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Leaving Australia for work? Beware of your tax residency status

Thousands of Australians head offshore each year to expand their horizons and a lucky few will fund their adventure by working overseas. Some may live overseas and work for an extended period, but there can often be confusion about the tax implications for taxpayers who take advantage of such offshore opportunities.

Why is tax residency important?

A person who is a "resident" for Australian tax purposes is taxed on their Australian sourced and worldwide income, whereas a person classed as a "non-resident" is taxed only on Australian sourced income.

Further, an individual who is a non-resident is not eligible for the $18,200 tax-free threshold, so all assessable income is taxed right from the first dollar. There are also variances in the marginal tax rates applied.

In cases where an Australian individual goes overseas for employment, even for some years, the individual's tax residency status is a key factor in how much tax that person is required to pay in Australia. Another factor to keep in mind is the tax law of the country in question, or whether there exists a "double taxation agreement".

Contact Us

Welcome to our client information newsletter, your monthly tax and super update covering the important issues, news and hot topics affecting you. Should you require further information on any of the topics covered, please contact us via the details below.

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A double taxation agreement sets out which country has the rights to tax each type of income that may be earned. This is to minimise the chances of the same income being taxed in Australia and being taxed in the other country under their tax laws.

The rules in these agreements generally take precedence over the local tax laws of each country. Where the agreement gives the other country the right to impose tax, the income earner is subject to the taxation laws of that country. It is important to know which countries have such agreements, and the relevant outcomes, so consult this office should you have questions.

In the case where an Australian individual takes up a post overseas but retains a domicile in Australia, the Australian Taxation Office is likely to consider that the taxpayer retains Australian residency for tax purposes. Should however the taxpayer rent out their home here or otherwise divest themselves of their domicile, due to an extended time of overseas employment, it is more likely that the individual is a foreign resident for tax purposes for the period they are overseas. But having said that, the outcomes are very much determined on a case-by-case basis.

If you remain an Australian tax resident

Any income that comes from working outside Australia – including salary, wages, commissions, bonuses and allowances – is typically regarded as foreign employment income. Such income may be paid by a foreign or an Australian employer. As an Australian tax resident, this foreign employment income is normally taxable in Australia and has to be included in your Australian tax return.

However, if you have paid tax on that employment income overseas, you should be able to claim some or all of the foreign tax as a credit against your Australian tax liability. This ensures that you are not double-taxed (as noted, you will need to consider the operation of any double taxation agreements). This credit is referred to as a "foreign income tax offset".

You can claim this for the Australian-dollar equivalent of the foreign tax paid on income, profits or gains (including gains of a capital nature) that are included in your Australian assessable income. In some circumstances, the offset is subject to a limit, which broadly equates to the amount of Australian tax that would be payable.

To be entitled to a foreign income tax offset:

- you must have actually paid, or be deemed to have paid, an amount of foreign income tax
- the income or gain on which you paid foreign income tax must be included in your assessable income for Australian income tax purposes.

If you cease Australian tax residency

As a tax non-resident, you will only need to submit an income tax return if you have Australian-sourced income — and there is no need to lodge a return if the only Australian-source income you receive is interest, dividends or royalties that has had the correct amount of non-resident withholding tax deducted and remitted.

All Australian-sourced interest, dividends and royalties derived after you ceased to be an Australian resident are subject to the non-resident withholding tax provisions. Basically, the payer of the income has to withhold tax (at varying rates) on your behalf and you receive the income net of the withholding tax. As the withholding tax is a final tax, the income should not be included in your Australian tax return.

As a tax non-resident, if you dispose of assets you would only be subject to capital gains tax (CGT) if the asset qualifies as "taxable Australian property". This includes Australian real property and certain holdings of shares in companies that have a majority of their assets as Australian real property.

Further, when you become a non-resident, you are deemed to have sold all your CGT assets that aren't taxable Australian property for their respective market values at that time. So it is theoretically possible to pay the tax before you sell the asset, although you can generally elect to defer any capital gain or loss until you later sell the asset. If you make such an election, your CGT assets are taken to be "taxable Australian property" and so will fall within the Australian tax net if it is later subject to a taxing event (such as disposal).

