PERSONAL TAXATION

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Introduction

Moving to Sydney is an exciting prospect for many people who are attracted to stunning beaches, our laid back but enthusiastic approach to life, the tolerance and freedom of our society and the opportunities in our economy.

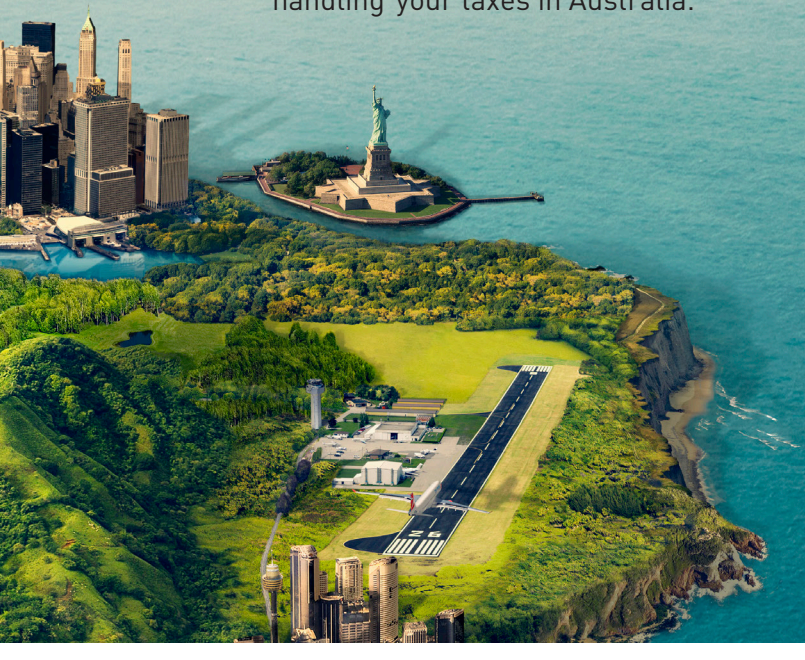
There is little doubt that Australia is regarded as a high taxing country. However, for those who are able to qualify as 'temporary residents' Australia has some excellent tax concessions which we explain in this Chapter.

We also cover the basics of Australian capital gains tax rules as they generally apply to individuals moving to Australia.

The Chapter provides a non-technical plain language guide to the questions that we are commonly asked.

It should not be used a substitute for professional advice about your personal situation. Australia's income rules are complicated and certain exemptions which may be available for some people may not be available in your situation.

Our view is that you should always engage the services of a qualified tax adviser or specialist accountant when handling your taxes in Australia.



Will Australia tax my worldwide income?

Yes after you become a resident of Australia for tax purposes you will generally be taxable on your worldwide income - unless you have the status of a 'temporary resident' for tax purposes.

If you have moved to Australia permanently, or are thinking of becoming a Permanent Resident of Australia then be aware that you will be taxable on all income that you earn from whatever sources, whether the income has been earned in Australia or outside Australia.

Many expats moving to Australia have been surprised to learn that income is taxable in Australia even if they have paid tax in another country on the same income.

For example this means that if you own a property outside Australia on which you earned rental income you will need to declare this income in Australia and claim any deductible expenses.

Double taxation is usually avoided because Australia will generally provide a foreign tax credit (known in Australia as a foreign income tax offset) for the foreign income tax paid.

However the foreign income tax offset system is not perfect and there are times where credits can be lost.

If you are moving to Australia and you have foreign assets, please ensure that you obtain specific advice about how they will be treated under Australian tax law so that you are not surprised by unexpected income tax bills.

What tax rates apply?

Like many countries Australia has a progressive income tax system for personal tax.

This means that the higher your personal income, the higher the percentage of tax that applies to you.

The table below shows the current personal income tax rates that would be applicable to you in Australia.

Resident Tax Rates for the year ended 30 June 2019

Taxable Income	Base Tax	Excess
$0 -18,200	NIL	NIL
$18,201 - $37,000	NIL	Plus 19% of excess over $18,200
$37,001 - $90,000	$3,572	Plus 32.5% of excess over $37,000
$90,001 - $180,000	$20,797	Plus 37% in excess over $90,000
$180,001 +	$54,097	Plus 45% of excess over $180,000

In addition a Medicare Levy of 2% is payable on total taxable income.

What about Employee Stock Options

Australia taxes employee stock options and employee shares, which are granted as part of your employment.

The basic rule in Australia, like many countries, is that these stock options are treated as if they were 'employment income'.

Consequently, gains from stock options can often suffer very high rates of tax.

