be payable by an employer on the amount of any tax reimbursement arising under a tax protection or tax equalisation plan paid by the employer to an employee on assignment in Australia.

Timing departure and arrival

107. Although it is not always possible to influence the date of departure from the home country and arrival in Australia, the timing of these events may have a bearing on an individual's tax position in both jurisdictions.
108. From Australia's viewpoint, the time of arrival will be relevant to a number of issues, including:
 - Double taxation agreement issues;
 - The rate of tax and the amount of Medicare levy payable. It should be remembered that in calculating the Australian tax payable in the year of arrival, the tax-free threshold available under the tax rates applicable to resident taxpayers (see Appendix A) will be pro-rated according to the period of residency;
 - Liability for tax as a beneficiary of an offshore trust.

Foreign investments

109. As indicated previously, residents of Australia are subject to Australian tax on their worldwide income, less a foreign income tax offset where applicable. It is essential therefore to review personal investments and other related matters prior to becoming a resident of Australia to determine the extent of any exposure to Australian tax. Note however from 1 July 2006 most foreigners would fall within the temporary resident rule and the foreign sourced personal income would be free of Australian tax.

Tax on investments within the family

110. The Australian tax liability will be reduced where investment income can be derived by various members of the family, rather than by a single individual. For example, a bank deposit held solely in the name of a non-working spouse should enable interest income to be taxed at a lower marginal tax rate. Australian tax law does not allow a husband and wife to file a joint income tax return; therefore, income arising from investments (e.g., shares) held in joint names will be divided evenly between the couple. However, it is **not** generally possible to assign income without actually transferring the asset into the spouse's name (capital gains tax consequences may result from such transfers).
111. The tax consequences of the transfer in the employee's home country would need to be considered. Also, special rules apply to the derivation of income by minors (aged 18 years and under); you should consult your PricewaterhouseCoopers advisor before considering investments in your children's name.

Trusts

112. Individuals with existing trust structures in their home country will need to examine closely the impact of Australian tax law on the trust arrangements. Some of the factors to be considered will include:
 - Whether the trust becomes a resident of Australia as a result of the transfer (and whether the cost base of “non-TAP CGT assets is deemed market value on residency, or just the historical cost);
 - The beneficiary's Australian tax liability on income and capital gains arising in the trust;
 - Distribution of income amongst trust beneficiaries and the overall tax exposure;
 - The timing of any decision to transfer trust assets to beneficiaries.

Obtaining Australian tax credits for foreign tax payments

113. Steps may need to be taken to ensure that all foreign tax paid on offshore investment income is identified and taken into account so as to maximize the credit available under Australia's foreign income tax offset procedures. Such steps could involve, for example:

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- Consideration of the timing of receipt of offshore investment income and associated tax payments; and
 - Ensuring that procedures are put in place to verify foreign tax payments.

Capital gains tax planning

114. As mentioned in Step 2, special CGT rules apply where a person becomes a resident of Australia. These rules provide that, where an individual becomes a resident, every CGT asset acquired after 19 September 1985 that was owned by that individual immediately before becoming a resident, other than ‘taxable Australian property’ as it is now termed from 12 December 2006, may be subject to CGT if sold or otherwise disposed of during the period in which the individual is a resident. In these cases the cost of the asset is deemed to be the market value of the asset at the time the individual became a resident. It is therefore advisable to obtain valuations of all such assets as close as possible to the date on which the individual becomes a resident. The cost of the valuation will form part of the cost base of the asset for the purposes of calculating any subsequent CGT liability.
115. Where assets are deemed to be acquired on the date of commencement of residence in Australia and are held for at least 12 months from the commencement of residence, only 50% of the net capital gain will be taxable on sale of the asset.
116. An important point to stress is that CGT is only imposed on CGT assets acquired after 19 September 1985. International assignees who acquired investments in their home country or elsewhere on or before this date will generally not be subject to the CGT regime in respect of those investments, even though the individuals subsequently take up residence in Australia for tax purposes.
117. Where a person ceases to be a resident of Australia, the CGT rules deem the person to have disposed of all CGT assets acquired after 19 September 1985 (other than “taxable Australian property”) at the time they cease to be resident. However, concessional rules which relieve the impact of the deemed disposal rule (refer to paragraphs 6.6 - 6.8) apply to certain CGT assets owned by the person at the time they became an Australian resident, provided their stay in Australia is relatively short. Bearing this in mind, it would also be appropriate to review:
 - The impact of Australia's CGT legislation on home country investments intended to be acquired in the near future; and
 - The timing of proposed disposals of investments in the home country (home country investments acquired after 19 September 1985 and disposed of while resident of Australia will be within the CGT regime).

Income earned before secondment to Australia

Employment income

118. Once an expatriate employee is regarded as a resident of Australia, the receipt of most allowances or bonuses while in Australia may be subject to tax in Australia.
119. Where the payment is referable to services performed outside of Australia before commencement of assignment but after grant of the temporary visa, the amount is subject to Australian tax. Of course where possible, bonus entitlements should be paid prior to arrival in Australia.

Employee stock option plan

120. Employee stock option plans have been used as a tax effective form of remunerating employees. However, the rules regarding the taxation of stock option income are complex, and circumstances need to be examined on a case-by-case basis. It is recommended that you seek specific advice from your PricewaterhouseCoopers

tax specialist before arriving in Australia. This is particularly so where cross-border issues need to be addressed. From 1 July 2009, the Australian Government introduced new rules with significant changes to the taxation of employee share schemes in Australia. The cross border implications of the taxation of employee share schemes under the new rules are based on the concepts of derivation and source. Hence an employee who has acquired shares under an employer share scheme or is contemplating such an offer before arrival to Australia should seek advice.

