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Australia: Budget 2015: Immigration issues

Overview

The Federal Treasurer, Joe Hockey, handed down his second budget on 12 May 2015. In general, the budget is aimed at supporting small business and growing jobs, supporting families, ensuring fairness of tax and benefits, national security, and progressing budget repair in a measured way.

There were no significant immigration related announcements, but rather some measures that are a continuation of some of the government reviews initiated during the previous 12 months.

Changes

Response to the Integrity Review of the 457 Program: The Government will provide additional funding over four years to implement recommendations from the Independent Review into the Integrity of the Temporary Work (skilled) visa (subclass 457) program. This measure will provide funding for the simplification and streamlining of visa processing for low-risk 457 sponsors, and the investigation of 457 sponsors to determine whether they are complying with their sponsorship obligations.

Migration Agents Registration Authority – deregulation: The Government will remove the requirement for lawyer migration agents to be registered under the migration agents' regulatory scheme following consideration of the Independent Review of the Office of the Migration Agents Registration Authority (OMARA).

This measure removes an unnecessary regulatory burden, clarifies OMARA's regulatory jurisdiction, and ensures lawyers working as migration agents are not accountable to two authorities. It is part of the Government's overall effort to remove red tape on business.

National Security – strengthen and enhance Australia's border protection services: The Government will implement capability enhancements to further strengthen Australia's border protection services. Funding will be provided for:

- Design and scoping work for new information and communications technology (ICT) platforms to manage travelers' biometric data and visa information.
- The trial and full-scale rollout of next generation eGates at major international airports and three seaports.
- Additional equipment and training for the Australian Border Force to undertake operational activities.

Additional funding will be provided for the expanded workload of the Australian Commission for Law Enforcement Integrity. From 1 July 2015, the whole Department of Immigration and Border Protection's activities will come under the Integrity Commissioner's jurisdiction.

This extends the 2014/15 Budget measure: Smaller Government – strengthen and enhance Australia's border protection services. This national security measure underlines the Government's commitment to a safe and secure Australia.

Smaller Government – immigration and border protection efficiencies: The Government will achieve savings over the next four years from efficiencies in visa, refugee, and humanitarian processing, and by simplifying the skilled migration and temporary activity visa program.

Efficiencies have been identified following a review of departmental operations relating to the Refugee and Humanitarian Assistance Program and visa processing systems. In addition, through simplification of the skilled migration and temporary activity visa program, the number of visa subclasses will be consolidated, while ensuring program's integrity is maintained, with the related system changes across three portfolios delivering operational savings.

This measure forms part of the fourth phase of the Smaller Government reforms, which reduce the size and complexity of government. The reforms are eliminating duplication and waste, streamlining services, and reducing the cost of government administration.

Changes to Visa Application Charges from 1 July 2015: Visa Application Charges (VACs) will change from 1 July 2015. These adjustments include:

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- A price increase in line with inflation (2.3 percent) on visas that face strong international competition or have been impacted by recent price increases.
 - These include specific visas within the Permanent Migration Skill Stream, Skilled Graduate, Temporary Long-Stay Business (Subclass 457), Visitor, and Student visa streams.

- A 5 percent price increase on visas that continue to see strong demand despite previous increases, or are likely to see a sustained volume increase through policy changes under consideration.
 - These include specific visas within the Temporary Resident Short-Term Business and Entertainment visas, Working Holiday visas, Resident Return and Retirement Investor visas, and Contributory Parent visa streams.
- A 10 percent price increase on specific visas within the Other Family (Remaining Relative, Career, and Aged Dependent Relative) visas and (noncontributory) Parent visa streams where the underlying demand is not expected to be impacted by the price increase.
- A 50 percent increase to the Significant Investor Visa (SIV) stream in the permanent migration Skill stream category where the VAC is a very small component of the minimum \$5 million of investments required under the visa regulation.
- An alignment of VAC prices where a differential currently exists for lodging an onshore and offshore application for specific visa subclasses.

Foreign Investment Review Board (FIRB) Targets Real Estate: The Federal Government recently announced a tightening of its foreign investment audit, compliance, and enforcement framework to identify acquisitions of residential real estate by individual and company foreign investors in contravention of FIRB requirements.

The changes are a key measure in the Government's Budget promise around fair and sustainable investment in Australia. Broadly:

- The Government's enforcement powers relating to residential real estate have been transferred to the Australian Taxation Office (ATO), which is better resourced to investigate potential breaches.
- The ATO will use data matching to identify and prosecute foreign investors in breach of their foreign investment requirements. This may also lead to an audit of the foreign investor's taxation affairs.
- A reduced penalty period is in effect from 2 May to 30 November 2015, for certain foreign investors that voluntarily disclose past acquisitions of residential real estate, which may have been in breach of Australia's foreign investment rules.

FIRB strictly applies the approval requirements to foreign investors' past and future acquisition of property, so that:

- Foreign investors' acquisitions of certain residential real estate will be prohibited by FIRB.
- Certain acquisitions will be permissible if they are not contrary to the national interest and approval is obtained.
- Other acquisitions of residential real estate will be allowed without requiring approval or providing notice to FIRB.

Failure to obtain requisite approval may lead to criminal and civil penalties, including three years jail time; forced divestment; fines of up to \$135,000 and \$675,000 for individuals and companies, respectively; as well as the imposition of penalties referable to gains or property value.

Deloitte's view

Many of the immigration related changes announced in the budget were known beforehand, and many were subject to previous government reviews. In this regard, the budget contains no surprises from an immigration perspective.

The changes to the Foreign Investment Review Board guidelines flag an increased level of compliance by the Australian Government on the purchase of residential real estate by foreign investors. It can be expected that increased enforcement measures will be introduced for noncomplying investments.

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France: Administrative Supreme Court overturns FTA practice on expatriate premiums

Overview

France's Administrative Supreme Court (Conseil d'Etat) issued a decision on 10 April 2015 on the "expatriate premium" provided for in article 81 A II of the tax code, concluding an employee's annual global base compensation must be taken into account in calculating the 40% cap on the premium.

The expatriate premium applies where a French resident employee is sent by his/her employer to perform professional activities abroad. The additional remuneration paid to compensate the employee for any hardships arising as a result of the assignment, such as family separation or difficult working conditions in certain countries, is tax exempt (although it is taken into account in calculating the effective tax rate applicable to taxable income in France). The tax code provides that the additional remuneration may not exceed 40% of the employee's base compensation (i.e. remuneration, excluding the expatriate premium). The actual wording of article 81 A II, however, is unclear as to how the 40% ceiling is to be calculated, i.e. whether it applies to the employee's remuneration in proportion to the actual number of day worked abroad or to the employee's annual global compensation. It has been the policy of the French tax authorities (FTA) to calculate the ceiling by using the actual number of eligible days spent abroad.

The Administrative Supreme Court disagreed, ruling that the ceiling must be computed by reference to the global amount of the employee's remuneration, rather than just the amount relating to the activities performed abroad. The court, therefore, has overturned the more restrictive interpretation of the FTA, opening the door to greater exemptions of expatriation premiums.

Deloitte's view

This decision might also afford claiming back the exemptions of such premiums whose amount, fixed in the employment contract, would have been higher than the above ceiling chosen by the tax authorities.

Due to the financial impacts of this decision, we recommend an audit of premium scales, employment contracts or addenda thereto providing the payment of expatriate premiums and a thorough review of personal situations on a case-by-case basis.

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