

---

# INTERNATIONAL ASPECTS OF AUSTRALIAN INCOME TAX

---

## **LWK PTY LIMITED**

Chartered Accountants  
Business Advisers and Consultants

Suite 201, Level 2  
65 York Street,  
Sydney NSW 2000  
Australia

Telephone: 61+2+9290 1588  
Facsimile: 61+2+9290 2997  
Email: [reception@lwkca.com](mailto:reception@lwkca.com)



## **FOREWORD**

The objective of this publication is to provide a brief introduction to the Australian business environment for potential investors in Australia.

As many regulations and laws change at short notice, this document should serve only as a reference source rather than providing comprehensive answers or definitive advice, for which specific consideration and expert advice should always be sought.

The Principals of LWK have been in business for over 30 years and LWK has been a member of the worldwide association of independent accountants, Nexia International.

The firm practises in a wide range of financial services including audit, accountancy, taxation, management, business advisory and migration services. We would be pleased to advise on any of these areas.

**LWK PTY LIMITED**

**1 July 2019**

## **GUIDE TO INTERNATIONAL ASPECTS OF INCOME TAX**

This paper focuses on the key principles of Australia's international income tax system and their impact on investment strategies and business structures generally.

### **1. GENERAL PRINCIPLES FOR AUSTRALIA'S INTERNATIONAL TAX SYSTEM**

#### **1.1 How does Australia tax resident taxpayers?**

The general rule is that residents of Australia are taxed on their world-wide income. (ie. income from sources within or outside of Australia).

However, there are special rules applicable to the derivation of foreign source income. These relate to the availability of:

- **deductions** for expenses incurred in deriving foreign income
- **foreign tax credits** to relieve double international tax; and
- **exemptions** for different types of foreign income.

These are discussed in subsequent paragraphs.

#### **1.2 How does Australia tax foreign residents?**

The general rule is that foreign residents of Australia are subject to tax only on their Australian source income.

However, there are special rules applicable to foreign residents. These relate to the:

- the application of withholding tax
- the rate of income tax
- exemptions for certain types of income
- the taxation of capital gains; and
- the quotation of tax file numbers.

These are discussed in subsequent paragraphs.

#### **1.3 Are foreign residents required to lodge tax returns?**

If assessable income is derived, a foreign resident must lodge an Australian income tax return and is taxed by ordinary assessment.

In most cases, foreign residents receive only exempt income (say, interest, unfranked dividends and royalties subject to withholding tax), in which case no returns are required to be lodged.

#### **1.4 Are foreign residents required to quote tax file numbers?**

No, foreign residents are deemed to have quoted their tax file number on the relevant investments to which quotation arrangements apply. See sec 202EE.

## 1.5 What are Double Tax Agreements?

Australia has entered into over 45 comprehensive double tax agreements (“Treaties”) with various countries as well as limited airline profits agreements.

The main purposes of Treaties are to:

- avoid double international taxation; and
- prevent fiscal evasion.

Treaties are part of Australia’s domestic tax law. They are given effect by the Income Tax (International Agreements) Act 1953 and appear as Schedules to that Act.

In the case of any inconsistency between a Treaty and the Act, the Treaty prevails except in relation to the operation of Part IVA which deals with the general anti-avoidance provisions.

## 1.6 What impact do Treaties have?

It is important to refer to Treaties as they may impact upon the domestic tax treatment of the following matters:

1. the residency of the taxpayer
2. the source of income
3. whether the income is exempt from source country tax
4. the rate of tax which applies to different types of income
5. the type of double taxation relief available; and
6. tax collection and exchange of information procedures between jurisdictions.

When considering the cross-border treatment of income, it is suggested that the tax treatment under domestic law be first examined and then review the Treaty to see what modifications, if any, apply.

## 1.7 What ordinary income rates of tax apply?

For resident and foreign resident individuals, the current income tax rates are set out below: (apply from 1 July 2019)

Individuals

<b>Taxable Income \$ p.a.</b>	<b>Resident Individuals</b>	<b>Foreign Resident Individuals</b>
0 – 18,200	Nil	32.50%
18,201 – 37,000	19%	32.50%
37,001 – 90,000	32.50%	32.50%
90,001 – 180,000	37%	37%
180,001 +	45% *	45% *

It should be noted that the tax free threshold is pro-rated for taxpayers who become or cease to be resident during a year of income.

Companies, resident or foreign resident, are currently subject to a flat rate of 30%, although small businesses have a reduced tax rate of 27.5%.