Foreign superannuation

121. The taxation laws of Australia and the home country should be considered in relation to superannuation benefits that may have accrued in a superannuation fund in the home country. Australia's tax laws in respect of benefits paid from superannuation funds, particularly foreign superannuation funds, are quite complex, and the timing of the payment of benefits (either before or after becoming a resident of Australia) may affect the overall taxation burden.
122. New rules apply from 1 July 2007 onwards and there are some subtle, and significant, differences to the rules which applied up to 30 June 2007.
123. The rules afford tax-free treatment to Australian residents for lump sum payments or transfers of entitlements from a foreign superannuation fund where the payment or transfer occurs within 6 months of becoming an Australian tax resident. Where transferred outside the 6-month rule, an assessable charge arises equivalent to the "earnings" from date of residency to date of payment.
124. The rules allow the taxpayer to make an election in respect of transfers into a complying Australian superannuation fund such that either personal tax or contributions tax applies to the assessable amount. Such transfers then fall within the "capping rules" which mean the untaxed amount is treated as a non-concessional contribution and penalty taxes can apply. This is a very complex issue and persons considering transferring amounts into an Australian fund should always obtain advice before doing so.
125. Further changes affecting entitlements of temporary visa holders in Australian superannuation funds from 1 April 2009 (such that all concessions are withdrawn and a 35% withholding tax applies on withdrawal of the funds consequent upon departure from Australia), mean there is little or no benefits for foreign nationals building up retirement nest-eggs in Australia.
126. Given the caps on contribution limits for Australians from 1 July 2007, and the removal of concessions for foreign nationals, the pendulum has swung back in favour of foreign pension funds. The absence of limits (within reason) and effective tax rates as low as 23% now mean funding of foreign pensions now has a certain attraction to mobile expatriates, albeit home country tax rules do need to be taken into account. For US citizens and Greencard holders, careful analysis of unused tax credits will be an important factor.
127. In light of the complexity of the foreign superannuation rules, please consult your PricewaterhouseCoopers advisor before making any decision in relation to foreign superannuation. When dealing with foreign pension funds, Wills and the naming of beneficiaries, it is of paramount importance to address Wills, appointment of trustees/beneficiaries, and both home/host Country tax rules.

Pre-arrival consultation

128. Where circumstances allow, a pre-arrival consultation should be held with a PricewaterhouseCoopers expatriate tax specialist well in advance of the transfer to Australia. This consultation should ideally form part of a pre-transfer familiarisation trip to Australia. Such trips are a useful means of enabling the individual to attend to the numerous matters relevant to the transfer.

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129. A pre-arrival consultation is not just an information-gathering exercise. It enables both potential tax problems and tax concessions to be identified and acted upon. The consultation also facilitates contact between the Australian and home country tax advisers, as well as with the assignee.

Customs-temporary importations

130. Certain customs duty concessions may apply to goods imported by tourists and temporary residents on arrival in Australia; provided the goods concerned are intended for re-export within the prescribed period, usually 12 months.

Customs-passenger concessions

131. Passengers may bring the following goods to Australia duty and GST free when the goods arrive with the passenger as part of their accompanied baggage on the same boat or aircraft. (The list is not exhaustive so other goods may be brought into the country, provided they are not restricted or prohibited goods such as food, weapons, dangerous goods, animal or plant material, certain medicines, protected wildlife, etc.):
- A\$900 worth of goods (not including tobacco and alcohol products) and A\$450 for passengers under 18 years of age. For example cameras, electronic equipment, perfume concentrate, jewelry, watches, sporting goods, leather goods;
 - 2,250ml alcoholic liquor for passengers aged 18 years and over;
 - Tobacco: 250 cigarettes, or 250 grams of cigars or other tobacco products, for travellers aged 18 years and over;
 - The passenger's personal goods in non commercial quantities such as new clothing, footwear, articles for personal hygiene/grooming.
132. Goods sent separately as unaccompanied baggage, as air or sea cargo or by mail, are not eligible for the above concessions. However, unaccompanied personal and household effects owned and used by the person for at least 12 months may be brought into Australia without the payment of duty and GST under another concession (refer below).
133. Goods purchased overseas or on arrival at an inwards duty free shop in Australia are included when Customs determines a duty free allowance.
134. A husband, wife and child under 18 years of age, travelling together, can pool their duty free concession entitlements.
135. Gifts are counted as part of the \$A900 duty free passenger allowance.
136. If the passenger has anything in excess of their duty free allowance they should declare the goods and provide proof of purchase to Customs for calculation of any duty and tax to be paid. If any of the above concession limits is exceeded, Customs may charge duty and tax on all items of that type not just the excess.

Customs-Unaccompanied Personal Effects

137. There is customs duty and GST free concessions for certain items imported as Unaccompanied Personal Effects (UPEs), i.e. household and personal items provided all of the following requirements are met:
- The person must have recently travelled or intend to travel to Australia; and
 - The goods must be the person's own personal property; and
 - The person must have owned and used the items for 12 months or more.

The owner of the UPEs must complete an Unaccompanied Personal Effects Statement (form B534) to have their goods cleared by Customs. Evidence of the purchase date of the goods may be required (e.g. purchase receipts), particularly if the goods appear new and unused.

Goods that are owned for less than 12 months will generally be subject to duty and GST.

Motor vehicles

138. A tourist may bring a motor vehicle to Australia for up to 12 months without paying duty or GST on it. A security may be required equal to the amount of duty and GST otherwise payable. If the vehicle is not exported within the prescribed period agreed with Customs (usually 12 months), the duty and GST will be called up by Customs. Alternatively, prospective importers may wish to avail themselves of a carnet which permits the international movement of vehicles with minimum customs documentation.
139. Otherwise, no specific concessions are available for temporary residents/tourists in connection with motorised vehicles, (i.e., cars, motor boats, etc.) and the vehicles are subject to customs duty and GST. Motor bikes, however, are typically duty free.
140. A vehicle Import Approval must be obtained prior to the import of **any** vehicle to Australia by any persons wishing to import a vehicle to Australia. Failure to obtain prior approval may mean that the vehicle will not be permitted entry to Australia. To avoid possible detention and storage charges it is essential to obtain the required Import Permit "before" the goods are shipped from overseas (see "Importing vehicles to Australia" at www.dotars.gov.au).
141. The customs value of a vehicle is calculated in Australian dollars and is normally assessed on the purchase price actually paid or payable overseas for the vehicle. However, Customs will require satisfactory evidence of the price of the vehicle and expenses to be deducted. This method will only be used where it can be demonstrated that the vehicle was purchased with an intention to import the vehicle into Australia.
142. Otherwise, Customs may decide to calculate a customs value using an alternative method of valuation. An alternative method can include an independent valuation of the vehicle which may lead to a different amount of customs duty and GST being payable than would have been the case using the previously mentioned value method. Duty will be assessed on the customs value determined. GST, however, is assessed on the combined sum of the customs value, overseas freight and insurance costs, and the duty payable amount.
143. For motor vehicles in general, the current approximate rates of customs duty and GST applicable are:
 - Used motor vehicles of an age of 30 years or more may be imported into Australia free of customs duty but will attract a rate of 10% GST;
 - Used motor vehicles of less than 30 years of age will attract a general customs duty rate of 5% from 1 January 2010 (previously 10%) and a GST rate of 10%;
 - Luxury car tax (LCT) is also payable on all new cars and on cars under two years old where the value of the car exceeds the threshold amount of A\$57,180 (for the 2009-10 financial year). LCT is calculated at the rate of 33% of the value of the vehicle that exceeds the threshold amount (subject to some exceptions e.g. fuel efficient cars with a LCT value not exceeding \$75,000 are exempt from LCT);
 - Used off-road vehicles attract a general customs duty rate of 5%. The 10% GST rate applies.
144. The above rates are subject to change at any time and should be checked prior to any decision to import. Any motor vehicle imported into Australia must meet certain Australian design specifications which can be obtained through the Vehicle Safety Standards Branch of the Department of Transport and Regional Services. Any person wishing to import a motor vehicle will also be responsible for registration with the appropriate state government department. Quarantine clearance is also required on arrival of the vehicle in

Australia and may involve steam cleaning, particularly if soil, mud or plant material is found anywhere within or outside the vehicle.

