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Global Mobility Services

Taxation of International Assignees – Australia

People and Organisation

Global Mobility Country Guide (Folio)

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Country: Australia

Additional Country Folios can be located at the following website:
Global Mobility Country Guides

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 issues 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 issues 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 PwC, 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 PwC office or from your local PwC Tax Partner. Please see Appendix E for further information.

Step 1:
Understanding basic principles

The scope of taxation in Australia

1. Australia has both Federal and State Governments which impose taxes of various kinds. Federal revenues are raised through income tax, fringe benefits tax (FBT), customs and excise duties, and goods and services tax (GST). Although the Federal Government imposes GST 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. There are currently no death or gift duties in Australia and it should also be noted that the States do not impose a separate income tax.

2. Income tax is imposed on all companies and individuals who are tax residents of Australia (subject to certain exemptions) and tax is applied on their worldwide income. Non-residents of Australia are subject to tax on Australian sourced income, although their tax liability may be reduced by the provisions of double taxation treaties which have been entered into between Australia and other countries. Former residents who are now non-residents should be aware that Australian tax may still apply to trailing payments (e.g. bonuses) and certain benefits from employee share plans where the benefits are in respect of Australian employment.

3. A former resident might also be subject to capital gains tax (CGT) on unrealised gains which relate to CGT assets that are **not** "Taxable Australian Property" (TAP). Individuals are taken to have disposed of non-TAP assets for their market value on the date they become a non-resident, unless they choose to defer CGT until the actual disposal of the asset. This choice must be made at the time the individual lodges their Australian tax return for the year in which they cease being a tax resident. It should be noted that there are CGT articles dealing with the "choice rule" in Double Tax Agreements (DTAs) between Australia and the following countries: the UK, USA, France, Japan, New Zealand, Chile, Switzerland and Germany.

The tax year

4. The Australian income year for tax purposes covers the 12-month period from 1 July to 30 June.

Methods of calculating tax

5. An Australian resident's taxable income is calculated 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 to disclose their 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 contained in Appendix A. Tax offsets, rebates and foreign income tax offsets (i.e. foreign tax credits) are deducted from tax 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, non-exempt income)

9. Exempt income rules interact with other rules so that losses are offset against exempt income. In some very limited cases the exempt income is aggregated with taxable income to determine the rate of tax on taxable income. The issue with "exempt income" is that it does not equate to "tax-free" income. The rules on non-assessable, 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 is earned overseas and subject to tax in the country of derivation (refer to paragraph 40);

   – Non-cash fringe benefits provided by an employer to an employee (such as use of a car, accommodation and low interest loans). 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 FBT regime (refer to paragraph 46);

   – Certain government pensions, scholarships and bursaries; and

   – Foreign employment income which is treated as exempt income due to a double tax agreement removing the Australian Government's right to tax foreign employment income of a resident of Australia who is also a resident of the host country (under the "tiebreaker" residence Article).

Net capital gains

10. Capital gains that are derived on the disposal of CGT assets which were acquired after 19 September 1985 are generally included in assessable income (refer to paragraphs 70 to 76). Where an asset is held for at least 12 months, a 50% discount concession is available to reduce the assessable gain (refer to paragraph 72). From 8 May 2012, the 50% capital gains discount has been removed for foreign and temporary residents (discussed in further detail below).

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, donations, various special allowances and carry forward losses. Personal home loan interest is not an allowable deduction.

12. Entitlement to tax deductions usually depends 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 (provided certain conditions are met). Rebates and tax offsets include:

– Dependant (invalid and carer) tax offset;

– Superannuation related tax offsets, including an Australian superannuation income stream tax offset, a tax offset for superannuation contributions on behalf of a spouse and a low income superannuation tax offset (from 1 July 2017);

– Seniors and pensioners tax offset;

– Private health insurance tax offset;

– Medical expenses rebate (only available in limited circumstances and is being completely phased out by 1 July 2019);

– Low income earner tax offset;

– Low and Middle Income Tax Offset (from 1 July 2018); and

– Remote area and overseas forces tax offsets.

Family Tax Benefit (FTB)

14. FTB is a payment provided to families by the Department of Human Services (DHS) to help raise dependent children. FTB has 2 parts, Part A and Part B. From 1 July 2009, FTB can only be claimed through the DHS as a direct fortnightly payment, or a lump sum payment after year end. FTB can only be claimed by individuals who are considered to be residents of Australia for social security purposes (i.e. Australian citizens, Permanent Residents and New Zealand citizens), all of whom must be residing in Australia. An individual's entitlement to FTB is subject to various income tests. It should be noted that temporary residents of Australia who are on 457 visas are not able to claim FTB.

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. A foreign income tax offset system applies to allow offsets for foreign taxes paid by a taxpayer on an amount which is included in assessable income for that year. The offset which is allowed for foreign taxes paid is the greater of $1,000 and the foreign income tax offset cap. In broad terms, the cap is 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 unable to be carried forward.

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 from the service of the relevant notice of assessment. Please also refer to comments regarding substantiation in paragraph 49.

Spouses

17. In Australia there is no provision for a joint return to be lodged (i.e. each spouse is individually assessed). Despite this, taxpayers are required to report their spouse's total taxable income (spouse includes both married and de-facto couples and both opposite-sex and same-sex couples). The spouse's total taxable income includes certain trust income, reportable fringe benefits, Government pensions (including exempt pension income), other exempt payments, target foreign income, voluntary superannuation contributions and net investment losses. Both incomes are then aggregated to assess their eligibility for a range of benefits which are only available to lower income earners (singles or couples). In normal circumstances, income-producing assets held in joint names will be assumed to be held 50/50 and income is apportioned accordingly.

Resident status

18. Foreign individuals living and working in Australia are categorised as either a 'resident' or 'non-resident' for Australian tax purposes. The imposition of tax on an individual differs depending on whether an individual is a resident or non-resident. The most fundamental distinction is that a resident is subject to tax on worldwide income. In contrast, a non-resident is only taxed on Australian sourced income.

Tests for determining resident status

19. Leaving aside the possible application of a tax treaty (see below), an individual will be considered a 'resident' of Australia where the individual:

   – Resides in Australia;

   – Is domiciled in Australia (unless the Commissioner of Taxation is satisfied that the individual's 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 individual's usual place of abode is outside Australia, and the individual does not intend to take up residence in Australia; or

   – Is an 'eligible employee or spouse or child thereof' 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 general, an individual entering Australia will be treated as resident from their date of arrival.

21. The primary consideration in determining whether an individual is a resident is whether they may be considered to 'reside' in Australia during the year of income. According to a ruling issued by the Australian Taxation Office (ATO), the Commissioner of Taxation will look at whether an individual's behaviour is consistent with residing in Australia in determining whether the individual is an Australian tax resident. Broadly, the Commissioner considers that individuals who are present in Australia for at least six months will exhibit behaviour which is consistent with residing here and will therefore be considered residents of Australia for tax purposes.

22. An individual who is present in Australia for less than six months may also be considered a resident, however this will depend on their intention and behavior while they are in Australia.

This may be relevant where an individual enters Australia for an extended employment contract, but decides to leave after spending only a short time in Australia. Similarly, an individual entering Australia for less than six months who later extends their stay beyond six months may be regarded as a resident of Australia for tax purposes from their date of arrival (as long as their behaviour has been consistent with residing here during the entire period).

