



## FOREIGN & MIGRATING CLIENT ISSUES

This information sheet is designed to provide new clients and their advisors with an overview of some of the issues that should be considered when transferring wealth into Australia or migrating from overseas. The information contained within is generic only and should not be considered as tax advice and accordingly should not be relied on. We recommend that professional, up to date advice specific to one's circumstances be sought before making any decisions in this regard.

### Tax Residency

There are a number of issues that determine tax residence depending upon the type of taxpayer (individual, company etc), whether Australia has a double tax agreement with the country of origin, the taxpayer's intention, family ties, domicile and permanent place of abode.

If a taxpayer is a tax resident of Australia, they are taxed in Australia on their worldwide income (usually with a credit for any foreign tax paid on that income). A non-resident taxpayer will only be taxed in Australia on Australian sourced income.

### Withholding Tax

Certain passive income – interest, dividends and royalties paid to non-residents is subject to withholding tax which is a final tax. If that is the only income of the non-resident taxpayer, there is no requirement for them to lodge an Australian income tax return.

In addition, Australian resident trustees are required to pay tax in respect of a trust distribution to a non-resident beneficiary, so withholding is also required for non-passive income

### Tax File Number

If an entity becomes an Australian resident, they will be required to apply for a Tax File Number and individuals will generally be required to lodge an Australian income tax return provided they earn more than \$6,000. Non-resident individuals and companies (whether resident or not) are taxed from the first \$1 of income earned.

### Foreign Investment Review Board (FIRB)

Australia places certain restrictions on the amount and types of investments that non-residents can acquire in Australian assets. The policy behind this is to ensure that foreign ownership benefits Australia. For example, non-residents are generally prohibited from acquiring second hand residential real estate. There are also certain notification requirements when acquiring new real estate. Accordingly, if non-residents are seeking to acquire real estate, they should ensure any contract signed is conditional on FIRB approval. Restrictions and notification is also imposed on non-real estate assets, so investors should seek advice before committing to any acquisition.

### Australian Investment Structure

There are a variety of ways to invest in Australia for example an individual can invest in his / her own name, through a trust, through a company or a superannuation fund or a combination of these. We would be happy to discuss the best investment structure for your circumstances.

### **Thin Capitalisation Rules – Limiting Interest Deductions**

Australia has rules which may cap any tax deduction for interest on borrowings where the entity is too highly geared. Very broadly, if the entity's debt to equity ratio exceeds 3:1 (ie \$3 of debt for every \$1 of equity), then tax deductions may be denied for any interest that relates to debt in excess of this ratio.

These rules can apply to foreign residents investing into Australia and Australian residents investing overseas. However the rules do not apply where the total interest deductions are less than \$250,000 per annum.

For example, a foreign investor seeks to purchase an income producing property for \$5 Million and provides a \$1 Million (20%) deposit. He borrows \$4 Million from the bank at 7% (ie \$280,000 interest pa). As the debt to equity ratio is more than 3:1 and the interest expense is more than \$250,000, depending on other factors, some of the interest expense may not be allowable as a tax deduction against the rental income received.

### **Control of Overseas entities**

If an Australian resident taxpayer (including a recent migrant) controls an entity (eg a company or trust) overseas, there are various rules (including Controlled Foreign Company rules and Transferor Trust rules) that can attribute the income of the company or trust to the Australian resident. This means the investor may pay tax on that income in Australia before they have received it.

Example: - An Australian resident owns 100% of the shares of a Hong Kong company which owns passive investments. Any income earned by that Hong Kong Company may be assessable to the shareholder in the year it is earned by the company, even if no dividends are paid. Subsequent dividends should then be exempt from tax in Australia.

Different rules apply depending on the type of overseas entity, the ownership percentage and the underlying business / investments of the entity and some exemptions may apply.

### **Superannuation**

Individuals migrating to Australia that wish to move foreign pension or superannuation entitlements into Australia should take action within six months of becoming a resident as they may be able to move the proceeds without paying tax on the accumulated earnings in Australia. Moving superannuation monies outside of the six month 'window' may cause the Australian beneficiary or receiving superannuation fund, to have to pay tax on earnings deemed to have accumulated since you migrated. Accordingly, it is critical to establish the 'lump sum value' of the fund as at the date of migration.

The Australian Government also places limits on amounts that can be contributed to a retirement fund. Transfers from foreign pension funds to Australian superannuation funds count towards an individual's contribution limits, so care should be taken to ensure a liability for excess contributions tax does not arise. Advice should be obtained either prior to, or immediately on arriving in Australia.

Hanrick Curran has assisted many clients who have migrated to Australia and those establishing businesses and investments overseas to establish a tax efficient structure and ensure all relevant compliance requirements are taken care of. In addition, as part of the Alliot group, an international affiliation of accountants and lawyers, Hanrick Curran can direct clients to obtain relevant advice overseas.

We would be happy to assist new clients and their advisors further in this regard. Should you have any queries or would like further information, please contact Jamie Towers, Hanrick Curran's tax consulting partner on 07 3229 6966.