Other matters

145. There are numerous non-tax matters which should be attended to prior to moving to Australia, including:
- Insurance cover (both personal and property);
 - Change of address notifications;
 - Grant of power of attorney where appropriate;
 - Shipment of personal and household goods to coincide as closely as possible with personal arrival in Australia;
 - Motor vehicle licence requirements;
 - Notification to banking and financial institutions, and arrangements for the continuation of payments, etc.;
 - Notification to electoral authorities to ensure compliance with voting procedures whilst absent from the home country;
 - Children's educational matters;
 - Rental of home country residence;
 - Storage of assets not required in Australia;
 - Booking of initial accommodation requirements in Australia;
 - Finalisation of outstanding accounts, debts, etc.;
 - Travel itinerary;
 - Preparation of wills and review of existing Wills to address foreign assets etc, and appointment of executors and beneficiaries;
 - Care and transport of domestic pets, and Australian quarantining rules.

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Step 4 – What to do when you arrive in Australia

General

146. If it has not been possible to arrange a pre-arrival consultation with a personal tax specialist, a meeting should be arranged at the earliest possible date after arrival. Any outstanding matters mentioned in Step 3 should be addressed at this consultation meeting.
147. The following matters also become relevant upon moving to Australia.

Tax file number application

148. Each taxpayer is given a unique identification number (tax file number) by the Australian revenue authorities. This tax file number is used only in connection with an individual's income tax affairs; for example, it is not linked with the individual's Medicare number (refer to paragraph 4.7).
149. Individuals are not obliged to quote their tax file number to any other person. However, subject to certain limited exceptions, failure to quote a tax file number on tax file number declaration (refer to paragraph 4.6) will result in tax being withheld from payments of salary at the highest marginal rate of tax plus Medicare levy. Similarly, failure to quote a tax file number in connection with bank accounts and other investments will result in tax being deducted by the payer at the highest marginal rate. In both cases, tax withheld will be credited, and any excess refunded, upon assessment. An application for a tax file number should, therefore, be made upon arriving in Australia. Applications can be made through branches of the Australian Taxation Office or online via the Australian Taxation Office website. At least two original documents providing proof of identity (e.g., passport, birth certificate) will be required at the time of the application.

Employment declaration form

150. A 'tax file number declaration form' is completed by an employee and given to an employer together with an 'employment declaration form' upon commencement of employment. The combined forms allow a resident employee to claim a reduction in the rate of tax withheld under the PAYG arrangements (refer to paragraph 2.12) to reflect entitlement to the tax-free threshold (refer to Appendix A for current threshold amount). Please note it is an offence to have more than one employment declaration in force at any one point in time.
151. However, as indicated above, whilst quotation of an individual's tax file number on an employment declaration is not mandatory, failure to do so will mean that the employer is required to deduct tax at the highest marginal tax rate plus Medicare levy. Notwithstanding the excess tax is refunded on assessment, it is common for employees in Australia to quote their tax file number to their employer. Note that there are some serious obstacles to obtaining a TFN after departure from Australia and identification documents usually require certification (for a fee) from an Australian Consulate.

Registration for Medicare benefits

152. On arrival in Australia all persons who are eligible for Medicare benefits (refer to paragraph 2.40) should register promptly. Medicare cards are issued following registration.
153. Under the Medicare system medical treatment may be obtained free of charge from doctors who directly bill Medicare for their services (commonly referred to as 'bulk billing' in Australia). Alternatively, where the

doctor issues an account directly to the patient, a refund of the major portion of the charge can be claimed from Medicare. Refunds are based on a Medicare Benefits Scheduled fee that has been allocated by the Federal Government and are generally payable at the rate of 75% of the Scheduled fee for in-patient hospital services and 85% for out-of hospital services.

154. Medicare does not cover ancillary services such as dental, optical, ambulance transport, physiotherapy, etc. Private health insurance funds offer varying degrees of cover in this regard.
155. Australia has Reciprocal Health Care Agreements with certain countries which allow for health care of immediate medical necessity under each country's public health system. The terms of each Agreement vary in the limitations on treatment as well as the length of time it is available. Eligibility is determined by passport (refer to paragraph 2.42 for countries with which Australia has negotiated Reciprocal Health Care Agreements).

Continued liability to meet obligations under tax law of home country

156. Whilst in Australia, an individual may have a continuing obligation to comply with the requirements of the tax laws of their former country of residence (generally referred to as the home country). The person may be taxable in the home country on employment and/or investment income, depending on residency status for tax purposes, the basis on which an individual is taxed in the home country (e.g., residency, citizenship or source of income) and the terms of any applicable double taxation treaty.
157. Consequently, it is important that whilst in Australia an expatriate employee continues to monitor and comply with obligations arising under the tax laws of the home country. Assistance in meeting these obligations can be provided by a PricewaterhouseCoopers personal tax specialist through access to our international network of offices.

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Step 5 – What to do at the end of the year

Tax return

158. Individuals whose taxable income exceeds a published threshold (refer to threshold at Appendix A) are required to complete and lodge a tax return form with the Australian Taxation Office (ATO) which shows taxable income for the year of income. This threshold does not apply to nonresidents, i.e., they do not receive any tax-free threshold. Tax returns must be lodged within a prescribed period (currently four months from the end of the financial year i.e., 31 October) if lodged by the individual. If lodged through a registered tax agent, such as PricewaterhouseCoopers, the lodgement date is extended beyond the prescribed date. Penalties may be imposed for late lodgement of the tax return.
159. Individual taxpayers may apply to the ATO for a Private Ruling on any contentious issue relating to their own particular tax affairs at any time. Private Rulings are binding. A taxpayer can object to an unfavorable Private Ruling as for normal assessments (refer to paragraph 5.4). Penalties can apply for not complying with a Private Ruling.

Notices of assessment

160. The final tax liability for an individual taxpayer is advised by the ATO by the issue of a notice of assessment. A notice of assessment can issue at any time after lodgement of the return but an average time is three to four weeks.
161. A taxpayer may lodge an objection with the Commissioner of Taxation against a tax assessment within two years of the date of receipt of the assessment notice. If the objection is disallowed, an appeal to an independent tribunal or court may be lodged against the Commissioner's decision. A four year period applies to an individual carrying on a business and to a partner in a partnership carrying on a business. For years of income prior to 30 June 2005, a four year amendment period applies.

