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FACCI WA Business Seminar

‘Changes on Visa and Tax Implications’

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Overview of Tax Residency

Joshua Haque

Senior Manager in Tax Advisory

Agenda

Here's what we are going to talk about today

1

Recent government developments

2

Basics of Resident or non resident taxation

3

Tests for residency

4

Double tax agreement

5

Temporary residency and examples

Government Monitoring

- Immigration records
- Austrac financial intelligence agency with regulatory responsibility for anti-money laundering, counter-terrorism financing, tax evasion.
- Common Reporting Standards (in effect from 1 July 2017)
Australia due to report in July 2018 to other tax authorities around the world

Resident taxation

Basic taxation

- Residents taxed on worldwide income and at resident tax rate
- Non-resident taxed only in relation to Australian sourced income at non-resident marginal rates
- Medicare levy and surcharge exemptions

Resident tax rates 2017–18

Taxable income	Tax on this income
0 – \$18,200	Nil
\$18,201 – \$37,000	19c for each \$1 over \$18,200
\$37,001 – \$87,000	\$3,572 plus 32.5c for each \$1 over \$37,000
\$87,001 – \$180,000	\$19,822 plus 37c for each \$1 over \$87,000
\$180,001 and over	\$54,232 plus 45c for each \$1 over \$180,000

Foreign resident tax rates 2017–18

Taxable income	Tax on this income
0 – \$87,000	32.5c for each \$1
\$87,001 – \$180,000	\$28,275 plus 37c for each \$1 over \$87,000
\$180,001 and over	\$62,685 plus 45c for each \$1 over \$180,000

Foreign residents are not required to pay the Medicare levy.

Residency Test Overview



Primary Test

(referred to as the common law test or ordinarily resides test)

- Word 'reside' is not defined in legislation
- Courts have decided
 - 1. Physical presence in a particular place
 - 2. Intention to treat the place as home; at least for time being, not necessarily forever
- TR 98/17

“to dwell permanently or for a considerable time, to have one's settled or usual abode, to live, in or at a particular place”

183 Day Test

- Have you spent more than 183 days in Australia in a year of income?
- Resident unless your usual place of abode is outside of Australia and does not intend to take up residence in Australia
 - IT 2650 : permanent/usual place of abode

Double Tax Agreements

- An individual can be a domestic tax resident of more than one country at the same time.
- To determine the individual's residency status under the treaty we need to look at Article 4, 15 and 18 of the appropriate DTA which allocates the primary taxing rights.
- DTAs contain treaty tie-breaker rules that address dual residence issues, however they do not alter domestic residency status.

Example

- Jim, a US citizen and executive of a US corporation comes to Australia to set up a branch of his company. Has a number of interest bearing accounts offshore.
- Although the length of his stay is not certain, he leases a residence in Sydney for twelve months.
- Wife accompanies but children in college remain in US in the family home
- Jim's daily behaviour is relatively similar to his behaviour before enter in Australia.
- Returns to US after 11 months

Temporary Residents

- Special class of resident
- Treated as Australian residents and exempt from certain foreign sourced income and capital gains
- Must hold a temporary visa under the *Migration Act 1958*
- Most common are individuals arriving on a 457 visa
- Liable for CGT only on Taxable Australian Property
- If ceases to be a temporary resident, will be taxed on worldwide property.

Example

- In 2014, Claire has relocated to Australia from France, entering the country on a temporary visa.
- Previous to moving, she sold her house in France in and deposited the proceeds into a high interest saving account (conversion value of \$800k AUD at time of entry to Australia).
- In 2017, Claire is transitioning off her temporary visa, and wishes to use the money in her French bank account to purchase a residential property in Australia. The amount is now only worth \$690k AUD.

Example cont.

Forex realized gains/losses

Sold French house

Deposited funds in
HISA

2017

Cease temporary
resident visa
\$690k AUD

2013

Enter Australia

Temp Visa

\$800k AUD equiv.



Example

- Francis has relocated from Japan to Australia, entering the country on a temporary visa.
- After working in Australia for a number of years, he is transitioning off his temporary resident visa.
- Francis has an overseas private company in Japan. He uses this money to finance the purchase of some private assets in Australia including his home \$1 million and car of \$100k.