Special rates apply to superannuation and retirement funds.

## **1.8 What rates of withholding tax apply?**

The rate of withholding tax varies depending on whether the income is derived by residents of Treaty or non-Treaty countries.

### **1.9.1 For Non-Treaty Country Residents**

For income paid to residents of non-Treaty countries, the withholding tax rates are:

	<b>Dividends (unfranked)</b>	<b>Interest</b>	<b>Royalties</b>
<b>Rate</b>	30%	10%	30%

### **1.9.2 For Treaty Country Residents**

The rates of withholding tax payable on dividends, interest and royalties may be reduced by a Treaty. In particular:

- the rate on unfranked dividends is generally reduced to 15%
- the rate on royalties is generally reduced to 15%.

There is no change in the rate applicable to interest, though some agreements provide an exemption from withholding tax in certain circumstances.

## **1.9 Does the Medicare Levy apply?**

The Medicare Levy of 2% of taxable income is currently payable by resident individual taxpayers. Foreign resident taxpayers do not pay the Medicare Levy.

## **1.10 What are the tests of residency?**

The legislation contains residency tests for individuals, companies, partnerships and trusts. This paper will only consider those for individuals and companies.

### **1.10.1 For Individuals**

An individual is considered to be a resident of Australia if one of the following four alternate tests contained in the definition of “residence” in sec 6(1) is satisfied:

- **Test 1 - Ordinary Concepts**

An individual is a resident of Australia for tax purposes if that person is a resident according to ordinary concepts.

There are a number of indicia of whether a taxpayer is ordinarily resident in Australia. Such indicia include the period of physical presence in Australia, the person's residence background, nationality and frequency of visits to Australia, the purpose of visits to Australia, the nature of a person's family, business and social ties and the like.

Refer to Income Tax Rulings IT 2681 and TR 98/17 for a discussion of various guidelines for determining residency status. As a rule of thumb, the Commissioner considers that where a person's intended visit to Australia is greater than 2 years, then that person would generally be regarded as a resident during his or her stay.

- **Test 2 – Domicile**

An individual is a resident if their domicile is in Australia – unless the Commissioner is satisfied that their permanent place of abode is outside of Australia.

There are three types of domicile which individuals can have – choice, origin and dependency.

This test mainly applies to Australians working overseas, who retain their Australian domicile whether of birth or of choice and who seek to establish that their permanent place of abode is outside of Australia.

Income Tax Ruling IT 2650 contains guidelines for determining a person's place of abode. As a rule of thumb, the Commissioner considers that a minimum of two years overseas stay would be necessary but not sufficient to establish a permanent place of abode outside of Australia.

- **Test 3 – 183 Days**

An individual is a resident if that person has been in Australia for more than 183 days in the year of income (ie. 1 July to 30 June) unless the Commissioner is satisfied that the person's usual place of abode is outside Australia and that person does not intend to take up residence in Australia.

This test usually applies to overseas visitors. The application of this test is discussed in Income Tax Rulings IT 2681 and TR 98/17.

- **Test 4 – Commonwealth Superannuation Fund**

A person is a resident if covered by certain Commonwealth Superannuation schemes.

### **1.10.2 For Companies**

A company (as defined in sec 6(1)) is a resident of Australia if one of the following tests is satisfied:

- **Test 1 – Incorporation in Australia**

If the company is incorporated in Australia, the company is a resident of Australia for tax purposes.

- **Test 2 – Central Management and Control**

If the company has its central management and control in Australia and carries on business in Australia, then it is an Australian resident.

Generally speaking, central management and control is the place where the directors meet to transact the business of the company. Case law suggests that a company carries on business where central management and control resides.

- **Test 3 – Voting Power**

A company is resident of Australia if its voting power is controlled by Australian resident shareholders and it carries on business in Australia.

### **1.11 Is there an appropriate wish list for companies, which should be followed in order for companies to ensure that they are not treated as resident in Australia?**

Taxpayers often wish to ensure that companies are not residents of Australia for tax purposes.

The following is a list of various matters which may minimise the risk that a company is treated as a resident:

- place of incorporation must be outside of Australia
- all directors meetings must be held outside of Australia
- the majority of directors should reside outside of Australia
- all statutory records and documents should be kept outside of Australia
- avoid carrying on business activities in Australia
- declare and pay all dividends outside of Australia
- hold general meetings outside of Australia
- ensure the company does not have a bank account in Australia
- negotiate, conclude and perform all contracts for the company outside of Australia; and
- ensure the assets and profits of the business are controlled outside of Australia.