Some concessions exist around the timing of when the tax system recognises that you have made a gain - but the concessions do not change the fact that they remain taxable.

For example if you are granted stock options as part of your employment - but if there is a reasonable risk that you might lose the benefit (known as a reasonable risk of forfeiture) then you would generally not pay tax until the year in which it becomes clear that there is no longer a reasonable risk of forfeiture.

If you work for a start-up or a company that is less than 10 years old - then you may be able to take advantage of tax concessions which are designed not to treat employee stock gains as salary but as concessionally taxed capital gains..

If you are moving to Australia with employee share scheme interest (such employee stock options or employee shares) then you should obtain specific advice.

What about my Bonus?

If you receive a bonus from your employer after you become a resident of Australia you will be taxable in Australia on it, even though the bonus may be for work you performed before you arrived in Australia. Also, you will be liable for tax even if you receive the bonus into a non-Australian bank account.

There can be exemptions in certain situations for payments received on the termination of a foreign employment, even if that payment is received while a person is in Australia.

Does Australia have state income taxes?

The Australian states and territories do not levy a separate income tax. You will not have to pay state income tax.

Income tax is collected by the Australian Federal government only and the income tax system is administered by the Australian Taxation Office. www.ato.gov.au.

However the Australian states and territories do collect a number of other taxes such as land tax, payroll tax and stamp duty.

When do I become a resident of Australia for tax purposes?

This is a critical question which will form the basis of your tax position in Australia. Unfortunately tax residence can at times be a complicated topic.

Many people ask us to advise them on the date when they will become a tax resident of Australia.

If you are coming to Australia to live and work having left your previous home country then you will usually be considered to be tax resident in Australia from your arrival date.

A whole range of tax laws apply from the date you become a tax resident of Australia

If you are a person who might only be spending a short time in Australia, and if you have maintained a home overseas and do not intend to reside in Australia then it may be accepted that you do not reside in Australia for tax purposes.

If this is to be the case, you would still be taxable in Australia on any income you derive which may be sourced in Australia.

In this case the rates of tax which would apply are the higher rates of tax that apply to non-residents.

The tax rate that apply to non-residents are shown in the table below.

Non-Resident (Foreign Resident) Tax Rates applicable for the year ending 30 June

Taxable Income	Base Tax	Excess
$0 - $90,000	N/A	32.5% of each $1
$90,000 - $180,000	$29,250	37% of the excess over $90,000
$180,000 +	$62,550	45% of the excess over $180,000

Over the years some clients have incorrectly assumed that because they have spent less than 183 days in Australia that they are not tax resident in Australia. This is a false assumption.

Non-residents of Australia are not required to pay the Medicare Levy.

Tax Residence - the Tests

The first test of residence which will always apply, is whether a person can be said to be residing in Australia under the ordinary meaning of that term. You could be considered to be residing in Australia even if though you may spend only a few months here, if the facts of your personal situation indicate that you are living here.

Many people also do not realise that it is possible to be a dual resident meaning that due to their connections and time spent in Australia that they will become resident in Australia even though they may still be tax resident in their home country.

In the increasingly global world in which we live it is not uncommon to have situations where families are split across borders.

Many people have asked us to help them understand if their spouse was to move to Australia whether they would also be considered resident of Australia.

This is an excellent question to be asking because it recognises that the location of a person's family, especially their immediate family, is a powerful indicator of residence.

However the fact remains that in Australia every person's tax position is a matter which is entirely their own. You would not become a resident of Australia merely because your spouse might move to or return to Australia.

Am I a Temporary Resident?

Considerable tax relief may be available if you can be classified as a 'temporary resident' for Australian tax purposes.

These concessions were introduced to make Australia a more attractive place for high skilled workers to move to on a temporary basis.

You will be considered to be a temporary resident for tax purposes if you hold a visa which is considered to be a 'temporary visa' for immigration purposes.

However you cannot be a 'temporary resident' if you have a spouse who is an Australian citizen or Australian Permanent Resident.

If you are a temporary resident, then you will not be taxable in Australia on;

- Income which has as source outside Australia (except foreign salary income which remains taxable). This means that foreign dividends, foreign interest income, foreign rents or foreign managed fund distributions are examples of income on which you would not be taxable if you are a temporary resident.

- Capital gains arising on assets that you own, unless the asset is Australian real estate or interests in Australian real estate;

Does Australia tax capital gains ?

Yes. In Australia, capital gains are included in a person's income for tax purposes.

If you are a resident of Australia then unless you qualify as a temporary resident, it generally does not matter whether the asset is located in Australia or overseas.