And remember, non-residents for tax purposes are not required to pay the Medicare levy, so you can claim the number of days that you are not an Australian tax resident during an income year as exempt days in your tax return. ■

Tax concessions for small business

The small business sector has variously been described as the engine room of the economy as well as the biggest employer in the country – and it's not hard to see why.

Research has indicated that small businesses are responsible for generating millions of jobs, with some estimates that small business jobs account for around half of private sector employment.

What is a small business?

The definitions of what constitutes a "small business" are not consistent.

The Australian Bureau of Statistics defines a small business as having less than 20 employees, while for the purposes of the Corporations Law it is set at fewer than 50 employees.

From a tax perspective, the bar is set at having annual turnover of less than $2 million and for the entity concerned to be "carrying on a business". If these conditions are satisfied, the entity is referred as a "small business entity".

Specifically, the tax law stipulates that this turnover is "aggregated". In very broad terms, this means the annual turnover of the business must include the turnover of every entity that is "connected to" or "affiliated" with the business. There are certain amounts that are to be included or excluded in the definition of turnover – for example, GST is excluded. Speak to this office for further information.

A large business cannot therefore split its activities so that each "division" can slip under the $2 million threshold in order to gain access to the various tax concessions.

What concessions are available?

No matter which definition is used however, the one thing that everyone agrees on is the central role that small business plays in the Australian economy. Just how important can be underlined by the fact that the government has seen fit to give the small business sector a break on a range of tax matters.

There are several tax concessions that smaller enterprises can take up:

Simplified depreciation

The advantage of this concession is that it is easier to do the tax depreciation calculations.

These simplified rules mean that small businesses can immediately write-off assets that cost less than $20,000 until June 30, 2017. This can include some big-ticket items as well as assets such as photocopiers, laptops, fridges, desks and so on.

A business can depreciate assets that are equal to or greater than the $20,000 threshold in a depreciation pool at a rate of 30% (15% in the first year). The pool balance can also be written off for an income year if the relevant balance falls below the $20,000 threshold – special conditions apply however, so speak to this office for further information.

Note that until the 2015-16 federal budget, this immediate write-off threshold was set at $1,000. It will revert back to that after June 30, 2017.

Trading stock

To make the business of running a business even easier, the tax law provides a set of simplified trading stock rules.

Specifically, if your trading stock has not changed in value over the income year, either up or down, by more than $5,000, you can choose not to do an end-of-year stocktake and merely include the same stock value at year-end as at the start of the year. In other words, the closing stock value is taken not to change for the income year.

Prepaid expenses

A small business entity can also get an immediate tax deduction for certain pre-paid business expenses. If a payment covers an expense that is referrable to the next financial year (like insurance premiums, or rent) you can

claim that deduction in the current income year. Note however that the "service period" to which the expense applies may need to be limited to 12 months or less, or otherwise the deduction may need to be apportioned over more than one income year.

Car parking and FBT exemption

If you are a small business employer, car parking benefits you provide to your employees are exempt from FBT if all the following conditions are satisfied:

- the parking is not provided in a "commercial car park"
- you are not a government body, a listed public company, or a subsidiary of a listed public company, and
- you were either a "small business entity" for the last income year before the relevant FBT year, or your total income for the last income year before the relevant FBT year was less than $10 million – for this purpose, your income includes ordinary income and "statutory income", that is, total gross income before any deductions.

GST and PAYG instalments

Taking care of your GST obligations can be made less of a headache as well, as eligible businesses (aggregated turnover $2 million or less, and using cash basis accounting) are only required to account for GST once payment is received. You can also pay GST in quarterly instalments, and the Tax Office will work out for you how much these are. A small business can also, if using some items for private uses, choose to claim the full GST credits and make one single adjustment for private use at the end of the tax year.

Another concession available to small business concerns pay-as-you-go income tax instalments, where you can pay a quarterly instalment that is worked out based on your most recently assessed tax return. The quarterly instalment amount is GDP-adjusted, and will save you the time and the effort in having to do the "long form" calculations.