### **1.12 What is Australian source income?**

There are two sets of rules to determine the source of income. These are the common law rules and the statutory rules set out in the Act.

### **1.12.1 Common law source rules**

In determining the common law source, it is necessary to have regard to the various steps involved in the operations leading up to the derivation of income.

For business income, where a series of operations is involved, say at different locations, part of the ultimate income may well be situated where each of those operations are conducted [eg Kirk (1900) AC 588]. On the other hand, where the essence of the income arises from making contracts, then the source of the income may well be where the contracts are made (see for example D & W Murray Limited (1929) 42 CLR 332).

There are common law source rules which apply to other types of income such as sales income, interest, employment income, royalties, dividends and the like.

### **1.12.2 Statutory Source Rules**

There are specific statutory source rules for certain types of income, such as:

- sec 44(1) in relation to dividends
- sec 25(2) for interest income on loans secured by mortgage of property in Australia
- sec 6C for outgoing royalties
- division 855 for capital gains

## **1.13 Is it possible to manipulate the source of income?**

Depending on the type of income involved and subject always to commercial considerations and the anti-avoidance provisions, there may be scope to manipulate the source of income so that it escapes Australia's tax net.

Foreign resident taxpayers who prefer to derive foreign source income, may arrange for contracts to be concluded and substantially performed offshore. Likewise services may be rendered offshore rather than domestically.

Residents may also wish to manipulate the source of their income. The source of the income may be relevant to the availability of domestic deductions or obtaining foreign tax credits. These matters are discussed later in this paper.

## **1.14 How does Australia tax Capital Gains?**

### **1.14.1 Taxation of Residents**

Capital Gains Tax ("CGT") applies to Australian resident taxpayers who dispose of (or are deemed to dispose of) certain assets acquired by them on or after 19 September 1985. There are a number of assets which are exempt from CGT which are considered later in this paper.



### 1.14.2 Taxation of Foreign Residents

Foreign residents are subject to CGT only in respect of disposals (or deemed disposals) of Taxable Australian Property acquired on or after 20 September 1985.

Taxable Australian Property are defined to include:

- (a) a direct interest in real property situated in Australia
- (b) a mining, quarrying or prospecting right to minerals, petroleum or quarry materials situated in Australia
- (c) a capital gains tax (CGT) asset that you have used at any time in carrying on a business through a permanent establishment in Australia
- (d) an indirect interest in Australian real property – you and your associates hold 10% or more of an entity, including a foreign entity, and the value of your interest is principally attributable to Australian real property.
- (e) an option or right over one of the above.

### 1.15 What are the CGT implications of becoming a resident?

For CGT purposes, sec 855-45 (ITAA 1997) deems a taxpayer who becomes a resident to **acquire** certain post-CGT non-Taxable Australian Property as at the date of change of residency and for a consideration equal to their market value at that time.

Thus, any increase in value of these assets since commencement of residency may be subject to CGT.

### 1.16 What are the CGT implications of becoming a foreign resident?

For CGT purposes, sec 104-160 (ITAA 1997) deems a taxpayer to **dispose** of all post-CGT non-Taxable Australian Property as at the date of cessation of residency for a consideration equal to the market value of the assets at that time.

However, there are certain rules for natural persons which may apply to negate this deemed disposal, such as sec 104-165(2) and 104-165(3) for taxpayers who make an election.

Effective from 8 May 2012, the 50% CGT discount is abolished for foreign residents on capital gains incurred. However, foreign resident will still be entitled to the 50% discount on capital gains accrued prior to this date, provided a written market valuation of the property is obtained from a certified valuer.

The legislation have been passed effective from 9 May 2017 for the following:

Increase the foreign resident capital gains tax withholding rate from 10 per cent to 12.5 per cent, as well as reducing the threshold of sale price from \$2 million to \$750,000. These changes will apply from 1 July 2017.

The Treasury has also announced a change that the Government will stop foreign residents from claiming the main residence capital gains tax exemption when they sell property in Australia from 7.30 pm on 9 May 2017 (with existing holdings being grandfathered until 30 June 2019).

### **1.17 What assets are exempt from CGT?**

There are a number of exemptions available from CGT including:

- sales of pre-20 September 1985 assets
- compensation payments or damages for personal wrongs or injuries
- the principal place of residence (up to 30 June 2019)

In addition, foreign residents may be able to obtain CGT exemption by relying upon the provisions of an applicable Treaty. A taxpayer who successfully claimed such an exemption under the Swiss Treaty in relation to the application of former sec 26AAA (sale within 12 months of purchase) was in Theil's case (1990) 21 ATR 531.