Payment of tax due

162. Where there is a final tax liability due to be paid on the notice of assessment (after taking into account tax credits), it is usually due and payable no less than 21 days after the due date for lodgement of the tax return. If tax credits (refer to paragraphs 2.12 and 2.32) exceed the tax liability and a refund is due, that refund will accompany the notice of assessment. The lodgement date for tax returns also sets a statutory due date for payment of the annual tax liability (and this due date is fixed regardless of when the taxpayer lodges a tax return). Where either the return is lodged late or any taxes due remain unpaid after the due date, a General Interest Charge (GIC) of approximately 12% pa is payable thereafter on a compounding basis. The GIC is however, tax deductible.
163. Once a PAYG installment rate is issued to the taxpayer by the Commissioner of Taxation, there may be a liability to PAYG installments on a quarterly or, in certain circumstances, an annual basis. A PAYG installment rate will not issue until the first tax return is lodged for the individual.

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Step 6 – What to do when you leave Australia

General

164. It is important not to overlook the taxation matters which need to be attended to prior to an individual leaving Australia upon completion of an expatriate assignment. In the discussion which follows, it is assumed that an individual is no longer a resident upon departing Australia. Nonresidents do need to be aware that apart from an Australian tax liability in respect of income and gains sourced in Australia, there may be a tax liability in respect of employee share plan benefits which are partly in respect of a period of Australian employment, and/or termination payments (including leave payouts) that relate to a period of Australian employment.

Tax return requirements

165. Arrangements need to be made for the lodgment of a tax return for the year in which departure from Australia occurs. In this return, the following information will need to be provided:
- The date on which the individual ceased to be resident;
 - Details of employment and investment income received up to date of departure;
 - Details of Australian sourced income derived following the date of departure (other than dividends or interest subject to withholding tax; refer to paragraph 7.8).
166. In calculating the Australian tax payable in the year of departure, the tax-free threshold available under the tax rates applicable to resident taxpayers (see Appendix A) will be pro-rated according to the period of residency.

Termination benefits and superannuation

167. On termination of your employment, you may be entitled to payment in respect of unused annual leave, long service leave, bona fide redundancy, early retirement, or simply receive a 'golden handshake' payment from your employer. Concessional tax treatment may apply to each of these types of payment, depending on factors such as the age of the recipient and the period over which the entitlement may have accrued.

From 1 July 2007, the termination payment must be taken as a cash lump sum (i.e.: there is no longer the choice to roll it over into superannuation). A transitional measure allows for a rollover in certain circumstances until 30 June 2012. The taxation of termination payments has changed with the abolition of the previous, complex RBL regime and replaced by a cap on the amount of termination payments which can receive concessional treatment of just A\$160,000 for 2010/2011). There are subtle changes also to the rules which allow for exemptions from taxation of certain foreign termination payments. Please contact your PricewaterhouseCoopers advisor for more information.

168. Superannuation benefits accrued from an Australian superannuation fund as a result of personal or employer-sponsored contributions cannot currently be paid out until the taxpayer has reached the preservation age limit. For persons born before 1 July 1960 the preservation age limit is 55 years, and for persons born from 1 July 1964 the age limit is 60 years. The age limit will be phased in gradually for persons born between these two dates. However, from 1 July 2002 temporary residents who permanently depart Australia can access their superannuation after they have departed. The "departing Australia superannuation

payment" is subject to a final withholding tax (generally 35%) which is designed to claw-back the concessional tax treatment applied to superannuation.

169. From 1 July 2007, a capping system applies limiting the level of personal after-tax contributions and employer before-tax contributions that can be made on behalf of the individual in a year. Contributions in excess of those thresholds may result in the individual paying penalty tax on those amounts. Advice should be sought prior to making personal contributions or to increase the amount of employer contributions to ensure these limits are not breached.

Temporary residents superannuation

170. Superannuation entitlements held by temporary visa holders in Australian complying funds may be “cashed out” after departure from Australia, but after 6 months the ATO will require fund providers to pay any unclaimed entitlements to the ATO. The ATO can retain the monies but cannot keep them which means a refund can be obtained at any time thereafter subject to the 35% withholding tax.
171. The conditions for release of superannuation monies (which are contained in preservation rules in Superannuation regulations) belonging to temporary visa holders have been amended such that payment can only be made subject to the 35% withholding rate (albeit such events as death, incapacity or terminal illness are still recognized). The other conditions of release, enjoyed by Australians, of retirement, age 65 or reaching preservation age have been withdrawn consistent with the view of Government that no concessions are made available to foreign nationals.

These new, restrictive rules do not apply to New Zealanders.

Capital gains tax issues

Deemed disposal of assets upon ceasing to be a resident

172. Subject to certain concessions outlined below, a person ceasing to be a tax resident of Australia is deemed to have, at the time of ceasing to be a resident, disposed of every CGT asset other than assets originally acquired before 19 September 1985 or taxable Australian property. The consideration on disposal is deemed to be the market value of the relevant asset upon cessation of resident status.
173. This deemed disposal rule could obviously cause extreme financial hardship by taxing unrealised capital gains. For example, a UK citizen who acquired shares in a UK company in 2010 prior to arrival in Australia on a two-year transfer would effectively be taxed on the increase in value of those shares during the period of residency, even though the shares had not actually been sold.
174. Prior to 6 April 2006, the ‘five-out-of-ten’ rule was used to alleviate CGT problems for individuals transferring to work in Australia for short periods of time. Although this rule was repealed with effect from 6 April 2006, it may still apply for those individuals who were present in Australia on 6 April 2006 (up until 5 April 2011) Essentially, this rule provides that a CGT asset will not be subject to the deemed disposal rule where an individual was a resident for a period of less than five years in the ten-year period prior to becoming a non-resident, and the relevant CGT asset was:
- Owned by the individual prior to last becoming a resident; or
 - Acquired whilst a resident as a result of the death of another person (e.g., as a beneficiary of a deceased estate).
175. Subject to any relevant Double Tax Agreement (for example, UK, US and the new French DTAs with Australia), CGT will still apply to non-residents on the actual disposal of assets acquired whilst a resident of Australia (but only to those CGT assets which are “Taxable Australian Property” and were acquired after 19 September 1985. Refer to Step 7 for details of the application of CGT to non-residents. Because gains made

on disposal of such assets by non-residents are subject to tax, you will need to make arrangements to ensure that an Australian tax return is lodged in the year of disposal.