Example cont'd

Division 7A



**Overseas
Private
Company**

\$1m
House Loan

\$100k
car loan

- Division 7A
- Deemed dividend
- Options available if identified in time

Superannuation - Inbound

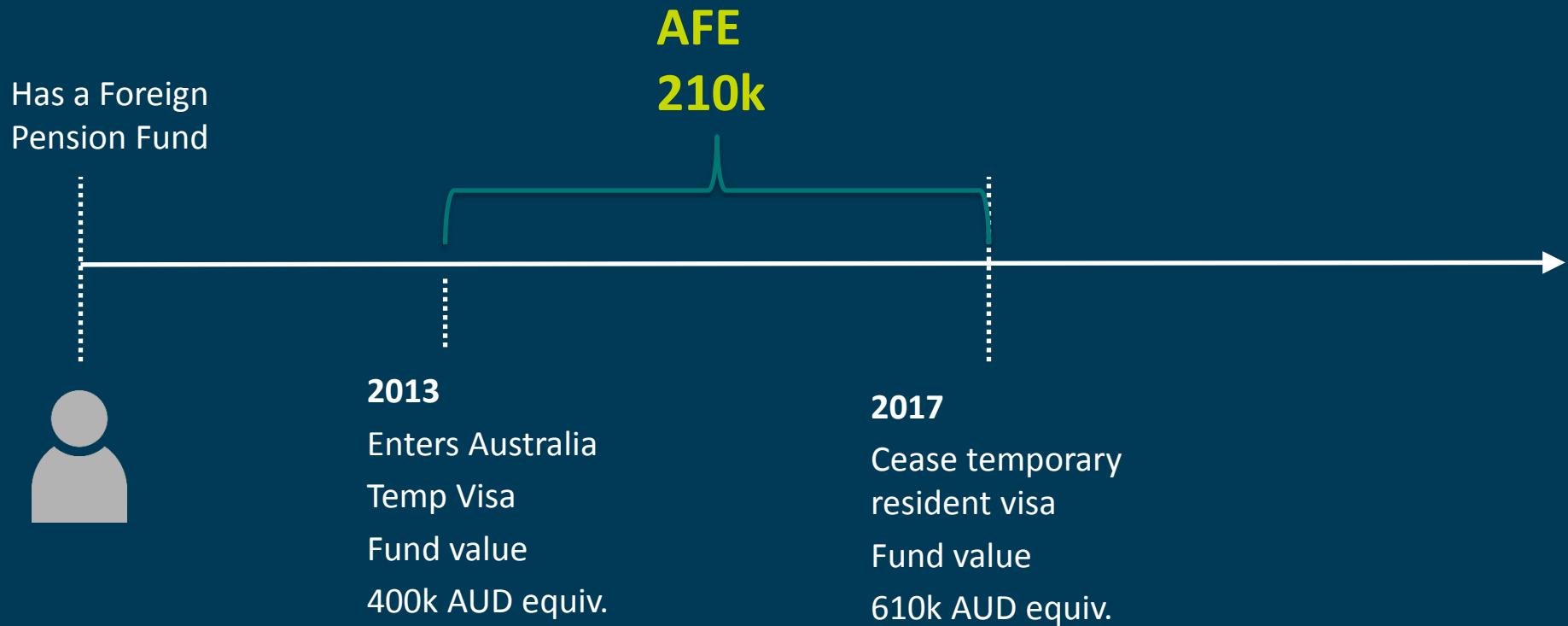
- A person who relocates to Australia and takes up Australian residency has 6 months to transfer in a super lump sum – tax free.
- If transferred after 6 months – the assessable amount of the lump sum is the amount that attributed to *applicable fund earnings*.

Applicable Fund Earnings - Taxation

- Applicable fund earnings is either taxed at:
 - Your marginal tax rate if received personally ; or
- Paid into a complying superannuation fund if :
 - Applicable Fund Earnings taxed at 15%;
 - No entitlement remains in the foreign fund after payment has been transferred into Australia;
 - The non-assessable portion of the lump sum payment is subject to the non-concessional contribution limits (which is at best 300k and at worst NIL).