## **2. TAX DEDUCTIONS**

### **2.1 Are expenses incurred in deriving foreign income deductible?**

A taxpayer may claim a deduction for any expenses or outgoings incurred to derive assessable foreign income (ITAA1997 sec 8-1(1))

However, no deduction is usually available for expense or outgoings incurred to derive foreign income which is exempt income.

Note that in addition to sec 8-1(1), other sections under ITAA 1936 or ITAA 1997 may permit deductions eg. Sec 70B for losses on disposal of traditional securities and sec 63 for bad debt write-offs.

From 1 July 2017, travel expenses relating to a residential investment property are not deductible.

### **2.2 Can you negatively gear a foreign investment?**

From 1 July 2001, interest (Sec 820-40) on borrowed funds for foreign investment can be offset against Australian income.

### **2.3 What are the classes of foreign income?**

From 1 July 2008, the foreign tax offsets are determined on a whole-income basis and not a class-income basis.

### **2.4 Can a foreign resident negatively gear a domestic investment?**

An excess of outgoings over Australian source assessable income derived by a foreign resident taxpayer is deductible, but not against exempt income derived by the foreign resident.

Thus, a foreign resident is unable to negatively gear a domestic investment unless there is sufficient other Australian source assessable income from which to offset the excess.

### **2.5 Can a foreign resident carry forward a domestic loss?**

It may be possible for a foreign resident to carry forward excess deductions (ie. losses) incurred in deriving domestic source assessable income for deduction in subsequent years.

However, the prior year domestic losses can be eroded by exempt income – but only if the exempt income is derived from an Australian source (other than income subject to withholding tax).

**2.6 Can a domestic prior year loss be offset against assessable foreign income?**

From 1 July 2008, domestic prior year losses can be offset against assessable foreign income.

**2.7 Is relief available from foreign taxes paid on foreign income?**

Australia uses both the credit method and the exemption method to relieve double international taxation.

**3. TAX EXEMPTIONS**

**3.1 What types of income are exempt?**

Some of the more common categories of exempt income in connection with international taxation are:

- a. Foreign source income derived by foreign residents (sec 6-5(3) and sec 6-10(5)).
- b. Income derived by an Australian resident where the person performed services on an approved project outside Australia (sec 23AF).
- c. Certain foreign income derived by Australian resident companies, including:
  - income and capital gains derived by a branch (ie. permanent establishment) in a listed country (sec 23AH).
  - non-portfolio (10 per cent or greater) distributions on equity interests, including distributions on non-share equity interests; received by public trading trusts, corporate unit trusts and corporate limited partnerships; and received through interposed trusts and partnerships (other than corporate tax entities) (subdiv 768-A).
  - dividends paid by a foreign company out of profits which have previously been attributed under the CFC or FIF regimes (secs 23AI & 23AK).
- d. The following income derived by foreign resident taxpayers (sec 128D):
  - interest, dividends and royalties subject to withholding tax
  - the franked part of any dividend
  - foreign account dividends
  - interest paid by Australian resident companies on debentures issued outside of Australia for which a sec 128F(4) certificate was issued
  - interest paid by an offshore banking unit on an offshore borrowing

## **4. PROFIT SHIFTING**

### **4.1 What is profit shifting?**

International profit shifting occurs when taxable profits are shifted outside of Australia to the detriment of the Australian Revenue. Usually this occurs between related parties.

Profit shifting can occur by:

- a foreign entity overcharging a local taxpayer for goods or services
- a local taxpayer undercharging a foreign entity for the supply of goods or services.

### **4.2 How is Transfer Pricing Attacked?**

There are four main sets of provisions which may be used to attack transfer pricing:

- Sec 8-1(1) – to deny a deduction for the excessive price of goods and services charged
- Division 13 – to substitute an arm's length price and to make consequential adjustments
- Part IVA – to deny the tax benefit and impose penalties
- The associated enterprise articles contained in the double tax agreements to adjust taxable profits.

### **4.3 What should taxpayers do when setting Transfer Prices?**

To minimise the risk of adverse transfer pricing adjustments by the Australian Taxation Office (ATO) upon tax audit, taxpayers should attempt to set an arm's length price from the outset.