23. To determine whether an individual exhibits behaviour which is 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 an individual to be a resident of Australia for tax purposes, a tie-breaker provision in a double taxation agreement may override this conclusion and treat the individual as a tax resident solely of their 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 residency 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. The tax implications of an individual being considered a resident of Australia are summarised below:

– Residents are subject to tax on worldwide income and taxable capital gains (although a foreign income tax offset is generally available to take into account 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 the tax rates which are applicable to non-residents. The relevant tax rates are set out in Appendix A;

– The various tax offsets or rebates mentioned in paragraph 13 are only available to residents;

– Medicare levy is only payable by residents. The levy is currently 2.0% of taxable income;

– Resident individuals who are high-income earners and do not have private patient hospital insurance with a registered Australian fund are required to contribute a further surcharge (in addition to the 2% levy). Since 1 April 2015 the Medicare levy surcharge thresholds have been as follows:

- o Single with adjusted taxable income between $90,001 and $105,000 or married with adjusted taxable income between $180,001 and $210,000 are liable for 1% Medicare levy surcharge on taxable income and reportable fringe benefits.
- o Single with adjusted taxable income between $105,001 and $140,000 or married with adjusted taxable income between $210,001 and $280,000 are liable for 1.25% Medicare levy surcharge on their taxable income and reportable fringe benefits.
- o Single with adjusted taxable income over $140,000 or married with adjusted taxable income over $280,000 are liable for 1.5% Medicare levy surcharge on their taxable income and reportable fringe benefits.

– An exemption from the Medicare levy is available to expatriates meeting certain requirements (refer to paragraphs 78 - 79 for further information);

– Residents may be subject to an accruals taxation system in respect of investments in certain foreign trusts and controlled offshore companies (refer to paragraphs 218 - 220).

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 non-resident status

29. The tax implications of an individual being considered a non-resident of Australia for tax purposes are summarised in Step 7.

Temporary residents

30. A concession applies for 'temporary residents' in respect of all personal income (ordinary and statutory) which is sourced outside of Australia. However, worldwide employment income is assessable to the extent it relates to the period of the visa. 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 Controlled Foreign Corporations (CFC) 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' (where spouse is defined as married or de facto and includes both opposite-sex and same-sex couples). An 'Australian spouse' is a spouse (defined above) who is either an Australian citizen or a permanent resident. A temporary resident includes New Zealand citizens who are Special Category Visa (SCV) holders. 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.

32. A person can be a temporary resident indefinitely and also on multiple occasions. A temporary resident will cease to be a temporary resident where they fail the tests (e.g. their spouse becomes an Australian citizen or Permanent Resident, or they become an Australian citizen or Permanent Resident).

33. Temporary resident status will typically cease when a foreign national receives Permanent Residency. Upon ceasing to be a temporary resident, all CGT assets which are not Taxable Australian Property are deemed to be acquired at their market value. When a temporary resident departs Australia, the CGT deemed disposal rule does not apply.

34. It should be noted that contributions by employers to foreign superannuation funds (i.e. pension funds) are ordinarily subject to FBT (refer to paragraph 46) 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 should seek advice on "salary sacrificing" remuneration into a foreign pension fund (refer to paragraphs 123 - 129).

Taxes arising from death

35. Australia abolished both Estate Duty and Gift Duty in 1979. For CGT purposes, death is (with one exception) not a "CGT event" and any CGT assets passing to a beneficiary are deemed to be acquired on the 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 the 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 to be 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 on the date of death 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 a "dependant" at the date of death of the superannuant. Tax of 17.0% (including the Medicare levy) is applied to the taxed element of death benefits paid to non-dependant recipients. The untaxed element of death benefits paid to non-dependant recipients is taxed at a rate of 32.0% (including the Medicare levy). Where the entitlements are from a non-resident pension fund, the rate of tax payable by a resident recipient can be as high as 47%. 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 individuals 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:

Norah Seddon, Partner (Tel: [61] (2) 8266 5864, Email: **norah.seddon@pwc.com)**

Kevin Lung, Director (Tel: [61] (2) 8266 7318, Email: **kevin.lung@pwc.com**)

38. Estate planning is becoming more important for Australians with foreign assets, or who may inherit such assets from overseas estates. Specialist advice should be sought.

Step 2:
Understanding the Australian tax system

Taxation of employment income

39. A resident individual's worldwide employment income is generally subject to Australian tax, regardless of whether or not the income is remitted to Australia.

40. Employment income includes foreign earnings except where the earnings are directly attributable to a specific class of activities and satisfy other conditions in s23AG of the *Income Tax Assessment Act 1936*. These activities are generally Government supported activities.

41. Generally salary and wages are taxed 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 double taxation.

42. Employment income which is subject to tax in Australia 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. Employee share schemes are discussed at paragraph 122.

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 FBT rules will apply (refer to paragraph 46).

44. An exact reimbursement of expenses by an employer is not an allowance and is not assessable. A reimbursement of this type will be subject to the FBT rules (refer to paragraph 46).

Services performed in and out of Australia

45. Where an individual first arrives in Australia part way through an income year, employment income which is attributable to services performed after arrival in Australia is subject to tax. In these circumstances, the individual may be required to lodge a tax return with the Australian revenue authorities and also the revenue authorities in their home country (depending on the country's tax laws and applicability 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. The tax is known as FBT and is levied on the employer. FBT is payable with respect to benefits provided in relation to an Australian assignment. This is the case whether the benefits are provided by either the Australian or overseas company. To encourage the movement of individuals posted to work in Australia, there are FBT exemptions and concessions for benefits which relate to employment relocations. These exemptions are discussed in Step 3.

Tax deductions for employees

47. An employee is entitled to claim tax deductions against employment income for most expenses incurred in deriving that income. Common deductions include membership fees for 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 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 $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 that an employee is unable to claim as a tax deduction include:

   - Travel costs of an accompanying spouse or family member whilst on a business trip (subject to very limited exceptions);
   - Recreational Club subscriptions; and
   - Car expenses incurred by an employee relating to a vehicle supplied by their employer for private use.

Substantiation rules

49. Eligibility for tax deductions depends 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 their entitlement to a 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 PwC personal tax specialists are able to provide information on this topic, including details of the type of information which should appear on receipts 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 amounts deducted are remitted to the 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 provide their employer with a Tax File Number (TFN) in order to avoid tax being withheld at the highest personal tax rate. Details on the TFN system are provided in Step 4.

51. FBT is payable by an employer with respect to benefits provided and these benefits are not assessable to the employee. However, an employee is issued with a PAYG payment summary at year end which discloses salary and wage details, PAYG deductions which have been remitted to the ATO and the value of reportable fringe benefits received from their employer. Whilst fringe benefits are not assessable to the employee, they are taken into account in calculating the following:

   - Medicare levy surcharge;
   - Private health insurance rebate;

- Deduction or rebates for personal superannuation contributions; and
- Higher Education Loan Programme (HELP) repayments.

52. The PAYG system is easily applied where an employee is paid from an Australian payroll, however 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 non-resident employer to meet the tax liability of the employee in relation to their salary and wage income (e.g. under a tax equalisation agreement) and to pay any FBT that may result from this agreement, the non-resident employer can lodge an application (quoting the employee's name and TFN) for PAYG withholding to be varied to nil. If the variation to nil is accepted by the ATO, the non-resident employer is not required to make PAYG withholding in respect of the employee working in Australia. Any tax due is instead paid via the tax return. The non-resident employer is required to provide the employee with a statement of earnings in Australian dollars for the Australian tax year from 1 July to 30 June summarising the income paid from the foreign payroll. The employee may still also receive a PAYG Payment Summary with respect to reportable fringe benefits, however, the salary and wages income paid off the overseas payroll would only be reported on the statement of earnings.

Investment income

53. For many individuals who are transferred to work in Australia, the most complex tax issues which require attention are tax issues related to investments maintained in their home country, or acquired in Australia. Careful planning and advice prior to an individual being transferred to Australia can usually resolve these issues. It should also be noted that since 1 July 2006, most foreign individuals fall within the temporary resident rules and their foreign sourced investment income is free from 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 offshore investments is provided in Step 8. It is essential that up-to-date and detailed advice is obtained on the tax treatment of Australian and offshore investments prior to an individual arriving in Australia.