Choice to defer tax

176. Alternatively, an individual may choose to treat a CGT asset affected by the deemed disposal rule as Taxable Australian Property, until the relevant asset is actually disposed of or the individual again becomes a resident—whichever happens first. The choice must be made at the time of lodging the Australian tax return for the year the individual ceases to be resident.
177. Double taxation can arise when a capital gain is derived in relation to the sale of an overseas CGT asset by an Australian resident or when a capital gain is derived in relation to the sale of an Australian CGT asset by a nonresident. In either case, relief may be available under the terms of the relevant double taxation agreement. This would need to be determined at the time, after consultation with your PricewaterhouseCoopers tax representative.

Tax issues after departure

178. Tax issues may exist in the year the individual departs from Australia. Common issues which arise in this context include:
 - The receipt of salary and bonuses before or after departure is affected by the tax rates prevailing in either Australia or the home country;
 - Provision of benefits to assist with the relocation process;
 - Sale or the realisation of assets may have differing tax treatment if disposed of before or after departure.

Selling an Australian residence

179. As mentioned in paragraph 2.37, an individual's main residence is one of the few CGT assets which are eligible for an exemption from capital gains tax. If a dwelling has been acquired in Australia, the CGT exemption may apply for that period of ownership when it is used as the individual's main residence. If an individual has more than one property that has been used as a main residence he or she must choose which property is their main residence. Special rules apply to spouses (including de facto couples) who nominate different main residences. Should ownership of an Australian dwelling be retained following permanent departure from Australia, and where the property then becomes available for rent (i.e., is used for income producing purposes), the CGT exemption may only be applied on an apportionment basis. The timing of the sale of a residence acquired whilst in Australia is therefore relevant in determining the extent to which the CGT exemption applies to any gain attributable to the residence. Tax advice should be sought prior to departure from Australia if you anticipate retaining property in Australia.
180. The tax aspects of renting out an Australian home at the end of the work assignment are outlined in paragraph 7.12.

Transferring funds abroad

181. Individuals and companies are not required to obtain a tax clearance certificate or complete a declaration form when international payments are made. However, the transfer in or out of the country of A\$10,000 or more of Australian and foreign cash must be reported by the financial institution which facilitates the transfer to the Australian Transaction Reports and Analysis Centre (AUSTRAC). Cash dealers (e.g., banks) are required to report international telegraphic transfers to AUSTRAC regardless of value. There is a prohibition on departure for Australia applicable to any person holding more than \$10k in cash.

Exit consultation

182. A final consultation with an expatriate tax specialist prior to departure from Australia will enable all the relevant Australian tax issues to be identified and the appropriate action taken to ensure that:
- The individual has complied with the various requirements concerning lodgement of tax returns;
 - Appropriate tax planning opportunities are pursued;
 - Advantage is taken of concessional tax rates applicable to certain types of payments made as a consequence of an employee's termination of employment.

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Step 7 – Taxation of nonresidents

Employment income

183. Except where the terms of a double taxation treaty apply, employment income including allowances (other than a living-away-from-home allowance), bonuses, commissions, and director's fees received by a nonresident for services performed in Australia is taxable in Australia at the rates of tax applicable to nonresidents (see Appendix A).
184. The general effect of the double taxation treaties is to exempt employment income from Australian tax where the nonresident employee is present in Australia for 183 days or less, generally in the income year. Certain additional requirements must also be met under most double taxation treaties; for example, the employee must remain a resident in the home country, the remuneration should be paid by a nonresident of Australia and the remuneration should not be a deductible expense in calculating the taxable profits of an employer in Australia. Short-term assignees who wish to rely on DTA relief from Australian tax should obtain advice to ensure that relief is appropriate given the Australian Tax Office's (ATO) view that where the taxpayer is working for the Australian business (as opposed to working in Australia on behalf of the foreign employer) the ATO may not allow such DTA relief.

Fringe benefits

185. Non-cash benefits (and a living-away-from-home allowance) received as part of the employee's remuneration package may be treated as fringe benefits. In that case, the employer will be subject to Fringe Benefits Tax (FBT) on the taxable value of the benefit provided (refer to Appendix A for FBT rate). The employer is liable to FBT whether or not the employer is a resident of Australia.

Tax deductions for employees

186. A nonresident who is taxable in Australia on employment income received from working in Australia is entitled to claim tax deductions for expenses incurred in producing that income in the same way as resident employees (refer to paragraphs 2.9 - 2.10).

Exemption from income tax for certain nonresidents

187. There are a range of exemptions from Australian income tax for certain nonresident individuals. These exemptions are usually based on the type of services performed by the nonresident in Australia. For example, special rules apply to nonresident individuals (and members of their immediate families) who are in Australia as employees of foreign governments or international organisations. Their salary is generally exempt from Australian tax. However, Australian sourced investment income may be taxable in Australia.
188. Exemption is also usually allowed under Australia's double taxation treaties (subject to certain conditions) for teaching and research income of visiting professors and teachers.

Investment income

189. Generally, nonresidents are subject to Australian tax on investment income derived from sources in Australia.
190. In the case of certain royalty, dividend and interest income paid or credited to nonresidents (see below), a flat and final rate of withholding tax is imposed and the income is not subject to the ordinary rates of tax.

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191. Most other categories of Australian sourced income paid to nonresidents (e.g., rentals from properties situated in Australia) are taxable at the ordinary nonresident rates of income tax. However, in certain cases the person making the payment may need to deduct tax on account of the final tax liability (e.g., certain trust distributions, refer to paragraph 7.20).

Interest

192. Broadly, withholding tax is imposed on interest paid to a nonresident to the extent that the interest is paid by a resident or is an expense of an Australian business (whether carried on by a resident or nonresident). Withholding tax is not imposed if the interest is derived by the nonresident in carrying on business through a permanent establishment in Australia. In that case, the interest will be subject to the ordinary rates of income tax.
193. The rate of withholding tax is 10% of the gross amount of interest paid, although this rate may be reduced in limited circumstances where certain DTAs apply. The tax is usually withheld by the payer on behalf of the payee and remitted to the revenue authorities. Withholding tax represents a final tax in Australia on the interest income.

Rental income

194. The tax treatment of nonresidents deriving income from rental property investments in Australia is basically the same as that applicable to residents (refer to paragraphs 2.19 - 2.22).

Dividends

195. Dividends paid out of profits which have borne Australian company tax, called 'franked' dividends, are not assessable to a nonresident shareholder, nor are they subject to withholding tax.
196. However, withholding tax is imposed as a final tax on dividends paid to nonresidents out of certain untaxed company profits, i.e., 'unfranked' dividends. Withholding tax is usually withheld by the payer on behalf of the payee on the gross amount of the dividend and remitted to the Australian revenue authorities.
197. The rate of withholding tax is 30%, although this rate may be reduced (usually to 15%) where a double taxation treaty applies (see Appendix B).
198. Certain unfranked dividend income is exempt from dividend withholding tax. The exemption is limited in its operation but effectively applies to those dividends paid by an Australian company out of foreign sourced profits for the company that was exempt from Australian income tax.