The ATO expects taxpayers to prepare and maintain contemporaneous records justifying their pricing methodology. In particular, taxation ruling TR 94/14 provides that the risk of an adverse transfer pricing can be reduced if companies:

- establish an economic justification for entering into a transaction
- satisfy themselves that the consideration is arm's length
- have the necessary contemporaneous documents
- provide reasons to justify why the methodology adopted was the most appropriate
- establish a systematic arm's length methodology for setting arm's length prices.

In addition, taxpayers may wish to enter into Advance Pricing Arrangements (APA) where the ATO will agree in advance with the particular pricing methodology and undertake not to make any adjustment. Refer to Practice Statement Law Administration PS LA 2011/1 for the procedures to adopt to enter into APA's.

#### **4.4 What is the Future for Transfer Pricing?**

Greater audit activity in the transfer pricing area can be expected – not only for the large multinational corporate groups but also for small to medium sized taxpayers involved in the international area.

### **5. FOREIGN COMPANIES EXPANDING ON-SHORE (IN AUSTRALIA)**

#### **5.1 What are the implications of using a branch or a subsidiary in Australia?**

- a. Generally speaking, there are no Australian tax advantages or disadvantages in using a branch or subsidiary.
- b. A foreign resident company operating in Australia by a branch is subject to Australian tax on the branch profits at the corporate rate of 30% or 27.5% for small business entities. Likewise, a resident subsidiary will be subject to tax at 30% or 27.5% for small business entities on its profits.
- c. The repatriation of profits in tax deductible fashion may be facilitated by using a subsidiary rather than a branch. For instance, interest, royalties and management fees paid by an Australian subsidiary to a foreign parent are usually deductible. On the other hand, no deduction is available for interest or royalties paid by a branch to its head office. However, such payments by a branch to related third parties are deductible.
- d. Australia does not impose a branch profits tax.
- e. Dividends paid to foreign residents will be subject to Australian withholding tax to the extent they are unfranked (ie. paid out of profits which have not borne Australian tax). The rate is 30% or 15% if paid to Treaty Countries. No withholding tax is imposed on remission of branch profits to head office.

#### **5.2 How should the Australian activities be financed?**

If the corporate rate of tax in the foreign jurisdiction is less than in Australia, it may be preferable to repatriate some profit in the form of tax deductible interest payments to the parent company rather than non-deductible dividends.

There is therefore a bias towards the use of loan funds rather than share equity to finance the Australian subsidiary.

However, Australia's thin capitalisation rules may apply to the subsidiary to deny a deduction for some of the interest paid if a funding debt to equity ratio is exceeded.

### **5.3 What is Thin Capitalisation?**

The thin capitalisation rules are contained in Division 820 of the Income Tax Assessment Act 1997.

They operate to deny deduction for interest paid on debt owed to a foreign related party where the Australian investment (ie. either an Australian subsidiary or branch) is excessively geared with related party foreign debt.

More particularly, in the context of an Australian subsidiary, they operate to deny a deduction on interest paid on debt owed to a foreign controller (or its associate) where the debt owed by the subsidiary to the foreign controller (or associate) exceeds a “safe harbour” amount calculated in reference to the values of certain assets and liabilities of the company.

A de minimis rule, however, releases most SMEs from the thin capitalisation provisions by fully allowing the debt deductions (including interests discounts and borrowing costs) if the total of which does not exceed the threshold for an income year. On 25 September 2014, the Tax and Superannuation Laws Amendment (2014 Measures No 4) Bill 2014 had been passed by the parliament and the de minimis threshold has been increased from \$250,000 to \$2,000,000.

### **5.4 What are the tax implications of selling the branch or subsidiary?**

- a. The sale of branch assets will be subject to CGT. The foreign resident will obtain the benefit of indexation (for assets acquired before 19 September 1999). No treaty protection would be available for the sale of assets used in connection with a permanent establishment in Australia. However, under some treaties it may be arguable that a disposal of assets which form part of a permanent establishment which has since ceased operations is exempt from CGT.
- b. The sale of shares in an Australian resident subsidiary is also subject to CGT – unless protection is available under an applicable double tax treaty. The Australian Tax Office considers that the sale of shares in an Australian subsidiary is subject to CGT. However, it may be possible to argue that protection from CGT is available under some treaties by virtue of the business profits or the alienation of property articles.

### **5.5 What are the CGT benefits of using an offshore holding company?**

As previously discussed, the sale of shares in an Australian resident subsidiary or the sale of business assets of an Australian branch may be subject to CGT.

On the other hand, the sale of the shares in an interposed foreign holding company (resident say in a foreign jurisdiction which exempts capital gains), will not be subject to CGT.