Interest

55. Resident individuals are subject to Australian tax on worldwide interest income. Australian sourced interest is included in the individual's Australian tax return as assessable income. Financial institutions and certain other investment bodies will withhold tax from Australian sourced interest payments where the investor fails to quote their TFN. Under this system, tax is withheld on interest income at the highest personal tax rate (plus Medicare levy). For further details on TFNs, see Step 4. It should be noted that all Australian financial institutions are required to report (via the TFN system) interest, dividends and trust distributions to the ATO. The information provided by financial institutions is then matched electronically

against personal tax returns. Any discrepancies are likely to result in the ATO issuing the individual with audit assessments and interest/penalty charges.

56. Foreign sourced interest income is also included in the assessable income of a resident individual, however a credit (foreign income tax offset) is granted for foreign taxes imposed by the country of source (e.g. interest withholding tax).

Rental income

57. Rental income commonly arises because an individual rents out their offshore residence whilst working in Australia. Alternatively, an individual may acquire an investment property upon or after their arrival in Australia. A resident individual is subject to Australian tax on worldwide rental income.

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 is allowed for expenses incurred in deriving rental income (e.g. interest on funds borrowed to acquire the property, depreciation of certain assets, 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 loss may be offset against the individual's other worldwide income.

59. An Australian withholding tax liability of 10% may arise in respect of interest paid by an Australian tax resident to a non-resident lender (subject to any DTA exemption – see Australia's DTAs with the United Kingdom, France, New Zealand, Chile, the United States, Japan and Germany). This includes interest paid to an overseas lending institution for payment of a mortgage on an overseas home. Where an individual qualifies for the temporary resident exemption, any foreign sourced net rental gain/loss is not assessable/deductible.

Dividends

60. The source of a dividend determines how it is treated when it is received by a shareholder. A resident individual shareholder is entitled to an imputed credit by way of a tax offset for 'franked' dividends received from an Australian company. 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.

61. Conversely, where a resident individual receives an 'unfranked' dividend (i.e. a dividend from company profits which have not been subject to Australian tax), the dividend is assessable in the shareholder's hands and no imputation credit is available.

62. Generally, foreign sourced dividends received by a resident individual shareholder are included in assessable income. If expenses are incurred in earning these dividends (e.g. interest on funds borrowed to acquire the shares, etc.) and the expenses do not exceed the amount of the dividend, Australian tax is payable on the net. A credit is allowed for any foreign withholding tax paid on the dividend (refer to paragraph 15). Where the relevant deductions exceed the foreign sourced dividend income, the loss may be offset against other worldwide income.

63. Foreign dividends which are paid from income which was previously attributed to a

taxpayer under the special rules relating to controlled foreign companies (refer to paragraphs 218 - 220) are exempt from tax.

64. Special rules apply where foreign sourced dividends are received by a resident corporate shareholder. PwC can assist with advice on these special rules.

Self-employment income

65. Profits from a trade, business, profession, or vocation which are derived by an individual are assessable. The individual will be able to claim a deduction for expenses incurred in gaining or producing the income which is 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). To be entitled to a deduction for certain motor vehicle or travel expenses, the individual must satisfy record keeping requirements.

Partnerships

66. 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 their 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").

67. A resident partner is treated as owning a proportionate interest in each asset owned by 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 their proportionate interest in the asset and will be required to pay CGT on any resulting gain (conversely, a capital loss may be available).

68. Where the partnership makes a loss, the resident partner will be entitled to claim a tax deduction for their proportionate share of the loss.

PAYG instalments on investment and business income

69. Tax may be payable on certain types of investment and business income in advance of an individual's final tax liability being determined. Tax is paid in advance when an individual's 'instalment income' exceeds a certain threshold (i.e. income from which PAYG withholding has not been deducted). Tax is collected via PAYG instalments, which are calculated by the Commissioner of Taxation and usually payable in quarterly instalments (however certain taxpayers are eligible to make a single annual PAYG instalment of tax). A credit is allowed in the individual's Australian income tax return for PAYG instalments paid throughout the year.

Capital gains

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

71. Under the CGT system, capital gains are recognised on disposal (by sale, gift, or otherwise) of CGT assets acquired after 19 September 1985. Assets which were

acquired on or before this date are not subject to the CGT regime. Where a CGT asset is gifted, it is taken as being disposed of for its fair market value.

72. The following rules apply in calculating capital gains which arise on the disposal of a CGT asset:

- Where the asset was acquired prior to 11:45 a.m. AEST on 21 September 1999, disposed of after 11:45 a.m. AEST on 21 September 1999 and held for at least 12 months, the individual has a choice of how to include the gain in assessable income. The individual can choose 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 11.45a.m. AEST on 21 September 1999 and 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 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;

- For capital gains tax events occurring on or after 8 May 2012, taxpayers who were non-resident or temporary resident taxpayers during any part of the holding period are not entitled to some/all of the 50% discount on the capital gain where the asset is Taxable Australian Property.

- The discount may be pro-rated for any ownership period up to 8 May 2012 (subject to a valuation at that date), but the CGT discount percentage available will depend on the circumstance of each individual. It would be wise for foreign nationals investing in Australian real estate to seek advice before making the investment.

73. All kinds of assets fall within the CGT system. For example, plant and equipment used in carrying on a business (albeit specific rules apply to tax gains or allow deductions before any net sales proceeds fall within the CGT rules), foreign currency, land, shares, personal-use items such as furniture and collectables and rights under an employment contract. Assets held outside of Australia also fall within the CGT rules.

74. Exemptions or concessional tax treatment apply (subject to certain requirements) to gains from the disposal of a 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.

75. Capital losses on the disposal of an asset are offset against capital gains arising in the same year, or carried forward indefinitely to be offset against future capital gains. Capital losses are not deductible from assessable income.

76. 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 who are transferred to work in Australia because of deeming provisions, which seek to bring certain assets which were acquired prior to becoming a tax resident of Australia into the CGT regime. For further details, refer to paragraphs 115 - 119 and 179 - 183.

Medicare levy

77. 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).

78. Generally, only individuals residing in Australia who are citizens and permanent residents of Australia or New Zealand citizens are eligible to enrol in Medicare. 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 to Medicare as a result of their visa.

79. Citizens from countries with which Australia has a reciprocal health care agreement may also be eligible. Citizens of these countries need advice upon arrival in Australia regarding enrolment in Medicare and selecting the correct health insurance for the duration of their stay. Citizens of other countries who were "ordinarily resident" prior to arrival in any of these countries will also need advice on arrival to ensure they select the correct health insurance and are required to either enrol/not enrol in Medicare. Australia currently has reciprocal health care agreements with:

- Belgium;
- Finland;
- Italy (limited application to Italian citizens);
- Malta (limited application to Maltese citizens);
- The Netherlands;
- New Zealand (limited application for visitors only);
- The Republic of Ireland (limited application to Irish citizens);
- Norway;
- Slovenia;
- Sweden; and
- The United Kingdom.

80. 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 a taxpayer is deemed to not be eligible for Medicare benefits. As noted at paragraph 27, certain high-income earners who are subject to the Medicare levy may also be required to pay an additional surcharge depending on their level of income. The Medicare levy surcharge is payable where a high income-earner does not hold private patient hospital insurance with a health fund registered in Australia.

Lifetime Health Cover

81. The “Lifetime Health Cover” 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 a member when they first take out hospital cover. Individuals who take 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 the age of 30 in order to lock in the lowest premium rate. After the age of 30, an individual’s premium will be subject to a 2% loading for each year they are over 30 at the time of joining. Special rules apply to expatriate individuals who turned 30 prior to arriving in Australia. Detailed information can be obtained from your PwC representative.

Step 3:
What to do before you arrive in Australia

General

82. A wide range of taxation matters need to be considered before an individual moves to Australia. The matters which require consideration depend on the particular circumstances of the individual, the tax regime of the individual's home country and the existence of a double taxation treaty (see Appendix B).
Some of the issues which should be considered are discussed below.

Visa application

83. 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

84. 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 Home Affairs in Australia. Sponsorship status is the accreditation required for a business to sponsor foreign staff to work in the business as temporary residents.