Capital gains

199. Nonresidents are liable to Australian capital gains tax (CGT), but only on the disposal of assets which are "Taxable Australian Property" acquired after 19 September 1985. These assets are specifically defined in the tax law and include:
1. Taxable Australian real property (directly held);
 2. Indirect Australian real property interests (other than interests in category 5);
 3. Business assets used in an Australian permanent establishment of a foreign resident (other than assets in category 1, 2 or 5);
 4. Options or rights over category 1-3 assets; and
 5. Assets where a CGT gain or loss is deferred when an entity ceases to be an Australian resident.

Prior to 12 December 2006, non-residents were subject to CGT but in respect of “CGT assets which did have the necessary connection with Australia”. Both definitions essentially limit CGT to interests in Australian real property but the pre-12 December 2006 rules also included shareholdings in Australian private companies and share/unit holdings of 10% or more in both public companies and resident unit trusts.

- 200. Net capital gains are calculated in the same way as for residents (refer to paragraphs 2.33 and 2.39) and are included in the assessable income of the nonresident.
- 201. There is no requirement for tax to be withheld from the disposal proceeds, nor is the nonresident required to notify the Australian revenue authorities of the disposal at the time the asset is sold or otherwise disposed of. Where taxable, disclosure is made upon lodgement of the tax return.

Trust distributions

- 202. Trustees who distribute Australian sourced income of the trust (other than dividends and interest subject to withholding tax) to a nonresident beneficiary are generally assessed directly on that income and will normally retain sufficient funds to meet the tax payable out of relevant distributions. Where the nonresident beneficiary lodges an Australian income tax return, credit is given in the beneficiary's assessment for any tax that has been paid by the trustee.
- 203. As mentioned above, a nonresident will only be subject to CGT on assets which are Taxable Australian Property (TAP). In relation to interests in a fixed trust or managed funds, such an interest will be TAP if an individual has an indirect Australian real property interest. Thus, a non resident beneficiary who disposes of their interest in a fixed trust or managed fund will be subject to CGT if their interest in the fixed trust is 10% or more and the value of real property assets are 50% or more of the total value of all assets.
- 204. Similarly, an individual will be taken to have disposed of their interest in the fixed trust at the time they become a nonresident (on or after 12 December 2006) even if they have an indirect Australian real property interest in the fixed trust. If the individual elects out of the deemed disposal rules, they will be subject to CGT in Australia at the time of actual disposal of their interest.
- 205. Note also from 1 July 2008 a new withholding regime applies to Australian property trusts in respect of distributions to non-resident beneficiaries. For 2008/2009, the rate is a “non-final” 22.5% but for 2009/10 and 2010/11, the rate is fixed as a final withholding tax rate of 15% and 7.5% respectively. The significance of the final withholding tax is that debt deductions for borrowing costs of units in the property trust are no longer deductible because the income will be ‘non-assessable and non-exempt’ from 2009/10 onwards. In an interposed entity situation, such as a resident family trust in Australia with foreign beneficiaries, it will be the interposed entity which has the liability to make withholdings. Advice should be sought concerning these new rules. Note also where the non-resident beneficiary does not reside in a country with a Double Tax Agreement with Australia, the final withholding tax is set at 30%.

Partnerships

206. A partnership is not treated as a separate entity for Australian tax purposes.
207. Members of the partnership are assessed on their individual share of the partnership income. A nonresident partner is subject to tax in Australia on the share of partnership income that is sourced in Australia, as well as net capital gains on disposal of the partner's share on assets having the necessary connection with Australia (or from 12 December 2006, being Taxable Australian Property) (refer to paragraph 7.17)

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Step 8 – Other matters requiring consideration

International taxation

208. The rules governing investments of Australian residents in offshore entities are extremely complex. This publication provides only a brief overview of how the rules apply. Any person who may be affected by the rules should seek advice from a PricewaterhouseCoopers personal tax specialist in Australia.
209. One issue often overlooked when an individual becomes a resident of Australia is the impact that resident status can have on an offshore entity in which the individual has a controlling interest, either directly or in association with relatives or other controlled entities.
210. An offshore company can itself be categorised as a resident of Australia if it carries on business in this country and has either:
- Its central management and control in Australia; or
 - Its voting power controlled by resident shareholders.
211. If a company is treated as a resident, it will be subject to Australian tax on its worldwide income. The CGT deemed acquisition and disposal rules mentioned in paragraphs 3.32 and 6.9 will also apply to offshore entities that become resident of Australia for tax purposes (however, note that the five out of ten rule and assets having a necessary connection with Australia procedure is not available to companies).

Closely held offshore companies

212. Even if a closely held company is not a resident of Australia, its Australian resident shareholders may be affected by special 'controlled foreign company' (CFC) rules. The aim of these rules is to tax Australian residents on certain income derived by offshore companies located in either:
- Low-tax countries; or
 - Countries whose tax rates are similar to Australia's but which tax certain types of income on a concessional basis.
213. In most cases, an offshore company will be a CFC if five or fewer resident shareholders, together with their associates, own or are entitled to acquire or control an interest (whether direct or indirect) of 50% or more in the corporation, or can effectively control the corporation by whatever means.
214. Where the CFC rules apply, the Australian resident shareholders will be taxed on a proportionate share of the offshore company's income, even though such income has not been remitted to the shareholder. Relief is provided for any foreign tax relating to the attributed income.

Non-controlling interests in offshore companies and trusts

215. In addition, certain non-controlling interests in foreign companies and foreign trusts will be subject to the foreign investment fund (FIF) rules. Under these rules Australian residents will be taxed, subject to certain exemptions, on a current accruals basis.

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216. The FIF rules are targeted at foreign companies and foreign trusts which primarily derive dividends, interest or other kinds of passive income. The major exemptions available from these rules include:
- Small investor exemption: investors with interests in FIFs and foreign life assurance policies (refer to paragraphs 8.16 - 8.17) of less than A\$50,000;
 - Temporary resident exemption (from 1 July 2006, previously there was a 4 year exemption for temporary visa holders) which may apply indefinitely so long as the individual satisfies the conditions to be treated as a temporary resident;
 - Active business exemption: available for **direct** investments in foreign companies (but not foreign trusts) which are principally engaged in active businesses (other than certain investment, property, financial services, banking or insurance businesses);
 - United States mutual fund exemption: available for direct interests in United States mutual funds or United States real estate investment trusts;
 - Employer sponsored superannuation fund exemption: employees who have an interest in a foreign employer maintained superannuation fund.
217. The FIF rules will only apply if a resident holds an interest in a FIF at the end of the income year.
218. If a taxpayer is subject to the FIF rules, the increase in the value of investments will be taxed each income year. There are a number of ways in which the increase in value may be measured which, in some cases, can result in unrealised gains being liable to tax. Deductions associated with deriving the FIF income and associated foreign tax credits will be allowed. Dividends and other distributions paid from the FIF will be exempt from tax to the extent that they have been previously taxed under the FIF rules. Limited relief for losses is allowed. On redemption of the FIF, CGT will usually apply to the difference between the realised profit and the amount of growth which has previously been taxed under the accruals tax system. The exception to this is where the FIF is an Australian complying superannuation fund to which favorable rules apply from 1 July 2003. Advice should be always be sought prior to redemption.