Help for capital gains tax

There are four CGT concessions that may be available to fully disregard or reduce capital gains made by a small business from the disposal of eligible CGT assets, such as a shop or office building used in business. The concessions can also apply to a small business owner disposing of their interests (such as shares in a company).

There are four CGT concessions available:

1. ***The 15 year exemption***
   Where a taxpayer who is at least 55 years of age and is retiring disposes of a CGT asset that has been owned for a minimum of 15 years. The capital gain is fully disregarded under the exemption.
2. ***The 50% active asset reduction***
   The capital gain arising from the disposal of a CGT asset may be discounted by 50%, but there are specific rules about what qualifies.
3. ***The retirement exemption***
   A taxpayer may exempt a capital gain from the disposal of a CGT asset under the retirement exemption up to a lifetime maximum cap of $500,000. It is not necessary to actually retire and the concession can be utilised more than once up to the cap. A taxpayer under 55 years is only exempt if this is rolled over into a complying superannuation fund.
4. ***The CGT small business roll-over***
   A capital gain arising from the disposal of a CGT asset may be deferred provided a replacement asset is acquired within a two year period. The gain is deferred until disposal of the replacement asset.

The small business CGT concessions are complex and contain numerous requirements under each concession. Ask this office for more details. ■

Making an amendment to your tax return

Once we have lodged your 2014-15 tax return and we have forwarded your notice of assessment to you saying that everything is as discussed, you may realise that something has been left out of your tax return or accidentally included an extra deduction.

The Australian tax system is based on "self assessment", which means the Tax Office generally takes your word, under our guidance, and bases its assessment on information provided. But if it subsequently becomes apparent that something is wrong, there is an option to make it right.

It is not all that uncommon for taxpayers to make a change to a tax return they have already lodged — often there can be a deduction that simply slipped your mind, or you realise that you received foreign income that you forgot about. And then there are the straight-out mistakes that we all make from time to time, or you could have forgotten to tell us something about your tax affairs at our appointment.

If it involves an increase in the tax you should have paid, then it is highly advisable you take the bull by the horns and 'fess up. This will try to prevent, or at least reduce, possible penalties that may apply if you realise that the oversight may actually lead to a "false" return (even if not intentionally lodged as such).

The important thing is to make sure that as soon as you realise that the information you have reported to the Tax Office is incorrect or incomplete, that you ask us to take actions to correct it. And the way we can do this is to apply to make an amendment.

Disagreements

It is also possible that you or we simply disagree with an associated penalty issued in relation to timing of lodgement of your return or interest charged on a shortfall amount, or some other decision made about your tax affairs that you or we may want to take issue with.

In this case, we would start by making an approach to the Tax Office via a phone call to try and remedy the situation before it gets bigger than Ben Hur. However, if the Tax Office refuses, we can also help by lodging an objection (see the next article in this newsletter).

If the amendment we prepare for you decreases the tax you owe, you will generally receive a refund (unless you have other tax debts) and may get some bonus interest to boot. If it increases the tax you owe, the Tax Office will generally treat it as a voluntary disclosure. This means you are likely to receive concessional treatment for any penalties and interest charges that apply (in which case you'll still have to pay any outstanding tax, but we can ask on your behalf for concessional treatment of interest charges, or for a possible remission all together depending on the amount).

Time limits

There are time limits for making amendments to tax returns, generally two years for individuals and small businesses and four years for other taxpayers, including trust beneficiaries and members of partnerships. For example, if you are a sole trader and receive a notice of assessment on September 7, 2015, your two-year period will start the day after, and therefore end on September 8, 2017. A business that is not classified as a "small business entity" will have until September 8, 2019. It's possible to submit more than one amendment request within an amendment period.

So if on current year discussions we identify something that we both didn't realise that we should have claimed in your previous year's tax return, then we can amend that year!