85. Business sponsorships granted to an Australian business entity remain valid for five years from the date of approval, or six years for *accredited* sponsors. Thereafter, both a nomination and visa application must be approved each time an assignee is required. There are various requirements a business must meet for approval including providing evidence of active and lawful business operation, financial capacity and also an overall commitment to non-discriminatory employment practices.

86. 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, employment contract or secondment agreement, salary details, and the proposed length of the employment of the nominee in Australia (periods of approval are up to 1, 2, 3 or 4 years, depending on the occupation). The salary must be above a minimum income threshold set by the Australian immigration authorities and must also be in accordance with the market salary rate for the occupation – if the market salary for the occupation is below the minimum threshold then the nomination would not be approved. The nomination application must also include evidence that the business has conducted adequate labour market testing to confirm that it cannot locate relevant skills in the local market. The final step involves the expatriate lodging an application for a subclass 482 Temporary Skills Shortage (TSS) visa.

87. 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. All applications relating to 482 visa sponsorship are lodged online and subsequently processed in Australia, regardless of the location of the sponsoring employer and the visa applicant. The length of stay permitted under the 482 visa will be determined by the occupation itself and whether it is included on the Short Term Skills Occupation List (STSOL) or the Medium-Long Term Strategic Sklls List (MLTSSL). STSOL occupations provide an initial stay of up to two years and the option for one onshore renewal for a further two years. MLTSSL occupations provide an initial stay of up to four years and indefinite renewals.

88. Businesses sponsoring 482 visa holders are subject to monitoring by Immigration officials to ensure compliance with the various sponsorship obligations agreed to as part of the initial approval process. The checking will include such things as ensuring the sponsor is meeting the relevant market rate requirements and that all 457 visa holders are being employed under terms and conditions of employment which are equivalent to those provided to their Australian counterparts. It can also be an opportunity to check employers against compliance with employment law and with the Australian compulsory superannuation regime. Significant penalties for non-compliance exist, including non-fault civil penalties.

Permanent residence

89. 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. To be eligible for the Employer Nomination Scheme, the expatriate must be nominated into an occupation included on the MLTSSL at the time of lodgement of the permanent application.

The nomination

90. The Department of Home Affairs must be satisfied that the company is lawfully operating as a business entity in Australia and is of good corporate standing. There must also be a genuine need for a paid employee in the position nominated and the occupation as noted must be on the MLTSSL.

91. All applicants must be under 45 years of age and possess vocational English language skills (exemptions do apply in the case of age, skill, and English). For certain applicants, this may require formal English language testing. Transitional arrangements are available to individuals who held a 457 visa prior to 18 April 2017, including a higher age limit of under 50 years.

92. An additional criterion of the nomination application is for the employer to attest that the position will be available to the nominee for a fixed period of at least two years after the permanent visa is granted and that there is nothing expressed in the employment agreement excluding the possibility of renewal beyond this time. The visa holder must also declare that they intend to stay employed for at least this period.

Personal application

93. 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.

94. It is also a requirement that the applicant meet any one of the following threshold criteria:

- Earn a base salary of A$180,001 or more (exclusive of superannuation, benefits and bonuses); or
- Hold a subclass 457 visa, and have worked full-time in the occupation to which the appointment relates, as a direct employee of the sponsor in Australia for at least the period of 3 years immediately before making the application (a lesser period of at least 2 years is available to individuals who held a 457 visa prior to 18 April 2017); or
- Have their skills assessed by the relevant authorities in Australia and possess at least 3 years relevant work experience immediately before applying (which can include experience gained outside Australia).

95. Any applicant applying for this visa can be in or outside of Australia at the time of lodgement or grant of the visa.

96. 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. It should be noted however a failure to remain in the nominated employment for the agreed two year period may lead to visa cancellation, if the Department of Home Affairs formed the view that the Declaration made in the application to this effect was not genuine.

Other visa options

97. 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 individuals 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 Home Affairs or the relevant immigration officials in Australian diplomatic missions abroad.

Structuring the remuneration package

98. Some companies will offer 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 their home location. From 1 October 2012, the living-away-from-home concessions are not meant to extend to foreign nationals working in Australia, however some generous concessions continue to apply to “Fly-in and Fly-out” employees. Advice should be sought in advance regarding these concessions. 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.

99. Companies should also consider whether to pay an employee’s remuneration in Australian currency, or the currency of the home country. Alternatively, an employee’s remuneration could be paid in both currencies (i.e. host country

living allowances paid in AUD, while home country "savings" etc. are paid in the currency of the home country). This is important where there are significant fluctuations in exchange rates. These fluctuations may also impact whether the employee's base remuneration continues to satisfy the market rate requirements for 482 visa approval (once converted into AUD). It should be noted that where and how the remuneration is paid does not affect the liability to tax.

100. It is essential that companies consider all relevant taxation issues prior to finalising the structure of an employee's remuneration package. In particular, the Australian FBT law contains numerous concessions and exemptions which, if kept in mind at the time of negotiating a remuneration package, may provide the employee with concessionally taxed benefits without increasing the overall costs to the employer. Some examples of the components of an expatriate package and an overview of the Australian tax treatment of each component, are set out in Appendix C.

101. Any contract of employment should be reviewed by an Australian taxation adviser prior to finalization. This is important for the purposes of identifying possible questions of residency and putting in place appropriate remuneration packages. If the employee requires 482 visa sponsorship, it should also be noted that for Immigration purposes, the contract or secondment/assignment letter must evidence a direct employment relationship between the employee and the Australian business sponsor, regardless of which payroll the employee is paid from.

Tax reimbursement ("tax equalisation") plans

102. A tax reimbursement program may be provided by employers to their employees to compensate them 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'.

103. 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'.

104. 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.

105. Both plans require the employee's hypothetical home country tax to be calculated. The hypothetical tax is generally calculated on an employee's base salary and other base remuneration, as if the employee had remained in their home country.

106. 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.

107. FBT (refer to paragraph 46) is payable by an employer on the amount of any tax reimbursement arising under

a tax protection or tax equalisation plan.

Timing departure and arrival

108. Although it is not always possible to influence an individual's date of departure from their home country and date of arrival in Australia, the timing of these events may have a bearing on the individual's tax position in both jurisdictions.

109. From an Australian perspective, the date of arrival is relevant to a number of issues, including:

    – Double taxation agreement;

    – Commencement date of Australian tax residency;

    – Availability of the appropriate Australian visa;

    – The rate of tax and the amount of Medicare levy payable. In calculating the Australian tax payable in the year of arrival, the tax-free threshold available 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

110. As indicated previously, residents of Australia are subject to Australian tax on worldwide income, less a foreign income tax offset where applicable. It is therefore essential to review an individual's personal investments and other related matters prior to the individual becoming a resident of Australia, as this will determine the extent of any exposure to Australian tax. Most foreigners fall within the temporary resident rules and their foreign sourced investment income is free from Australian tax.

Tax on investments within the family

111. The Australian tax liability on investment income is reduced where the income is derived by various family members, rather than a single individual. For example, a bank deposit held solely in the name of a non-working spouse will generally enable interest income to be taxed at a lower marginal tax rate. Australian tax law does not allow spouses 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. It is important to note that it is generally not possible to assign income without actually transferring an asset into a spouse's name. CGT consequences may also result from such transfers.

112. The home country tax consequences of the employee's transfer to Australia should also be considered. Special rules also apply to the derivation of income by minors (aged 18 years and under). Individuals should therefore consult their PwC advisor before considering investments in their children's name.

Trusts

113. Individuals with existing trust structures in their home country will need to examine closely the impact of Australian tax law on trust arrangements. Some of the factors which should 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 the deemed market value on the date the individual becomes a resident, or just the historical cost of the assets);

    – 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.
- Taxation of any accrued income in the trust upon later distribution to an Australian resident beneficiary (these rules can adversely impact Australian beneficiaries).