Example cont'd

Foreign Pension Fund



Key takeaways

Times to seek advice



Before entering Australia

- Allows time to understand whether you will be resident, non-resident or temporary resident



Changing your visa

- Forex
- Division 7A
- Foreign Pension Funds



Departing Australia permanently

- CGT events and choices
- Loss of franking credits for private companies



Helene Rodari

Principal of HR Migration Services

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Changes on Visas and Tax Implications

Impact on Individuals:

- Working Holiday Visas
- Employer-Sponsored Visas
- Citizenship

Working Holiday recent changes

- No more unpaid work accepted to qualify for second year of Working Holiday visa (417)
- From 1 January 2017, first \$37,000 taxed at 15%, balance taxed at ordinary rates
- From 1 July 2017, taxation of Departing Australia Superannuation Payment (DASP) at 65%

Employer-Sponsored Visas

- Work migration with assistance from a business sponsor or nominator
- Currently several options
 - Temporary 457 (all Australia)
 - Permanent ENS 186 (all Australia)
 - Permanent RSMS 187 (“regional” Australia)
- All options are currently subject to changes

Recent changes to 457 Program

18 April 2017

- Abolition of 457 visa announced
- New lists, occupations removed or restricted
- Short-Term Skilled Occupations List STSOL
- Medium and Long-Term Strategic Skills List
MLTSSL
- Duration: 2 or 4 years max depending on list

Recent changes to 457 Program

1 July 2017

- Further adjustments to lists
- English exemption based on salary removed
- Clarification of Training Benchmarks for employers
- Police checks required
- Mandatory skills assessment extended

Further announced changes to 457 Program

December 2017

- TFN of 457 visa holders collected by DIBP to be matched with ATO's records (nominated salary)
- Publication of details relating to sponsors sanctioned for not meeting obligations

Further announced changes to 457 Program

March 2018

- 457 visa abolished and replaced by Temporary Skills Shortage (TSS) visa
- 2 streams for TSS: Short-term stream and Medium-term stream
- **Minimum 2 years work experience**
- Workforce test
- Training requirement: Skilling Australian Fund levy replaces training benchmarks

Further announced changes to 457 Program

TSS: Short-term stream

- Occupation on STSOL
- Granted for 2 years
- Can be renewed onshore once
- No pathway for Permanent Residence
- Genuine Temporary Entrant
- English: similar to current 457 (IELTS 4.5 minimum in each component, 5 overall)

Further announced changes to 457 Program

TSS: Medium-term stream

- Occupation on MLTSSL
- Granted for 4 years
- Pathway for Permanent Residence after 3 years with same employer
- English: higher level required (IELTS 5 minimum in each component)

Changes to ENS 186

- Direct Entry Stream
 - 18 April 2017
 - Occupation on STSOL or MTLSSL, restrictions
 - 1 July 2017
 - Age lowered to 45
 - March 2018
 - MTLSSL only
 - TSMIT will apply
 - Commitment 3 years employment with sponsor
 - SAF levy for employer

Changes to ENS 186

- Temporary Residence Transition Stream
 - Until March 2018
 - 2 years employment with same 457 sponsor
 - Age 50 years maximum
 - 1 July 2017
 - English level raised: IELTS 6 in each component
 - After March 2018
 - 3 years employment with same sponsor
 - Age 45 maximum
 - TSMIT will apply
 - SAF levy for employer

Changes to RSMS 187

- Direct Entry Stream
 - March 2017
 - Not available anymore in Perth (no RCB certification possible), rest of WA still eligible
 - 1 July 2017
 - Age limit lowered to 45
 - After March 2018
 - Minimum 3 years work experience
 - MTLSSL with additional occupations for regional positions
 - TSMIT will apply
 - Commitment 3 years employment instead of 2
 - SAF levy for employer

Changes to RSMS 187

- Temporary Residence Transition Stream
 - Until March 2018
 - 2 years employment with same 457 sponsor
 - Age 50 years maximum
 - 1 July 2017
 - English level raised: IELTS 6 in each component
 - After March 2018
 - 3 years employment with same sponsor
 - Age 45 maximum
 - TSMIT will apply
 - SAF levy for employer

Changes to Citizenship

- Changes announced on 20 April 2017 subject to legislation being passed
 - New residence requirements (4 years PR)
 - New English requirement (competent)
 - New Citizenship test (3 attempts maximum)
 - New Pledge
 - Evidence of integration in the community
- First reading 15 June 2017
- Report expected 04/09/2017

Thank you and Merci !

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