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Australia: 2017–18 Australian Federal Budget: Immigration and Tax Announcements

Overview

On May 9, 2017, the 2017-18 Australian Federal Budget (the “Budget”) was released, which included a number of announcements that may affect foreign workers and their employers.

The Budget contains further details about the Australian government’s announcement to abolish the Temporary Work (Skilled) visa (subclass 457 visa) and replace with the new Temporary Skill Shortage visa, which was first announced in April 2017 and is targeted to take effect in March 2018. These changes were covered in a previous Deloitte NewsFlash.

Tax announcements

Personal tax rates: No changes were announced to the personal tax rates. Additionally, the Temporary Budget Repair levy of 2 percent (on taxable income above AUD 180,000) will expire on June 30, 2017, as originally intended.

However, it was announced that the Medicare levy (applicable to Australian tax residents) will increase from 2 percent to 2.5 percent of taxable income on July 1, 2019.

Personal income tax rates for July 1, 2017 to June 30, 2018 remain as follows:

Income threshold (AUD)	Tax rate
0 – $18,200	Nil
$18,201 – $37,000	19%
$37,001 – $87,000	32.5%
$87,001 – $180,000	37%
$180,001 and over	45%

Changes to taxation on investments: A number of changes were announced related to property taxation, and these measures could have a significant impact on foreign and temporary residents for Australian tax purposes.

Relevant announcements:

- The main residence Capital Gains Tax (CGT) exemption will no longer be available to foreign and temporary tax residents for new property purchases after 7:30 AEST on May 9, 2017. This change, as announced, applies to Australian citizens and permanent residents who are residing overseas and foreign tax residents when they sell their main residence, as well as all temporary residents. Owners of existing properties will be able to access the exemption if sold before June 30, 2019.
- Starting on July 1, 2017:
    - The CGT withholding rate for foreign residents will increase from 10 percent to 12.5 percent, and the CGT withholding threshold will decrease from AUD 2 million to AUD 750,000. The current clearance certificate process will continue to apply in instances in which the withholding is not required (*e.g.*, seller is an Australian tax resident and not also a temporary resident).
    - Travel expenses to inspect a rental property will not be allowed as tax deductions.
    - Depreciation deductions will only be permitted for plant and equipment purchased and installed by the taxpayer, not by a previous owner. This change applies to property purchased after May 9, 2017 (*i.e.*, taxpayers can no longer claim a depreciation deduction for fixtures and fittings acquired with the purchase of the property).

Superannuation: Two of the superannuation announcements contained within the Budget are intended to reduce pressure on housing affordability.

The first announcement relates to additional non-concessional superannuation contributions that allow taxpayers ages 65 years and older to contribute up to AUD 300,000 of the proceeds from the sale of their principal residence (owned for 10 years or more) to superannuation.

The second announcement relates to the "first home super scheme," which starts on July 1, 2017, and allows eligible individuals to voluntarily contribute a portion of their salaries to a superannuation fund that can be withdrawn at a later date for a first home deposit. There is an annual cap of AUD 15,000 and a total aggregate cap of AUD 30,000 that can be applied in this manner. Consider the following three important details:

- Contributions constitute concessional contributions to the superannuation fund and will be included within existing concessional contribution caps. As a result, salary contributed to the fund will be taxed at 15 percent, and earnings within the fund will also be taxed at 15 percent.

- Withdrawals of contributions and earnings from the fund can be made starting on July 1, 2018, and will be included as part of the individual's assessable income in the year of withdrawal and taxed at marginal income tax rates, reduced by a 30 percent tax offset.
- Employers should be cautious when implementing this scheme and ensure that employees obtain their own financial advice prior to participation.

Immigration announcements

Skilling Australians Fund Levy: From March 2018, businesses that employ foreign workers on certain skilled visas will be required to pay a levy that will provide revenue to a new Skilling Australians Fund.