Obtaining Australian tax credits for foreign tax payments

114. Steps may need to be taken to ensure that all foreign tax paid on offshore investment income is identified and taken into account in order to maximize the credit available under Australia's foreign income tax offset rules. Such steps include:

- Considering 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

115. As mentioned in Step 2, special CGT rules apply where an individual 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 the individual immediately before becoming a resident is subject to CGT if it is sold or otherwise disposed of during the period in which the individual is a resident. The cost of the asset in these cases is deemed to be the market value of the asset at the time the individual became a resident. It is therefore advisable for individuals to obtain valuations of all non-taxable Australian property assets as close as possible to the date on which the individual becomes a resident. The cost of the valuation forms part of the cost base of the asset for the purposes of calculating the capital gain or loss.

116. Where an asset is deemed to be acquired on the date an individual becomes a resident of Australia and the asset is held for at least 12 months from this date, only 50% of the net capital gain is taxable when the asset is sold.

117. 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.

118. 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’) on the date that they cease being a resident.

119. Where a person ceases to be a resident of Australia and disregards the CGT event I1 (deemed disposal), the individual is deemed to treat all their non-taxable Australian property assets as taxable Australian property assets. This means that when an individual sells these assets (even if they are a foreign resident at the time of sale), the individual will be subject to Australian tax on any gain arising from the sale - although exceptions may apply per the Double Tax Agreements with the UK, the US, New Zealand, France, Chile, Japan, Switzerland and Germany. However as of 8 May 2012, the CGT discount percentage is denied to non-residents and temporary residents; and therefore the discount must be apportioned for the period an individual is a non-resident and/or temporary resident.

Those individuals who may be affected should consult their PwC adviser.

Income earned before secondment to Australia

Employment income

120. 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.

121. Where the payment relates to services performed outside of Australia before commencement of assignment, but after grant of the temporary visa, the amount is subject to Australian tax. Where possible, bonus entitlements should be paid prior to arrival in Australia.

Employee Share Schemes

122. Employee Share Schemes (ESS) are used as a tax effective form of remunerating employees. The rules regarding the taxation of ESS income are complex and circumstances need to be examined on a case-by-case basis. It is recommended that employees seek specific advice from their PwC 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 ESS in Australia. There were further changes for shares and rights granted under an ESS on or after 1 July 2015. The cross border implications of the taxation of ESS under the new rules are based on the concepts of derivation and source. Hence an employee who has acquired shares under an ESS or is contemplating such an offer before arrival to Australia should seek advice.

Foreign superannuation (pension / social security)

123. The taxation laws of Australia and the home country should be considered in relation to superannuation benefits which have accrued in a superannuation fund in the individual's 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.

124. Australian tax 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 amounts are transferred outside the initial 6-months, an assessable charge arises equivalent to the "earnings" from date of residency to date of payment.

125. The rules allow the taxpayer to make a choice in respect of transfers into a complying Australian superannuation fund such that either personal tax or contributions tax applies to the assessable amount. Transfers are subject to "capping rules" which mean the untaxed amount is treated as a non-concessional contribution. The rules are very complex, therefore if you are considering transferring amounts into an Australian fund, you should obtain advice before doing so.

126. There is little or no benefit for foreign nationals on temporary visas to build up retirement savings in Australia. This is because in addition to the contribution tax their Australian superannuation funds are subject to a 35% withholding tax on withdrawal of the funds upon departure from Australia and cancellation of their Australian visa.

127. Given the caps on contribution limits for Australians since 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 30% now mean funding of foreign pensions has a certain attraction to mobile expatriates, albeit home country tax rules do need to be taken into account. For US citizens and Green Card holders, careful analysis of unused tax credits are an important factor.

128. In light of the complexity of the foreign superannuation rules, please consult your PwC advisor before making any decision in relation to foreign superannuation. When dealing with foreign pension funds, wills and the naming of beneficiaries and trustees, it is of paramount importance to address both home and host country tax rules.

Pre-arrival consultation

129. Where circumstances allow, a pre-arrival consultation should be held with a PwC expatriate tax specialist well in advance of an individual transferring 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.

130. 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 the assignee.

Customs - Temporary importations

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

Customs - Passenger concessions

132. 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:

- $900 worth of goods (not including tobacco and alcohol products) and $450 for passengers under 18 years of age. For example cameras, electronic equipment, perfume concentrate, jewellery, watches, sporting goods, leather goods;
- 2,250ml alcoholic liquor for passengers aged 18 years and over;
- Tobacco: one unopen packet of up to 25 cigarettes, or 25 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.

133. Note that the above list is not exhaustive, so other goods may be brought into the country provided they are not restricted or prohibited. Restricted and prohibited goods include food, weapons, dangerous goods, animal or plant material, certain medicines and protected wildlife.

134. 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 overseas for at least 12 months prior to departure for Australia may be brought into Australia without the payment of duty and GST under another concession (refer below).

135. Goods purchased overseas or on arrival at an inwards duty free shop in Australia are included when Customs determines a duty free allowance.

136. A husband, wife and child under 18 years of age, travelling together, can pool their duty free concession entitlements.

137. Gifts are counted as part of the $A900 duty free passenger allowance.

138. 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

139. There are 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 be a migrant who is coming to Australia to take up permanent residence for the first time, a person returning to resume permanent residence, a temporary resident, a returning Australian citizen, or an Australian citizen who is residing overseas that has returned to Australia temporarily; and
- The goods must be the person's own household or personal items; and
- The person must have owned and used the items for 12 months or more.

140. 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.

141. Goods that are owned for less than 12 months and alcohol and tobacco products will generally be subject to duty and GST. Additionally, motor vehicles, motor vehicle parts, bequeathed goods, goods purchased from overseas whilst the owner was in Australia and commercial goods cannot constitute UPEs.

Motor vehicles

142. 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 (where the payment of duties and taxes is guaranteed by an overseas issuing body) which permits the international movement of vehicles with minimum customs documentation.

143. 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 (although not GST-free).

144. Unless prior permission has been granted, the vehicle must not be lent, sold, pledged, mortgaged, hired, given away or exchanged. In addition, the owner must not part with the vehicle unless it is for the purpose of exportation.

145. 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 https://infrastructure.gov.au/vehicles/imports).

146. The customs value of a vehicle is calculated in Australian dollars and is generally assessed on the purchase price actually paid or payable overseas for the vehicle where the seller and purchaser are non-related parties. 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.

147. 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.

148. For motor vehicles in general, the current approximate rates of customs duty and GST applicable are:

– Used motor vehicles of 30 years of age 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 attract a general customs duty rate of 5% 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$66,331 (for the 2018-19 financial year). An alternate threshold of A$75,526 (for the 2018-19 financial year) is applicable for ‘fuel-efficient’ vehicles. LCT is generally 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 $75,526 are exempt from LCT);

– Used off-road vehicles attract a general customs duty rate of 5%. The 10% GST rate applies.

149. 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 Infrastructure and Regional Development. 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

150. 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.

Step 4:
What to do when you arrive in Australia

General

151. 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.

152. The following matters are also relevant upon arrival in Australia.

Tax File Number application

153. Each taxpayer is given a unique identification number (Tax File Number; TFN) by the Australian revenue authorities. This TFN 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 157).

154. Individuals are not obliged to quote their TFN to any other person. However, subject to certain limited exceptions, failure to quote a TFN on a 'Tax File Number declaration form' (refer to paragraphs 155 - 156) 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 TFN 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 of an individual's income tax return. An application for a TFN should therefore be made upon arriving in Australia. Applications can be made through branches of the ATO or online via the ATO website. Two original documents (only one if online application) providing proof of identity (e.g. passport, birth certificate) will be required at the time of the application.

Employment declaration form

155. 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 50) to reflect their entitlement to the tax-free threshold (refer to Appendix A for current threshold amount). It is an offence to have more than one employment declaration in force at any one point in time.

156. As indicated above, whilst quotation of an individual's TFN 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. It is therefore common for employees in Australia to quote their TFN to their employer. 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

157. On arrival in Australia all individuals who are eligible for Medicare benefits (refer to paragraph 78 - includes Australian citizens and permanent residents and New Zealand citizens) should register with Medicare promptly. Medicare cards are issued following registration.