**5.6 Is it possible for a foreign resident to trade with or in Australia and not be liable to Australian income tax?**

If the foreign resident is a resident of a non-treaty country, then any income which has an Australian source is assessable, unless the income is in the nature of interest, dividends and royalties which are exempt under sec 128D (ie. broadly, subject to withholding tax).

Accordingly, any trade carried on in Australia, which gives rise to Australian source income, will be taxable in Australia.

On the other hand, any trade with Australia, which does not generate Australian source income, will not be taxable. Thus, a sale of stock by a foreign resident to a resident taxpayer where the contracts were concluded and substantially performed offshore, should not be taxable.

If the foreign resident is a resident of a treaty country, then its business profits (even if Australian sourced), will only be taxable in Australia if they are connected with a business carried on through a permanent establishment in Australia. Thus, provided there is no permanent establishment in Australia, then the business income will not be taxable.

There are lengthy definitions of the term permanent establishment in all treaties. Generally, it means a fixed place of business. Normally, the existence of employees or other dependent agents with the authority to conclude contracts in Australia, will normally lead to a permanent establishment.

To avail themselves of treaty protection, residents of non-treaty countries may seek to use an interposed vehicle in a treaty country. This is called treaty shopping and there are anti-treaty shopping provisions in various treaties which should be considered.



## 6. WORKING IN AUSTRALIA

### 6.1 What are the Australian income tax implications for employees working on-shore?

- a. It is necessary to consider whether the foreign parent is liable to Australian tax by having Australian source income or by acquiring a permanent establishment in Australia. The residency status of the expatriate working in Australia should be determined.
- b. If the expatriate remains a temporary resident of Australia (by holding a temporary visa and does not have a spouse who is an Australian resident), the following implications arise:
  - A temporary resident will be treated in a similar fashion to a foreign resident for tax purposes. Only Australian source income is subject to Australian tax.
  - Foreign sourced income (such as dividend, interest and rent) will be exempt from Australian tax. However, this does not apply to foreign sourced employment income.
  - The new rule broaden the CGT to catch any indirect interest that a foreign resident has in Australian real property – even very indirect interests as the concept of “have the connection with Australia” is narrowed into “taxable Australian property” which is defined under section 855-15. The interest of less than 10% will be ignored, under the new rule (section 855-25 and section 855-30).
  - By carefully with the time of arrival in and departure from Australia, it may be possible to obtain Treaty exemption from Australian tax for the salary and wage income under the Dependent Personal Services articles.
  - Special rules apply to shares and options acquired under an employee share/option scheme to prevent avoidance of Australian tax on any gain realised that relates to employment or services in Australia.
- c. If the expatriate does not qualify as a temporary resident and becomes an Australian resident for tax purposes, then the following implications arise:
  - As a resident, the employee will be subject to Australian tax on world-wide income. Consideration could be given to accelerate the payment of any off-shore superannuation benefits or termination payouts before commencement of Australian residency. Alternatively, the payment of certain types of income could be deferred until residency ceases.
  - The tax-free threshold will be pro-rated during the first year of residency.
  - The foreign income accruals regimes may apply to any interests in foreign companies or trusts held by the expatriate. The possible restructure of ownership of such assets prior to commencement of residency should be considered.

- The appropriate superannuation strategy should be considered. Should the Australian employer contribute to a local superannuation fund or should the foreign parent continue to contribute to a foreign superannuation fund? Usually salary sacrifice arrangements and superannuation contributions reduce personal tax. Any benefit accumulated in an Australian fund can be withdrawn on ceasing to work in Australia. The withdrawal, known as “Departing Australia Superannuation Payment”, is subject to the following withholding tax:

Component of payment	Withholding Tax Rate
Tax-free component	0%
“Untaxed Element” of a taxable component	45%
“Taxed Element” of a taxable component	35%

- The provision of fringe benefits will likely be subject to FBT. Consider the provision of concessional tax or exempt fringe benefits.
- All assets acquired by the employee after 20 September, 1985 (other than taxable Australian assets) are deemed to have been acquired for CGT purposes at the time of commencement of residency and for a cost equal to their then market value. Thus, any gains realised on such assets since the date of commencement of residency may be subject to CGT.

This is not Advice. You should not act solely on the basis of the material contained in this publication. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We recommend that our formal advice be sought before acting in any of the areas. This publication is issued as a helpful guide for your private information. Therefore it should be regarded as confidential and not made available to any person without our prior approval.