Businesses with turnover of less than AUD 10 million per year will be required to make an upfront payment of AUD 1,200 per visa per year for each employee on a Temporary Skill Shortage visa and a one-off payment of AUD 3,000 for each employee sponsored for a permanent Employer Nomination Scheme (subclass 186) visa or a permanent Regional Sponsored Migration Scheme (subclass 187) visa.

Businesses with turnover of AUD 10 million or more per year will be required to make an upfront payment of AUD 1,800 per visa per year for each employee on a Temporary Skill Shortage visa and a one-off payment of AUD 5,000 for each employee sponsored for a permanent Employer Nomination Scheme (subclass 186) visa or a permanent Regional Sponsored Migration Scheme (subclass 187) visa.

The levy will replace the current training benchmark financial obligations for employers of workers on Temporary Work (Skilled) (subclass 457) visas, which are being abolished, and permanent Employer Nomination Scheme (subclass 186) Direct Entry stream visas.

Increases in visa application charges: As part of the Budget, the government announced a number of changes to existing Visa Application Charges (VACs).

Starting on July 1, 2017, all VACs will be indexed annually in line with the Consumer Price Index (CPI) and rounded to the nearest AUD 5.

- Indexation only applies to the first instalment of VACs.
- Indexation does not apply to second instalment of VACs.
- The indexation of first instalment VACs applies to both primary and secondary applicants.

Some of the relevant increases for employers are detailed below:

Visa Subclass	Current VAC Price (AUD)			New VAC Price (AUD)		
	Primary Applicant	Secondary Applicant	Child Dependent	Primary Applicant	Secondary Applicant	Child Dependent
Employer Nomination Scheme (186)	3,600	1,800	900	3,670	1,835	920
Regional Sponsored Migration Scheme (187)	3,600	1,800	900	3,670	1,835	920
Temporary Work Skilled (457)	1,060	1,060	265	1,080	1,080	270
Temporary Work (400)	275	275	70	280	280	70
Temporary Activity (408)	275	275	70	280	280	70

Temporary sponsored parent visa: The government will introduce a new temporary sponsored parent visa starting in November 2017, with 15,000 visas available annually. The temporary sponsored parent visa will allow parents of Australian citizens, Australian permanent residents, and eligible New Zealand citizens to stay in Australia for periods of up to three or five years. The visa may be renewed from outside Australia to allow a cumulative stay of up to 10 years. Temporary sponsored parent visa holders will not be eligible to apply onshore for a permanent parent visa.

The visa holder's sponsor, his or her Australian child, will have legal liability for public health expenditure (including aged care arrangements) incurred by the visa holder while in Australia. This is designed to reduce the cost to the government of health services for temporary parent migrants.

Existing contributory and non-contributory parent visas will remain open to new applicants.

The introduction of the new temporary sponsored parent visa is in response to community concerns around existing parent visas, including wait times and visa costs. The Department of Immigration and Border Protection will review the temporary sponsored parent visa at the end of the first program year.

Deloitte's view

Employers are still adjusting to the immigration changes announced in April 2017. These additional measures mean that employers must consider the increase to VACs and the new Skilling Australians Fund levy when determining the cost associated with hiring foreign workers into Australia.

As for the announced taxation measures, the removal of the CGT main residence exemption for foreign or temporary residents for Australian tax purposes is likely to have a significant impact. This change will come as quite a shock to Australian citizens and permanent residents who work overseas and choose to sell their main residence while residing outside Australia as a foreign tax resident. Under the proposed amendments, individuals who own a main residence on May 9, 2017, and who fall into this category, will only have until June 30, 2019 to sell their homes and access the main residence exemption.

From our discussions with tax authorities, we understand the main residence exemption will only be lost if the individual is a foreign or temporary resident at the date of sale. This means that Australian citizens and permanent residents who currently reside overseas may not be able to access the exemption if the property is sold while they are living abroad and a foreign resident (or, for existing properties, after June 30, 2019). However, if they were to return to Australia, recommence Australian tax residency, and then sell their property, the exemption seems to be available (on the basis that the other conditions for the exemption are met). We expect there will be pressure on the government to soften the impact of this proposal, perhaps allowing a partial exemption for Australian citizens and permanent residents for the period they were actually residing in their main residence. We understand that there will be further consultation on this announcement, including discussion on the potential impact for New Zealand citizens currently residing in Australia as temporary residents for tax purposes.