A great many things can be considered assets for CGT purposes ranging from the more obvious types of assets such as real estate and shares to less common assets including artworks, and collectibles.

For expats arriving in Australia who are considered to be temporary residents any gains made on foreign assets are not taxable in Australia even if the funds are brought into Australia from gains made overseas.

Many clients have also asked whether Australia will tax assets which were acquired before they moved to Australia. The answer is 'yes' - but relief usually arises because of how the taxable gain is calculated.

Generally speaking for people coming to or return to Australia the capital gain is calculated by comparing the proceeds on the sale with the 'market value' of the asset on the day the person became a resident of Australia.

This means that you will need to undertake a valuation of all your assets at the time you become an Australian resident.

Note that this excludes Australian real estate which would be taxable in Australia most of the time.

Example

For example assume that you move to Australia and become a permanent resident (or you already are an Australian citizen).

At the time you move to Australia assume you own shares in America which are worth AUD $100,000 at the time.

If you sell the shares for $150,000 then you will be required to pay tax on $50,000. If hold the shares for more than 12 months from your arrival in Australia, the 50% capital gains tax discount would apply to you and you would only have to pay tax on $25,000.

Does Australia have an inheritance tax or death tax?

No. Unlike the United Kingdom and the United States of America, we do not have an inheritance tax or death tax. That is a great thing for Australian resident families.

However, capital gains taxes will usually arise if you subsequently sell an asset that you inherit.

If I sell my home after moving to Australia, am I taxable?

It depends. There is an exemption from capital gains tax if you move to Australia, and you sell your former main residence in your home country.

We suggest you obtain an advice from a specialist before selling any property or other assets you have overseas.

I own a foreign company should I seek advice?

Yes, Australia has very complicated rules which apply to tax residents who have interests in foreign companies or foreign trusts.

Unless your company or trust is situated in a company which Australia considers to have a similar comprehensive tax system then it is likely that you will be taxable in Australia on any income derived within the foreign company that is considered to 'passive in nature' under Australia's Controlled Foreign Company Rules.

Similar rules apply to foreign trusts that you may have an interest in or may be deemed to have an interest in.

You should also be aware that Australia's tax laws can treat a foreign company or a foreign trust as being tax resident in Australia if the central management and control of the company or trust is exercised in Australia

What is the Australian tax year and is there a good time to come to Australia?

It is always a great time to come to Australia! However from a tax perspective that answer always depends on your situation.

What should I do when I arrive in Australia?

Typically when clients first move to Australia we suggest that you undertake the following administrative steps in relation to taxation.

- Ascertain whether you are a temporary resident;

- If you are eligible register for Medicare;

- Apply for a Tax File Number and remember that your first tax return will be due by 31 October following the first 30 June that you are a resident of Australia;

- Open a bank account
- Obtain private health insurance if you wish to avoid a surcharge of 1% of your taxable income
- Appoint a tax agent and provide them with a list of all the assets you own and their market value;
- If you are associated with (or own) any overseas companies or trusts - advise your tax agent and obtain advice in relation to your obligation in respect of those entities.

Do I have an obligation to report overseas income?

Yes, Australian residents must report their worldwide income and there are a number of questions that must be answered on an Australian personal tax return every year in respect of foreign assets that you may hold.

Holding investment assets in Australia

Australia has a range of common structures through wish you could hold investment assets and you should take professional advice before establishing any of the structures below.

One of the most common investment holding structures in Australia is a trust and we have provided some initial information on some of the most typical investment holding entities in Australia.

Trusts

Trusts are a very common structure in Australia for holding assets. Some information on trusts is set out here.

However, it is not an exhaustive explanation of the legal and taxation issues associated with trusts, but it is a useful introduction if you are considering establishing a trust. It is important that you obtain further advice from a legal practitioner.

In essence a trust is simply a relationship where one person (the trustee) is under an obligation and holds assets (trust property) for the benefit of another person (a beneficiary) for some object or purpose.

A trust has four essential elements:

1. Trustee
2. Trust Property
3. Equitable Obligation
4. Beneficiaries.

To restate these elements in slightly more legalistic terms "a trust is a fiduciary relationship where one person, a trustee, holds an interest in property but has an equitable obligation to use or keep that property for the benefit of another person(s) (beneficiaries) for some committed object or purpose.

Common Types of Trusts in Australia

There are many types of trusts; however, the common ones are, Discretionary Trusts, Unit Trusts, and Will Trusts.

Discretionary Trust: A common settled trust dealt with in practice is a discretionary trust.