158. 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 a 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.

159. Medicare does not cover ancillary services such as dental, optical, ambulance transport and physiotherapy. Private health insurance funds offer varying degrees of cover in this regard.

160. Australia has Reciprocal Health Care Agreements (RHCAs) 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 79 for countries with which Australia has negotiated RHCAs). Foreign nationals who are eligible for restricted Medicare benefits from RHCA countries are in the position of only being able to access Medicare in limited circumstances, but are fully liable for the 2.0% Medicare levy. In addition, they may be liable for the 1-1.5% Medicare levy surcharge payable by “high income earners”. In order to avoid that surcharge they must have private health insurance (PHI) from an Australian health fund (note that PHI can only cover for a private hospital what Medicare covers for a public hospital). For this reason ALL foreign nationals need to have full medical/hospital cover under either an International policy (via their employer) or a general health policy from an Australian insurer. Advice on both Medicare and choice of health policies must be sought on arrival (or before arrival). Ask your PwC representative for assistance.

Continued liability to meet obligations under tax law of home country

161. Whilst in Australia, an individual may have a continuing obligation to comply with the requirements of the tax laws of their home country. The person may be taxable in their home country on employment and/or investment income, however this will depend on their residency status for tax purposes, the basis on which an individual is taxed in their home country (e.g. residency, citizenship or source of income) and the terms of any applicable double taxation treaty.

162. It is therefore important that an expatriate employee continues to monitor and comply with obligations arising under the tax laws of their home country whilst they are in Australia. Assistance in meeting these obligations can be provided by a PwC personal tax specialist through access to our international network.

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

Tax return

163. 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 ATO which shows their taxable income for the year ending 30 June. This threshold does not apply to non-residents, 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 an individual lodges their own tax return). If tax returns are lodged through a registered tax agent, such as PwC, the lodgement date is generally extended beyond the prescribed date (to either 31 March or 15 May). Penalties may be imposed for late lodgement of tax returns.

164. Individual taxpayers may apply to the ATO for a Private Binding Ruling on any contentious issue relating to their tax affairs at any time. A taxpayer can object to an unfavourable Private Binding Ruling as for normal assessments (refer to paragraph 166).

Notices of assessment

165. The final tax liability for an individual taxpayer is advised by the ATO issuing the individual with a notice of assessment. The ATO can issue a notice of assessment at any time after lodgement of a tax return, however the average processing time is three to four weeks.

166. 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 notice of assessment. 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, a partner in a partnership carrying on a business, beneficiaries of trusts, participants in an Employee Share Scheme and for taxpayers who fail to report ALL of their foreign income. A four year amendment period applies to income years prior to 30 June 2005. If there is fraud or evasion, the ATO may amend any assessment regardless of time limits. It should be noted that an individual who wishes to object to an assessment outside the 2-4 year time limits may seek the exercise of discretion of the ATO to allow a late objection.

Payment of tax due

167. 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 50 and 69) exceed the tax liability and a refund is due, that refund will accompany the notice of assessment. The ATO will no longer issue cheques and refunds must be made by an Electronic Fund Transfer to an Australian bank account. 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% p.a. is payable thereafter on a compounding basis. The GIC is however, tax deductible.

168. Once a PAYG instalment rate is issued to the taxpayer by the Commissioner of Taxation, there may be a liability to PAYG instalments on most personal/investment income on a quarterly basis. In certain circumstances, PAYG instalments are due on an annual basis. A PAYG instalment rate will not issue until the first tax return is lodged for the individual. Employment income is subject to PAYG withholding by employers and hence not included in PAYG instalment income.

Step 6:
What to do when you leave Australia

General

169. It is important not to overlook the taxation matters which need to be attended to prior to an individual leaving Australia upon completion of their expatriate assignment. In the discussion which follows, it is assumed that an individual is no longer a resident upon departing Australia. Non-residents 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 trailing tax liability in respect of employee share plan benefits or deferred bonus plans which are partly in respect of a period of Australian employment.

Tax return requirements

170. Arrangements need to be made for the lodgement of a tax return for the year in which an individual departs from Australia. 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; and

– Details of Australian sourced income derived following the date of departure (other than dividends or interest subject to withholding tax; refer to paragraph 196).

171. 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

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

173. The termination payment must be taken as a cash lump sum (i.e. there is no choice to roll it over into superannuation). The taxation of termination payments has an employment termination payments (ETP) cap on the amount of the termination payment which can receive concessional treatment. The ETP cap for the year ending 30 June 2019 is $205,000. The concessional treatment in respect of certain “golden handshakes” is limited to

the smaller of the ETP cap ($205,000) and the whole-of-income cap (up to $180,000). There are also rules which allow for exemptions from taxation of certain foreign termination payments. Please contact your PwC advisor for more information.

174. 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 (refer to the exception to this below for temporary residents). For individuals born before 1 July 1960 the preservation age limit is 55 years and for individuals born from 1 July 1964 the age limit is 60 years. The age limit is phased in gradually for taxpayers born between these two dates. Temporary residents who permanently depart Australia can access their superannuation after they have departed. The "departing Australia superannuation payment" (DASP) is subject to a final withholding tax regardless of whether they have reached preservation age on withdrawal (currently 35%) which is designed to claw-back the concessional tax treatment applied to superannuation. From 1 July 2017, a DASP made to a working holiday maker (i.e. a subclass 417 or 462 visa holder) is taxed at 65%.

175. A capping system applies limiting the level of personal after-tax contributions and employer before-tax contributions that can be made on behalf of an individual during the year. Contributions in excess of these thresholds may result in the individual paying transaction ("penalty") tax on the 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

176. 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.

177. The conditions for release of superannuation monies to temporary visa holders have been amended such that payment can only be made subject to the 35% withholding rate. Australian citizens and permanent residents can only access superannuation monies once they reach retirement, age 65, or their preservation age.

The DASP rules do not apply to New Zealand citizens.

Capital gains tax issues

Deemed disposal of assets upon ceasing to be a resident

178. Subject to certain concessions outlined below, an Australian citizen or a permanent resident residing in Australia (or the spouse of an Australian citizen or the spouse of a permanent resident) ceasing to be a tax resident of Australia is deemed to have disposed

of certain CGT assets at the time of ceasing to be a resident. Assets originally acquired before 19 September 1985 and "Taxable Australian Property" (generally Australian real estate) are not subject to the deemed disposal rules. The consideration on disposal of the assets is deemed to be the market value of the relevant asset on the date the individual ceases to be a resident of Australia.

179. This deemed disposal rule could cause extreme financial hardship by taxing unrealised capital gains. For example, an Australian citizen, who acquired shares in a foreign company while an Australian resident, would effectively be taxed on the increase in value of those shares during the period up until their departure, even though the shares had not actually been sold.

180. Subject to any relevant Double Tax Agreements with Australia (for example, UK, NZ, US, Chile, Japan, Switzerland, Germany and France), 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

181. 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. Should the individual make the choice for a CGT asset that is affected by the deemed disposal rules to be treated as Taxable Australian Property, the 50% discount concession on CGT will be limited to a pro rata of any residency days post-8 May 2012.

182. 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 non-resident. 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 PwC tax representative.

Tax issues after departure

183. 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

184. As mentioned in paragraph 74, an individual's main residence is one of the few CGT assets which are eligible for an exemption from CGT. 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. If ownership of an Australian dwelling is retained following permanent departure from Australia and 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. The denial of the 50% CGT discount rule for both non-residents and temporary residents in respect of disposals of Taxable Australian Property from 8 May 2012 needs to also be taken into account in both decisions to buy Australian property and to retain Australian property upon departure from Australia.

185. The tax aspects of renting out an Australian home at the end of the work assignment are outlined in paragraph 200.

The Government has proposed the removal of the CGT main residence exemption from 7:30pm (AEST) on 9 May 2017 where the individual is a foreign resident at the time of the CGT event occurring. This measure has not yet been legislated at the date of this publication.