The reduction of the CGT withholding tax threshold on property sales (from AUD 2 million to AUD 750,000) is likely to create additional administrative requirements for both purchasers and sellers alike. An individual who is an Australian tax resident and sells a property for more than AUD 750,000 will need to obtain a clearance certificate so that no withholding tax is deducted from the sales proceeds. The previously higher threshold removed this administrative requirement for many sellers.

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Netherlands:
Immigration Update: The effect of Directive 2014/66/EU, the intracorporate transfer directive, on the Dutch practice

On November 29, 2016, in accordance with the EU intracorporate transfer directive (ICT), the Dutch Immigration and Naturalization Service unveiled a combined permit for residence and work in the Netherlands. Since its introduction, many elements of the ICT permit have been clarified, and there have also been some remarkable changes. A broad overview of the components of the ICT permit procedures and related rights follows:

Is the ICT directive applicable?

If the applicant qualifies for the ICT directive, the main rule is that he/she can only apply for the ICT permit, in principle no other permit will be applicable. The ICT directive is applicable to third-country nationals (*i.e.*, any applicants not from an EU/EEA member state or Switzerland) who reside outside the territory of the EU and apply to be admitted to the Netherlands to work as a manager, specialist, or trainee employee. The ICT directive is also applicable to foreign national transferees already residing in EU member states. Prior and during transfer, an employment contract with the entity outside the territory of the EU is required.

There are a number of exceptions to the application of the ICT directive for third-country nationals:

- Scientific researchers admitted to the Netherlands under Directive 2005/71/EU
- Posted workers admitted to the Netherlands under Directive 96/71/EC
- Transferees admitted to the Netherlands or another EU member state based on a program other than the ICT directive
- Transferees admitted to Denmark, Ireland, or the United Kingdom (EU member states that opted out)

The Dutch immigration authorities also confirmed that the ICT Directive allows for more favorable immigration conditions on the basis of bilateral and multilateral agreements with the Netherlands. For example, as mentioned in our previous NewsFlash, this means that Japanese and Turkish nationals can opt for a selection of other permits even if the ICT directive is applicable, and American nationals can opt for residence permits as self-employed individuals, if all requirements are fulfilled.

Are the conditions for an ICT permit fulfilled?

If the ICT directive is applicable, the transferees must fulfill the following requirements to be granted an ICT permit in the Netherlands:

- A minimum employment of three months with the non-EU entity prior to the transfer.
- Details of the employment prior and during transfer, including duration, job description, experience (*e.g.*, a master's degree or trainee agreement), return guarantee, and salary
    - Dutch immigration authorities will accept a salary that meets the Dutch highly skilled migrant (HSM) threshold. It is possible to make an exemption, if the applicant can prove that his/her salary is in accordance with Dutch labor market standards or, if applicable, a collective labor agreement.

Unlike other national permits, a director is not bound to the 25 percent limit on shares.

Like the HSM permit, working at the client site is permitted if it is part of the core business. Furthermore, like the HSM permit, spouses, partners, and children younger than 18 can obtain a long-term ICT permit for the same duration as the ICT permit of the transferee. These dependents will also have free access to the national labor market.

What are the procedures for intra-EU mobility?

Application for the ICT permit must be submitted in the EU member state in which the longest stay shall take place. Sanctions could be imposed if this is not done correctly.

To facilitate mobility of transferees to the EU, short- and long-term mobility standards have been introduced:

- A transferee with an ICT permit in another EU member state can reside and work in the Netherlands for up to 90 days (within 180 days). The Dutch labor authorities must be notified at least two days in advance. After notification, the transferee can immediately start working. No work permit is required.
- A transferee with an ICT permit in another EU member state can reside and work in the Netherlands for more than 90 days (within 180 days), provided a simplified application for long-term ICT permit is submitted to Dutch immigration authorities, after which the transferee can immediately start working.