After the Tax Office processes the amendment, a notice of amended assessment should be issued, showing the new amount payable or refundable. And if we submit a request for an amendment before your return has been processed, they will generally be processed together, so a standard notice of assessment is issued, not an amended assessment. Sometimes additional information is needed, but the Tax Office should ask us for this information within 14 days of receiving the amendment request.

While ignoring an oversight may seem to be an easier option, the trouble with this is that future dealings with the Tax Office may by muddied. And as the process of asking for an amendment is fairly straightforward, and the fact that we are here to help, the better option is to make sure your tax affairs are in order sooner rather than later. ■

If you think the taxman is wrong, here's what you can do

You are allowed to disagree with the Tax Office, if they have disallowed the self-assessment of your tax position.

If you believe your tax assessment is incorrect, the first step is straight forward and pretty informal. You contact us and we start making inquiries. If we still believe the assessment is wrong, or if you can provide us with extra information that may change it, we can lodge an amendment with the Tax Office (see previous story in this newsletter).

But if the Tax Office disagrees, we can lodge an objection on your behalf (in other words, we can disagree with the disagreement). We can also object if the Tax Office amends your assessment and has taken a different stance on particular items in your return (for example, we thought you were eligible to claim a deduction but were allowed only part of it).

We must put objections in writing detailing all the reasons we think a decision is incorrect. This requires us to prepare a document that includes, where relevant, references to legislation, rulings or case law. It will also be necessary to include any supporting documents and information that relates to the decision.

This can sometimes be a costly exercise and we would recommend that for complex tax affairs where Tax Office scrutiny may transpire, insurance should be considered.

The Tax Office will review its original decision with a tax officer who was not involved in the original decision. It will then let us know the outcome in writing (referred to as an "objection decision"), but if you're still not satisfied, the next step is to ask for an independent external review of the Tax Office's actions and its decisions about your tax affairs.

This escalation process can get even more costly, so you need to consider the value of taking this next step.

Tax laws specifically give you the right to go to the Administrative Appeals Tribunal or the Federal Court of Australia for a review of some of the Tax Office's actions or decisions. When the Tax Office lets you know its decision, it will also explain how these options differ. The Tax Office allows 60 days from the date of this decision notice to seek a tribunal or court review.

When taking the tribunal or court route

The burden of proof is with the taxpayer. With our help, you will need to go into the tribunal or court being able to prove the tax outcome is the right one, and support this idea with evidence, documents, and sound technical analysis of the tax law.

The tribunal is less formal than a court hearing, but its powers are substantial enough. It can confirm, vary or set aside the Tax Office's decision. You can appear yourself or be represented, and there is an application fee, which is refunded if the hearing goes your way.

Under the umbrella of the tribunal is the Small Taxation Claims Tribunal, which provides a quicker and cheaper review if the amount of tax in dispute is less than $5,000. Either way, if you are not satisfied with the tribunal's decision you can appeal to the Federal Court.

Be warned, though: Things get a lot more formal at the Federal Court. You will generally need legal representation and there are a lot more fees (filing fee, "setting down" fee and daily hearing fee, for example). So you want to be sure the claim is worth it.

After this level of intervention, the next steps up the legal ladder are the Full Federal Court and then the High Court – but these are rare options for most taxpayers, and these courts won't grant every appeal requested. ■

Top 5 tax mistakes small businesses make when they don't use an adviser

It's something of a little white lie, isn't it? The one told to aspiring small business owners and entrepreneurs that hard work guarantees success.

Hard work is vital, but it's not the only quotient. And while you may be told by starry-eyed blog writers or charismatic motivational speakers that you can't lose if you try hard enough, the third of new businesses that fail each year can attest to a different reality.

In our experience, a lot of businesses fail because they don't plan the tax side of things well enough. From payroll tax to super guarantee contributions to GST, we've seen businesses blindsided by hefty penalties and tax debts. Unfortunately we've had to step in to make it right.

Here are the five most common tax areas where small businesses can trip up. You can avoid these mistakes with our help, and boost your chances of making it.

1. We'll help you keep good records

Good records means good business – there's no way around it. We've seen one small business owner with a truck delivery business who neglected to put in place a system to keep track of her fleet's fuel usage, and had to rely on estimations. Because of this, she missed out on valuable fuel tax credit claims.