For individuals having an ownership interest in a dwelling, the date of the disposal of their interest in the dwelling will be the time a contract for sale is entered into. This will be the relevant time to determine whether the individual is an Australian tax resident or a foreign resident and consequently whether the main residence exemption can be applied.

For properties acquired on or before 9 May 2017 (and where the individual was a foreign resident at that date) the new rules would not apply to disposals of the property until after 30 June 2019. Therefore, individuals who owned an Australian dwelling before 9 May 2017 that they used as their main residence - or where the absence rule provision will apply to treat this dwelling as their main residence - would still be able to benefit from the main residence exemption for disposals on or prior to 30 June 2019.

Transferring funds abroad

186. 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 to the Australian Transaction Reports and Analysis Centre (AUSTRAC) by the financial institution which facilitates the transfer. Cash dealers (e.g. banks) are required to report international telegraphic transfers to AUSTRAC regardless of value.

Exit consultation

187. A final consultation with a PwC 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 considered;
– Advantage is taken of concessional tax rates applicable to certain types of payments made as a consequence of an employee's termination of employment;
– The individual is aware of any future filing obligations with respect to trailing payments (e.g. bonuses or employee equity income);
– The superannuation DASP process is advised of where applicable

Step 7:
Taxation of non-residents

Employment income

188. Except where the terms of a Double Tax Agreement apply, employment income including allowances (other than a living-away-from-home allowance), bonuses, commissions and director's fees received by a non-resident for services performed in Australia is taxable in Australia at the rates of tax applicable to non-residents (see Appendix A).

189. The general effect of the DTAs is to exempt employment income from Australian tax where the non-resident 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 agreements; for example, the employee must remain a resident in their home country, the remuneration should be paid by a non-resident 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 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

190. 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 this case, the employer will be subject to FBT on the taxable value of the benefit provided (refer to Appendix A for the FBT rate). The employer is liable to FBT whether or not the employer is a resident of Australia. The Double Tax Agreements between the Australian Government and the Governments of NZ, the UK, Chile, Switzerland, Indonesia and Germany, contain “FBT articles (or sub-articles)” which resolve potential double taxation of fringe benefits (as defined under Australian FBT rules) by allocating an exclusive taxation power to whichever country has the primary right to tax salary or wage income.

Tax deductions for employees

191. A non-resident 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 47 - 48).

Exemption from income tax for certain non-residents

192. There are a range of exemptions from Australian income tax for certain non-resident

individuals. These exemptions are usually based on the type of services performed by the non-resident in Australia. For example, special rules apply to non-resident 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.

193. An exemption is also usually allowed under Australia's double taxation agreements (subject to certain conditions) for teaching and research income of visiting professors and teachers.

Investment income

194. Generally, non-residents are subject to Australian tax on investment income derived from sources in Australia.

195. In the case of certain royalty, dividend and interest income paid or credited to non-residents (see below), a flat and final rate of withholding tax is imposed (triggered by the foreign address) and the income is not subject to the ordinary rates of tax.

196. Most other categories of Australian sourced income paid to non-residents (e.g. rentals from properties situated in Australia) are taxable at the ordinary non-resident 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 208).

Interest

197. Withholding tax is generally imposed on interest paid to a non-resident 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 non-resident). Withholding tax is not imposed if the interest is derived by the non-resident 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.

198. 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 triggered by the foreign address) and remitted to the revenue authorities. Withholding tax represents a final tax in Australia on the interest income.

Rental income

199. The tax treatment of non-residents deriving income from rental property investments in Australia is basically the same as that applicable to residents (refer to paragraphs 57 - 59).

Dividends

200. Dividends paid out of profits which have borne Australian company tax, called 'franked' dividends, are not assessable to a non-resident shareholder, nor are they subject to withholding tax. There is no credit allowed for the “imputation” (i.e. the franking) credit.

201. However, withholding tax is imposed (triggered by the foreign address) as a final tax on dividends paid to non-residents 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.

202. The rate of withholding tax is 30%, although this rate may be reduced (usually to 15%) where a double taxation agreement applies (see Appendix B).

203. Certain unfranked dividend income is exempt from dividend withholding tax. This exemption is limited in its operation but effectively applies to dividends paid by an Australian company out of foreign sourced profits for the company that was exempt from Australian income tax.

Capital gains

204. Non-residents are liable to Australian 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.

205. Net capital gains are calculated in the same way as for residents (refer to paragraphs 72 and 75) and are included in the assessable income of the non-resident.

206. There is usually no requirement for tax to be withheld from the disposal proceeds, nor is the non-resident 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. However note that a 12.5% "non-final" withholding tax applies to sales proceeds derived by non-residents from the sale of Australian real properties of $750,000 or more from 1 July 2017. It is possible to vary this rate by application. Any person who may be affected by the withholding tax rules should seek advice from a PwC personal tax specialist in Australia as to whether a variation may be able to be applied for.

Trust distributions

207. Trustees who distribute Australian sourced income of the trust (other than dividends and interest subject to withholding tax) to a non-resident 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 non-resident 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.

208. As mentioned above, a non-resident 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.

209. Similarly, an individual will be taken to have disposed of their interest in the fixed trust at the time they become a non-resident (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.

210. A withholding regime applies to Australian Managed Investment Trusts (“MITs”) in respect of distributions to non-resident beneficiaries. The rate is fixed as a final withholding tax rate of 15% where the distribution is made to a non-resident beneficiary who is residing in a country with an Exchange of Information Agreement (including an exchange of information article in a DTA) with Australia. 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’. 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 rules. Note also where the non-resident beneficiary does not reside in a country with an Exchange of Information Agreement (including an exchange of information article in a DTA) with Australia, the final withholding tax is set at 30%. The MIT withholding applies to “Australian sourced income excluding interest and dividends” and this means all other Australian sourced income and capital gains from disposal of Australian property. The MIT withholding is triggered by a foreign address and annual tax statements clearly set out Australian sourced income and TAP capital gains as being subject to the MIT rules.

Partnerships

211. A partnership is not treated as a separate entity for Australian tax purposes.

212. Members of the partnership are assessed on their individual share of the partnership income. A non-resident 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 205).

HELP and TSL debt repayments

213. Effective 1 July 2017, taxpayers with a HELP or TSL debt relocating overseas for at least six months (referred to as ‘overseas debtors’) are now required by the ATO to:

- Update their contact details with the ATO within seven days of leaving Australia through myGov; and

- Lodge an Australian tax return or form each year declaring their worldwide income (or complete a non-lodgement advice)

214. From 1 July 2017, overseas debtors (including Australian tax non-residents) with ‘worldwide income’ that exceeds the repayment threshold are required to make mandatory repayments against their HELP and TSL government debts. This change means that Australian non-resident taxpayers now have to repay their loans in the same way as Australian resident taxpayers.

Individuals who opt to pay their debt through the tax system are required to make payments if their "repayment income" is above the repayment threshold for the year (i.e., A$51,957 for 2018-19). Repayment income includes the following:

- Taxable income;

- Total net investment loss (including net rental losses);

- Reportable fringe benefits amounts; reportable superannuation contributions; and

- Foreign employment income.

215. Subject to certain conditions, when declaring their worldwide income, the overseas debtor will have the option of choosing between three income assessment methods in calculating their worldwide income (prior to declaration, all amounts are first required to be converted to Australian dollars using the relevant average exchange rate for the Australian tax year):

- Simple self-assessed method;

- Overseas assessed method; or

- Comprehensive tax-based method.

216. Failure to update contact details or to declare worldwide income will constitute a failure to comply with taxation requirements and penalties may be imposed. It is important that the overseas debtor lodges on time, in order to avoid a penalty for late lodgement.

Step 8:

Other matters requiring consideration

International taxation

217. 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 PwC personal tax specialist in Australia.

218. 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.