A discretionary trust, which may also be known as a family trust, allows the trustee (who is usually the head of the family) to exercise discretion on an annual basis as to which beneficiaries will receive a distribution and to what extent each beneficiary shall benefit.

Unit Trust: Unit trusts are commonly used when arm's length parties wish to enter into a commercial undertaking together.

Each party's entitlement to income and capital from the trust is proportionate to the units held.

Will Trust: A Will trust or a deceased estate arises on the death of a person.

Upon death, property of the deceased passes to their estate.

The fiduciary obligation to administer the estate and the assets therefore falls upon the executor or administrator who assumes the role of trustee in respect of the property of the deceased estate.

Taxation of Trusts

In Australia the taxation of trusts is a complicated area.

In essence the income of the trust is taxable to the beneficiaries who are entitled to the income.

If there is part of the income of a trust that no beneficiary is entitled to then the Trust will be taxable at the top individual marginal tax rate of 47%.

Most trusts in Australia allocate their income to one or more family beneficiaries and if they are discretionary trusts the trustee (which is controlled by the family) has the flexibility to choose how the proportion of the income which is distributed to each beneficiary on an annual basis.

This means that in the first year the income of a trust could be distributed equally among family members whereas in the next year the trustee might choose to distribute the income entirely to one beneficiary.

Departing your Home Country

It is important to understand and plan for the tax systems of your home country and Australia prior to your move.

Specifically, there are six considerations that should always be addressed:

1. Does your home country tax you when you exit your home jurisdiction and change tax residency?

2. Does your home country levy tax on your income when you are living overseas and, if so, what are the consequences of this?

3. If you are not taxed on your foreign income and foreign assets by your home country, how will the income and assets you hold be taxed in the Australia? For example, you may have a share portfolio in your home country that is not taxed in your arrival country.

4. If your home country assets – such as real estate or shares – rise in value and are sold while you are a resident in Australia, what are the tax consequences?

5. If you own assets in a third country (meaning a country that is not your home country or Australia country), what are the tax implications for you selling those assets in that third country?

These are just some of the many questions you need to consider when moving from your home country to a Sydney.

Failure to plan and understand the impact of these questions could add thousands of dollars to your global tax bill.

Unfortunately, this cost may not be evident until years after a move to Australia.

Examples

One recent case of a client moved to Australia and had retained a large deposit of foreign currency in their bank account in Singapore, which they held there for many years after they became resident of Australia.

They did not take advice on the issue. Unfortunately some years later then they moved those funds to Australia they were surprised by a very large tax liability that had arisen because of they had made a foreign exchange gain from an Australian dollar perspective.

In another case a client moved to Australia but was continuing to pay interest to a bank in their home country without realising that from the time they moved to Australia they were required to deduct a 10% withholding tax on the interest that was paid to the overseas bank.

Developing a tax strategy around arriving in Sydney and departing from your home country is very important and cannot be overemphasised.

We would always suggest that you obtain professional advice in relation to your departure and advice in relation to arrival in Australia.

New South Wales Land Taxes

If you move to Sydney and purchase real estate in New South Wales (whether a free-standing property or an apartment), you may be liable to pay New South Wales land tax if the unimproved value of the land is more than the land tax threshold of $629,000.

Even if you own an apartment and you do not purchase land directly, the apartment will be allocated a share of land value based on its unit entitlement.

An exemption exists if you live in the property as your principal residence.

AT A GLANCE

- When you become a resident of Australia you will be taxable on your worldwide income unless you can qualify as a temporary resident.
- Typically you will become a tax resident (whether or not you qualify as a 'temporary resident') or otherwise) from Australia from the day you arrive with the intention to live in Australia.
- You should always undertake a valuation of your assets at the time you become an Australian resident.
- Employment income and employee share scheme gains are usually taxable if you receive them after moving to Australia even though they may relate to service outside Australia.
- Australia has a very expansive capital gains tax system, but it does not have any inheritance or estates taxes.
- There are no state income taxes in Australia, only the Federal government levies income tax.

- If you own or control foreign companies or trusts you should be aware that Australia has complicated rules that need to be complied with in relation to overseas entities.

- Trusts are a very widely used in Australia to hold investment assets.

- Unlike some other countries Australia does not have different rates of tax for income depending upon the type of income it is. There is a lower rate for long term capital gains though.

- Employment income and employee share scheme gains are usually taxable if you receive them after moving to Australia even though they may relate to service outside Australia.

- Australia has a very expansive capital gains tax system, but it does not have any inheritance or estates taxes.

- The state of New South Wales levies land tax on an annual basis on land owned in New South Wales, although land tax does not apply to a person's principal residence.