2. Get advice on the status of workers

Not getting the engagement status of workers right can land employers in unforeseen hot water. There was one events business owner hired a group of contracted cleaners every week to tidy up his party hall after functions, but ended up in trouble with the law. "I thought because they were contractors I didn't have to pay super. I was wrong."

3. Pay the superannuation guarantee, and on time

When cash flow becomes an issue, too many businesses leave superannuation guarantee payments until last. If you want to avoid penalties from the Tax Office, you need to make sure your employees are paid superannuation when they need to be paid. You can't risk late lodgements.

4. We'll keep you up-to-date on changes to tax laws

Did you know payroll tax rates changed this year? One business owner didn't. "I've got three employees working for my electrical estimation business, and I didn't withhold enough to cover the rate increase. Now it's tax time, and I've a tax penalty because my books weren't right."

If you're not following tax law closely, it's understandable you'll miss things. Luckily, our monthly newsletter keeps you up to date, but it also couldn't hurt to check in with us from time to time for updates.

5. Don't miss out on deductions

One sole trader started a jewellery business from home. "For the first year, my revenue was relatively small. I didn't think I needed an accountant or tax agent to do my return. I thought I could just leave it. The only problem is this year I missed out on claiming a big asset write-off deduction for my pendant-pressing machine. If only I'd gone to see my tax agent!" 'If-onlys' are crippling for small businesses, and they're avoidable. ■

Taxing children's savings accounts: Whose money is it?

Back in the 1980s, people could reduce tax by having their money in bank accounts belonging to their kids. In 1988, the Tax Office intervened by issuing guidance.

Thanks to a simple criterion and penalising tax rates, parents cannot pass off their money as mere pocket money for the kids in order to avoid paying tax on interest they earn.

Children must "own" the money in their bank accounts. It doesn't matter if parents, relatives or friends put it there; money deposited as a gift or as payment for some kind of informal work must belong solely to the child (under 18 years old).

If a parent uses a child's bank account as a through-point for income, any interest generated must be included in the parent's tax return. Birthday or Christmas money deposited is also considered money "owned" by the child.

It's worth noting that kid's savings account interest earnings have a tax-free threshold of $416 per income year, but once the threshold is exceeded, any interest from a child's bank account is taxed at 66%. And once more than $1,307, it's taxed at the top marginal rate.

Who lodges the tax return for a child who earns interest on their own money?

If a child's bank interest earnings exceeds $416 — and the money **belongs solely to the child** — the interest accrued on that money must be included in a tax return. In most cases, that's a parental responsibility.

The Tax Office says: "As a general rule, where the Taxation Office is satisfied that the money in the account really belongs to the child, it will not insist on a strict application of the trust provisions of the Income Tax Assessment Act where the account is operated by a parent as trustee. Where the interest is shown in a tax return lodged by a child a trust tax return will not be necessary."

In most cases, parents operate their children's bank accounts. In these circumstances, the parents act as trustees — making withdrawals and deposits on behalf of the child. They will therefore need to lodge the necessary paperwork when tax time rolls around.

Say the parents of one-year-old Will open an account on his behalf and deposit $20,000 as university savings. It's technically Will's money, he'll earn interest on it, and he'll be taxed on it. But he can't fill out his own tax return. For all intents and purposes, he's a beneficiary with his parents acting as trustee. ■

Did you know...

The deductible cuppa

Providing morning and afternoon teas and light refreshments to employees (or their "associates") at the employer's business premises or worksite is tax-deductible to the employer. The same applies if the business provides such refreshments to visitors.

The Australian Taxation Office has ruled that this is not "entertainment". If the business has no employees (for example, a partnership), claims for light refreshments are not allowed unless they are also provided to visitors.

Information provided is of a general nature only, is not personal financial or investment advice, and we accept no responsibility for persons acting on information contained herein. Clients should not act solely on the basis of material contained in this document. We recommend that our formal advice be obtained before acting on the basis of the topics presented here.