219. AAn offshore company can itself be categorised as a resident of Australia if it carries on business in this country and has either:

   – Central management and control in Australia; or

   – Voting power controlled by resident shareholders.

220. 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 115 - 119 and 179 - 183 will also apply to offshore entities that become resident of Australia for tax purposes.

Closely held offshore companies

221. 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.

222. 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.

223. 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.

Superannuation

224. 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, FBT 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 considered a temporary resident. Contributions to foreign superannuation/pension funds are specifically non-deductible for Australian tax purposes. Foreign employers will need specific guidance on this issue.

225. Australia has a 'Superannuation Guarantee' scheme under which employers (both resident and non-resident) 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 non-resident employees working in Australia and most 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).

226. Given that departing temporary resident superannuation entitlements are taxed at 35% on withdrawal (refer to paragraphs 176 - 177), 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

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

- Austria
- Belgium
- Chile
- Croatia
- Czech Republic
- Estonia
- Finland
- Germany
- Greece
- Hungary
- India
- Ireland
- Japan
- Korea
- Latvia
- The former Yugoslav - Republic of Macedonia
- The Netherlands
- Norway
- Poland
- Portugal
- Slovak Republic
- Switzerland
- United States of America

228. 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.

Appendix A:
Personal tax rates

Personal tax rates resident individuals – Year ending 30 June 2019

Taxable income (A$)	Tax on column 1 (1) (A$)	% on excess - marginal tax rate (1)
18,200	Nil (2)	19%
37,000	3,572	32.5%
90,000	20,797	37%
180,000	54,097	45%

Personal tax rates resident individuals – Year ended 30 June 2018

Taxable income (A$)	Tax on column 1 (1) (A$)	% on excess - marginal tax rate (1)
18,200	Nil (2)	19%
37,000	3,572	32.5%
87,000	19,822	37%
180,000	54,232	45%

Notes:

1. Before deduction of rebate entitlements, excluding Medicare levy at the rate of 2% of taxable income. In addition, a Medicare surcharge is applied where an individual taxpayer has a taxable income in excess of the Medicare Levy Surcharge threshold and do not have private patient hospital insurance with a health fund registered in Australia. The Medicare Levy Surcharge threshold for the years ending 30 June 2018 and 30 June 2019 is as follows:

	Taxable income (A$)	Taxable income (A$)	Taxable income (A$)	Taxable income (A$)
Singles	90,000 or less	90,001 – 105,000	105,001 – 140,000	More than 140,000
Families	180,000 or less	180,001 – 210,000	210,001 – 280,000	More than 280,000
Medicare Levy Surcharge	0%	1%	1.25%	1.5%

2. A part-year resident is entitled to access a tax-free threshold of at least $13,464 and the remaining $4,736 of the full tax-free threshold is pro-rated according to the number of months for which resident status is attained.

Non-resident adult individuals – Year ending 30 June 2019

Taxable income (A$)	Tax on column 1 (1) (A$)	% on excess - marginal tax rate
Nil	Nil	32.5%
90,000	29,250	37%
180,000	62,550	45%

Non-resident adult individuals – Year ending 30 June 2018

Taxable income (A$)	Tax on column 1 (1) (A$)	% on excess - marginal tax rate
Nil	Nil	32.5%
87,000	28,275	37%
180,000	62,685	45%

Notes:

1. The Medicare levy and Medicare levy surcharge do not apply to non-resident individuals.

Fringe Benefits Tax (FBT) rate

The FBT rate for the FBT year 1 April 2018 to 31 March 2019 is 47%.

Tax rate for companies

The full company tax rate for the year ending 30 June 2019 is 30%, although a 27.5% rate is applicable where a company both:

- has an aggregated turnover less than $25 million for the income year; and
- 80% or less of their assessable income is “base rate entity passive income”.

Superannuation guarantee

The prescribed level of employer support is 9.5% of salary to a threshold capped at A$54,030 per quarter for the year ending 30 June 2019.

Working holiday makers – Year ending 30 June 2019*

Taxable income (A$)	Tax on column 1 (1) (A$)	% on excess - marginal tax rate
Nil	Nil	15%
37,000	5,550	32.5%
90,000	22,775	37%
180,000	56,075	45%

* A working holiday is an individual who is working in Australia and holds a subclass 417 visa, a subclass 462 visa, or a bridging visa relating to a subclass 417 or 462 visa.

Notes:

1. The Medicare levy and Medicare levy surcharge do not apply to non-resident individuals.

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	Slovakia
China, P.R.	Kiribati	South Africa
Czech Republic	Korea, Rep. Of	Spain
Denmark	Malaysia	Sri Lanka
	Malta	Sweden
Fiji	Mexico	Switzerland
Finland	Netherlands	Taipei
France	New Zealand	Thailand
Germany	Norway	Turkey
Greece	Papua New Guinea	United Kingdom
Hungary	Philippines	United States
		Vietnam

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				*	*
Australian tax return preparation, Australian tax advice, etc.		*			*
School fees (8)				*	*

	Assessable to employee	No FBT	Concessional FBT treatment available	FBT applicable	Deductible to employer for AU income tax purposes
Relocation (moving expenses) (9)		*			*
Home leave (10)				*	*
Tax reimbursement (11)				*	*
Child care facilities (12)				*	*

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 is unlimited from 1 July 2007.

3. FBT generally applies to contributions made to foreign superannuation funds (unless they are made to a foreign superannuation on behalf of an employee who is a temporary resident of Australia when the contribution is made). A deduction is not allowed for any contribution made to foreign and non-compliant superannuation funds.

4. The employer may be entitled to a deduction in respect of shares or rights that meet certain requirements. FBT can apply to grants of shares and rights where the share scheme does not meet the new requirements under Division 83A of the 1997 Act.

5. Concessional FBT treatment is available when the investment is made by the employee to produce income assessable in Australia.

6. A living-away-from-home allowance is subject to FBT rules. A living-away-from-home allowance is an allowance the employer pays to compensate the employee for additional expenses incurred and any disadvantages suffered because the employee's duties of employment require them to live away from their normal residence. FBT concessions for living-away-from-home allowances and benefits are generally limited to a period of 12 months for an employee at a particular work location, and to cases where the employee:

   i) maintains a home in Australia at which they usually reside and is available for their immediate use and enjoyment during that period that their duties of employment require them to live away from home; and
   ii) can substantiate all expenses incurred on accommodation; and
   iii) can substantiate all expenses incurred on food or drink (if the food or drink expenses incurred are more than the Commissioner of Taxation’s reasonable amounts); and
   iv) provides you with a declaration about living away from home and, where required, a declaration on substantiation.

Special rules apply to employees who are working on a fly-in fly-out and drive-in drive-out basis.

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. A 50% FBT concession is available in respect of one home leave trip per FBT year ending 31 March provided to an expatriate and family members. The concession is 50% of the taxable value of the airfare(s) where travel is to the home country and for a duration of 3 days or greater. Where travel is to a place other than the home country, the concession will be limited to 50% of the economy cost of the airfare(s) to the home country.

11. Where the tax payments are made as an allowance to the expatriate (who then subsequently makes payment to the Australian Taxation Office), it may be considered an allowance in which case FBT will not apply, rather the allowance will be taxed in the hands of the individual.

12. Full FBT exemption is available where the child care is provided on the employer's (or related company's) business premises for the benefit of employees.

Appendix D:
Typical tax computation

Typical tax computation for the year ending 30 June 2019 for a tax resident of Australia:

Tax computation	$	$
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	14,832	
Medicare levy (2% of $71,647)	1,433	
Less: Foreign income tax offset	(4)	
Less: Imputation credits	(332)	
PAYG tax deducted at source from salary	(15,600)	
Tax payable/(tax refundable)		***329***

Note: This calculation does not include any fringe benefits, as the employee is not subject to tax on fringe benefits. However, FBT may be payable by the employer on any benefits provided (refer to paragraph 46).

Appendix E:
Australia contacts and offices

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