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Australia: Rental property update

Overview

The Australian Government has now passed legislation, which requires a 10% withholding tax to be remitted by purchasers who acquire Australian property from foreign residents. The legislation has the following impact:

- The measure will apply from 1 July 2016, to direct and indirect Australian real estate property (residential and commercial) sold by a foreign resident.
- It will only apply to sales where the market value of the property exceeds AUD 2 million.
- The purchaser of the property will be required to remit 10% of the total purchase price to the Commissioner of Taxation (the "Commissioner") on or before the date the purchaser takes ownership.
- The tax is not a final tax and the foreign resident vendor will be required to lodge an Australian income tax return, but will receive a credit for the amount remitted by the purchaser.
- Australian resident vendors can apply for a clearance certificate from the Commissioner to confirm their Australian residency status and avoid having the purchaser remit 10% of sales proceeds to the Commissioner.
- Further, any vendor can apply to the Commissioner to vary down the withholding rate. This is available where, for example, there would be no tax payable on the sale due to carryforward loses or the main residence Capital Gains Tax (CGT) exemption.

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- The Commissioner intends to implement an automated process for issuing clearance certificates. A vendor may apply for a clearance certificate at any time, even prior to the property being listed for sale. The Commissioner may set a time period for which the clearance certificate is valid.

Deloitte's view

- This legislation indicates increased Australian Taxation Office (ATO) scrutiny on taxpayer compliance.
- The new law allows the ATO access to tax proceeds at source, rather than having to wait until the taxpayer lodges an Australian income tax return. This should also encourage greater compliance for taxpayers who have had withholding tax deducted, in order to obtain any refund amount they may be entitled to (i.e., due to carryforward capital losses).
- All vendors disposing of Australian property will be deemed to be foreign residents. This puts the obligation to address the residency issue on the vendor.
- Australian tax resident vendors should consider applying for the clearance certificate at the time of listing, as processing may take up to 14 days in straightforward cases. It would be beneficial for the vendor to hold the certificate prior to sale to ensure the purchaser does not deduct 10% from the sales proceeds.
- Similarly, foreign resident vendors should consider applying for a variation where they believe they should not be liable to CGT on sale of the property. For example, if they are selling their main residence, then the sale will not be subject to taxation in Australia.

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Hong Kong:
Immigration Department continues enforcement activities: Nonresident trainers reminded to comply with immigration rules

Overview

On 19 February 2016, Hong Kong immigration task force officers conducted a raid at the Hong Kong Sports Institute and arrested a Japanese karate master and his assistant who were suspected of working illegally in Hong Kong. The master had come to Hong Kong to offer a five-day training course to members of the Hong Kong Karatedo National Squad at the Hong Kong Sports Institute. Both individuals were released on bail after being detained for about 10 hours.

Immigration rules for nonresident trainers

Under Hong Kong immigration rules, visitors to Hong Kong are not permitted to take up employment in Hong Kong or to establish or join a business in Hong Kong without obtaining permission from the Director of Immigration. The length of a training course (e.g., technology, martial arts, dance, language) or whether the trainer is paid or unpaid is irrelevant: in all cases, a nonresident trainer must obtain an employment visa before he/she can provide training in Hong Kong.

Offenders are liable to prosecution and, upon conviction, may be sentenced to a maximum fine of up to HKD 50,000 and imprisonment for two years. Additionally, a person employing or engaging individuals not lawfully employable in Hong Kong is liable to a maximum fine of HKD 350,000 and three years' imprisonment.

The latest trend

The Hong Kong authorities remain vigilant against illegal workers, and in recent years, the Immigration Department has taken tough and effective enforcement actions against unlawful employment in order to protect the local labor market. Measures include publishing relevant government policies and regulations, encouraging the public to whistle blow on offenders (through a 24-hour hotline or the Immigration Department website) and conducting unannounced visits. In 2014, 6,100 illegal workers were arrested and 219 employers were prosecuted for employing illegal workers. Many of the illegal workers and prosecuted employers were sentenced to jail. Among them, many were whistleblowing cases, similar to the case above.

Deloitte's view

While Hong Kong's immigration procedure is relatively straightforward, the authorities are focused on ensuring compliance. We have spoken with the Chief Immigration Officer from the Immigration Department and she reiterated the importance of immigration compliance.

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Global Rewards Updates:
South Korea: New requirement for domestic companies to withhold income tax for foreign assignees

Background

Currently, there is no income tax withholding requirement with respect to employment income for foreign assignees in Korea where the employment costs are not recharged to or borne directly by the Korean entity.

A new tax law commencing 1 July 2016 will require Korean entities involved in certain limited business areas to operate monthly income tax withholding in relation to employment income for foreign assignees in cases where a service fee has been paid by the Korean entity to the foreign company, even where the relevant employment costs are not directly borne by the Korean entity.

The Korean entity will be required to operate monthly income tax withholding at a rate of 17% (18.7% including a local income tax surcharge) when it pays the service fee to the foreign company.

Korean entities meeting the following conditions are subject to the new withholding income tax reporting/payment obligation:

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1. Total service fee paid by the domestic company to the foreign company dispatching its employees to Korea exceeds KRW 3 billion per annum (approx. USD 2.5 million).
2. Previous year's revenue of the domestic company is KRW 150 billion or more (approx. USD 124 million), or previous year's total assets equal KRW 500 billion or more (approx. USD 414 million).
3. The core business of the domestic company falls under one of the following categories:
   a. Air transport
   b. Construction
   c. Professional, scientific, or engineering service

Impact

As the tax legislation was only recently introduced, there have not been any specific rulings or interpretations provided by the Korean tax authorities with regards to the application of this law to different employment income types yet.

However, it is likely that the new law will include an income tax withholding requirement on equity awards related to an individual's employment where the service fee paid by the Korean entity to the foreign company has been calculated with reference to the equity award. The amount subject to income tax withholding would likely be the portion of the equity income that was included in the service fee charge to the Korean entity.

Companies impacted by the new legislation may therefore wish to consider operating income tax withholding for employees working in Korea who are not on tax equalisation arrangements in order to meet this new obligation.

Where the service fee paid by the Korean entity to the foreign company has not included the equity award amount, it is unlikely that a withholding requirement will arise.

Deloitte's view

Employers impacted by the new legislation should be prepared for the likelihood of a new income tax withholding requirement on equity awards for foreign assignees dispatched to Korea under a service agreement where the above conditions apply from 1 July 2016. As no official clarification has been provided by the tax authorities, Deloitte will provide further information as and when it becomes available.

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