Important Note

219. The FIF rules have been repealed as of 30 June 2010 and will be replaced by a Foreign accumulation Fund regime on the recommendation of the Board of Taxation. The Board considered that rather than continue deploying the current broad based attribution regime with wide sweeping exemptions, the better approach is to target the most abusive cases. The Board considered this should be achieved by a specific anti-avoidance rule that applies to offshore accumulating or roll-up funds. The approach is similar to the approach taken in Canada and the United Kingdom. Several versions of draft legislation have been introduced as part of the Consultative process. The most recent draft Bill conceded the anti-avoidance measure was unworkable and has been replaced by a “self-executing rule” which is likely to be modified in accordance with submissions from Professional Bodies, the Funds Management Industry and the large Accounting and Law Firms. Although Treasury is working towards a 1 July 2010 start date, the new regime may actually apply from date of Royal Assent in view of the impact new rules may have in the event the 1 July 2010 start date is maintained.

Offshore trusts

220. Just as the resident status of an individual can affect the residence of a company, an offshore trust can be treated as a resident under Australia's tax law if a trustee becomes a resident or the central management or control of the trust is located in Australia. The change of residence of a trust can have substantial implications under Australia's income tax and CGT rules and is a matter requiring specialist tax advice. For inbound assignees to Australia, advice should be sought prior to arrival.

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221. In addition to the foreign investment fund (FIF) rules mentioned above, special rules apply to tax certain income on an accruals basis derived by residents who have transferred assets or funds to offshore trusts located in low-tax countries or in countries which, although they impose tax at rates similar to Australia's, provide tax concessions to certain income received by the trust.
 222. Australian resident beneficiaries who have an interest in an offshore trust, and have not been taxed on trust income under the FIF rules, will be taxed on a current basis on their share of the income derived by the nonresident trust, irrespective of whether the beneficiary is presently entitled and whether the income of the trust is actually distributed. However, any foreign tax attributable to the trust income may be allowed as a credit against the Australian tax liability.
 223. In certain circumstances, distributions to beneficiaries from offshore trusts out of income which has not been taxed in Australia on a current basis or comparably taxed in a foreign country may also be subject to additional tax in the nature of an interest charge.

Foreign life assurance policies

224. An Australian resident with an interest in a foreign life assurance policy (FLP) is assessed on the increase in value of the FLP on a current basis. Special valuation rules apply.
225. The measures will generally only apply to FLPs issued by a nonresident. It should be noted that it is not necessary that the FLP be held at 30 June for the measures to apply. An important exemption is provided for temporary residents of Australia provided they continue to satisfy the conditions to be a temporary resident and has not applied for permanent residency in Australia.

Important Note

226. The FLP rules are contained in the FIF rules which (see Important Note above) which have been repealed and are to be replaced with a Foreign Accumulation Fund regime, While these rules are intended to replace the FIF rule from 1 July 2010, the actual start date may be from date of Royal Assent.

Superannuation

227. Complex legislation governs the taxation of superannuation funds and benefits paid from such funds. The impact of this legislation needs to be considered in the light of each individual's present circumstances and retirement needs. In cases where a foreign superannuation fund already caters for an international assignee working in Australia, the membership of that fund and the continuation of fund contributions whilst the individual is present in Australia are just two of the matters which may require attention. For example, Fringe Benefits Tax will be imposed on an employer who makes a contribution to a foreign superannuation fund on behalf of a resident employee, unless the employee is in Australia on a temporary visa. Contributions to foreign superannuation/pension funds are specifically nondeductible for Australian tax purposes. Foreign employers will need specific guidance on this issue.
228. Australia has a 'Superannuation Guarantee' scheme under which employers (both resident and nonresident) are required to provide a minimum level of superannuation support for most Australian employees. The minimum level of superannuation support is expressed as a percentage of each employee's salary and must be paid by the employer to a resident superannuation fund which complies with various legislative rules (known as a 'complying fund'). The required level of minimum support is shown at Appendix A. Superannuation support is required to be provided for resident employees, although an exemption is available for certain foreign executives working in Australia and assignees from certain foreign countries whose Governments have entered into Bi-lateral Social Security agreements with the Australian Government to deal with "double coverage" (see below)

229. Given that departing temporary resident superannuation entitlements are taxed at 35% on withdrawal (see paragraph 6.7 to 6.8), the amount of Australian superannuation contributions may need to be addressed. Foreign nationals should be wary of making any additional contributions in excess of the compulsory levels and should consider seeking advice into the alternative option of directing any additional monies for retirement purposes into a foreign pension fund. That advice should cover home country as well as Australian rules.

Social security

230. Australia has concluded Social Security Agreements on double coverage and benefits with the following countries:

Belgium	Ireland	Switzerland
Chile	Japan	The Netherlands
Croatia	Korea	United States
Germany	Norway	Finland
Greece	Portugal	

Social Security Agreements between Australia and the following countries will shortly come into effect:

Czech Republic	Mid 2011
Former Yugoslav Republic of Macedonia	Mid 2011
Poland	Mid 2010
Republic of Austria	Mid 2011
Slovak Republic	Mid 2012

231. In certain circumstances these agreements allow expatriates on temporary assignments to remain covered under the legislation of their home country and be exempt from making contributions to the host location.
232. Australia has recently renegotiated its existing Double Tax Agreements with the United States, the United Kingdom, New Zealand and France. Also, Australia has signed a double tax agreement (DTA) with the British Virgin Islands (BVI) on 27 October 2008 and a DTA with the Isle of Man (IoM) on 29 January 2009. Neither of these two DTAs is 'comprehensive', with each only dealing with limited classes of income.

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Appendix A – Personal tax rates

Personal tax rates Resident adult individuals – Year ended 30 June 2010

Taxable income (A\$)	Tax on column 1 (1) (A\$)	% on excess - marginal tax rate (1)
6,000	Nil (2)	15%
35,000	4,350	30%
80,000	17,850	38%
180,000	55,850	45%

Personal tax rates Resident adult individuals – Year ended 30 June 2011

Taxable income (A\$)	Tax on column 1 (1) (A\$)	% on excess - marginal tax rate (1)
6,000	Nil (2)	15%
37,000	4,650	30%
80,000	17,550	38%
180,000	55,550	45%

Notes:

1. Before deduction of rebate entitlements and excluding Medicare levy at the rate of 1.5% of taxable income. In addition, a 1% Medicare surcharge is applied where an individual taxpayer has a taxable income in excess of A\$73,000 or a combined family income in excess of A\$146,000 and do not have private patient hospital insurance with a health fund registered in Australia. The Medicare Levy Surcharge is being increased (see paragraph 1.27).
2. Where an individual becomes or ceases to be a resident during the year, the tax-free threshold available to resident taxpayers is pro-rated according to the number of months for which resident status is attained.

Nonresident adult individuals – Year ended 30 June 2010

Taxable income (A\$)	Tax on column 1 (1) (A\$)	% on excess - marginal tax rate
Nil	Nil	29%
35,000	10,150	30%
80,000	23,650	38%
180,000	61,650	45%

Nonresident adult individuals – Year ended 30 June 2011

Taxable income (A\$)	Tax on column 1 (1) (A\$)	% on excess - marginal tax rate
Nil	Nil	29%
37,000	10,730	30%
80,000	23,630	37%
180,000	61,630	45%

Fringe Benefits Tax rate

Fringe Benefits Tax (FBT) for the FBT year 1 April 2010 to 31 March 2011 is 46.5%.

Tax rate for companies

The company tax rate for the year ended 30 June 2011 is 30%.

Superannuation guarantee

Prescribed level of employer support is 9% of salary to a threshold capped at A\$42,220 per quarter for year ending 30 June 2011.

Last updated: April 2011

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Appendix B – Double-taxation agreements

Countries with which Australia currently has double-taxation agreements:

Argentina	India	Poland
Austria	Indonesia	Romania
Belgium	Ireland, Rep. Of	Russia
Canada	Italy	Singapore
Chile	Japan	Slovak Republic
China, P.R.	Kiribati	South Africa
Czech Republic	Korea, Rep. Of	Spain
Denmark	Malaysia	Sri Lanka
East Timor	Malta	Sweden
Fiji	Mexico	Switzerland
Finland	Netherlands	Taipei
France	New Zealand	Thailand
Germany	Norway	United Kingdom
Greece	Papua New Guinea	United States
Hungary	Philippines	Vietnam

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Appendix C – Elements of remuneration packages (1)

	Assessable to employee	No FBT	Concessional FBT treatment available	FBT applicable	Deductible to employer for AU income tax purposes
Salary and Bonus	*	*			*
Superannuation contributions					*
• Resident complying fund (2)		*			*
• Foreign superannuation fund (3)				*	
Employee share schemes (4)	*	*			*
Car for private use of:					*
• Employee			*		*
• Spouse			*		
Low-rate investment loans (5)		*			*
Low-rate non-investment loans				*	*
Accommodation occupied as usual place of residence				*	*
Living-away-from-home allowance (reasonable) (6)					
• Food			*		*
• Accommodation					*
Health Insurance				*	*
Car parking			*		*
Life Insurance (7)				*	*
Travel to attend employment interview or selection test		*			*
Private telephone expenses				*	*
Tax return preparation, tax advice, etc.		*			*
School fees (8)				*	*
Relocation (moving expenses) (9)		*			*
Home leave				*	*
Tax reimbursement				*	*
Child care facilities (10)				*	*

Note:

1. The table gives an overview of the tax treatment of the possible elements of a remuneration package. It presents the general position only, and certain conditions must be satisfied before the tax treatment indicated is applicable.
2. The total amount of deductions for employer contributions to a superannuation fund for the benefit of an employee (which were previously limited according to the age of the employee) are unlimited from 1 July 2007 but employees are subject to penalty taxes where their annual contributions exceed A\$50,000 (or A\$100,000 for persons aged 50 and over from 1 July 2007 to 30 June 2009). From 1 July 2009, the annual concessional contributions cap is halved to A\$25,000 (with A\$50,000 for persons aged 50 and over from 1 July 2009 to 30 June 2012). These new contributions caps will be indexed annually to average weekly ordinary time earnings, rounded down to the nearest multiple of A\$5,000.
3. FBT generally applies to contributions made to foreign superannuation funds (unless they are made on behalf of a person who is from 1 July 2006, a Temporary Resident of Australia (the previous rule applied to foreign nationals who held a four year (maximum) temporary entry permit, i.e., exempt visitors)) or to any noncompliant superannuation fund. A deduction is not allowed for any contribution made to foreign and noncompliant superannuation funds.
4. The Government has legislated significant changes to the taxation of shares and rights discounts granted under an employee share scheme on or after 1 July 2009. You should consult your personal tax adviser as to the taxation of such benefits.
5. Concessional FBT treatment was previously only available when the investment was not foreign. From 1 July 2008, the restrictive foreign income rules were abolished in favour of a neutral worldwide tax regime where worldwide deductions are applied against worldwide income.
6. Where an employee is temporarily required to live away from their usual place of residence in order to perform their employment duties, an employer may provide certain benefits to the employee which are free from fringe benefits tax or are taxed at a concessional rate. To qualify as 'living away from home' the employee needs to hold a temporary residence visa and maintain intent to return to their home country on completion of their assignment (as well as certain other criteria). LAFH status is usually not available to "citizens of the World" who travel from country to country and do not have a "usual place of residence" in their home country.
7. Life cover may be obtained under an employer's superannuation arrangements, in which case the tax rules applicable to superannuation apply.
8. Concessional FBT treatment may be available in special cases where it is customary, in the particular industry, to pay school fees and/or holiday transport whilst the employee is working overseas.
9. Includes travel costs, temporary living expenses, removal and storage of household effects, payment of costs associated with the sale or acquisition of a dwelling as a result of relocation, cost of connecting gas, electricity and telephone.
10. Full FBT exemption is available where the child care is provided on the employer's (or related company's) business premises.

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Appendix D – Typical tax computation

Typical tax computation for the year ended 30 June 2011 for a tax resident of Australia:

Tax computation	A\$	A\$
Salary	70,000	
Interest income	500	
Dividend income	775	
Imputation credits	332	
Overseas interest income	40	
Taxable income		71,647
Total tax on taxable income	15,044	
Medicare levy (1.5% of A\$71,647)	1,075	
Less: Foreign tax credit	(4)	
Less: Imputation credits	(332)	
PAYG tax deducted at source from salary	(15,600)	
Tax payable/(tax refundable)		183

Note: This calculation does not include any fringe benefits, as the employee is not subject to tax on fringe benefits. However, Fringe Benefits Tax may be payable by the employer on these benefits, where provided (refer to paragraph 2.8).

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Appendix E – Australia contacts and offices

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