Intra-EU mobility is not always possible in practice because some EU member states have not yet (fully) implemented the ICT directive (*i.e.*, Portugal, Belgium Luxembourg, Germany, Austria, Slovakia, Slovenia, Croatia, Poland, Finland, Sweden, Cyprus, Greece, and Malta).
Furthermore, there are some limitations in terms of timing and order for short-term and long-term mobility. Please reach out to your Deloitte contact person to assist you with planning and submitting these applications.

What is the duration of an ICT permit, and what are the possibilities afterwards?

The duration of the ICT permit is limited to three years for managers and specialists and one year for trainees. While renewal beyond the maximum duration is not possible, there are two options to extend the stay of a transferee in the Netherlands.

After completing the maximum duration under an ICT permit in the Netherlands:

- A new ICT permit can only be applied for after a cool-off period of six months outside the territory of EU member states.
- Alternatively, an HSM permit can be applied for without a cool-off period. Dutch immigration authorities have confirmed that a local employment contract is no longer required in this case.

After completing the maximum duration on the basis of an ICT permit in another EU member state, an ICT permit can be applied for in the Netherlands without a cool-off period. Nevertheless, the third-country national must return to his/her home country or another country outside the EU and reside there pending approval of the application. Further, the conditions of the ICT directive apply. Other national permits may be applicable. Please reach out to your Deloitte contact person to assess the situation.

While the years of residence on the basis of an ICT permit are not taken into account for eligibility for EU long-term residence status, Dutch immigration authorities have confirmed that these years are taken into account for eligibility for national long-term residence status.

Deloitte's view

During and after implementation of the ICT directive in the Netherlands there was a lot of uncertainty about the practical implementation. Furthermore, there were concerns about the cool-off period, limited duration, and long-term residence status. After submitting the first ICT permit applications and posing questions to Dutch immigration authorities, we are now able provide to you with the above overview of the ICT permit procedures and related rights in practice.

Multiple options are presented to extend the stay of transferees in the Netherlands, and the years of residence on the basis of an ICT permit are taken into account for national long-term residence status.

Please note that for a transferee working in different EU member states, subsequently or simultaneously, the EU coordination rules on social security (as laid down in Regulation 883/2004) are applicable and may, in some situations, activate the social security scheme in the EU country where the individual resides. Furthermore, you need to be aware of a possible chain of employment agreements that may convert into an employment agreement for an indefinite period of time, if and to the extent Dutch law applies. Please reach out to your Deloitte contact person to assess the situation.

While we continue to gain more experience with the ICT directive, we will keep you up to date about future developments. In addition, we will keep a close eye on the consequences of a new EU Blue Card and Brexit for the Netherlands.

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Sweden:
Monthly Employer Reporting: New monthly obligation for employers in Sweden to report paid remuneration and tax withholdings per employee

Overview

In December 2016, the Swedish government put forth a proposal for the monthly reporting of individual employee remuneration and tax withholding. The primary purpose of the proposal is to provide more control information for the Swedish Tax Agency and other agencies, and, thereby, reduce tax evasion.

On May 10, 2017, the Swedish Parliament approved the proposal.

The proposal in brief

Employers should file information about paid remuneration and tax withholding per employee with the Swedish Tax Agency on a monthly basis. This reporting, known as the PAYE return, replaces the Annual Income Statement that is used today.

The PAYE return should contain information about the remuneration, tax withholdings, and social security charges paid. Both the Swedish Tax Agency and the employer filing the PAYE return should inform the individual about its contents.

The PAYE return can be filed on paper or electronically. If filed electronically, the employer can either submit a file that contains the necessary information for all employees, or manually register the necessary information for each individual. An e-service, which individuals can log into using an electronic ID, will manage the electronic filing.

For employers that are required to keep an employee ledger and who have more than 15 employees, the regulations will be in effect beginning July 1, 2018. For other employers, the regulations will come into effect beginning January 1, 2019.

The Social Insurance Office, Swedish Migration Agency, and the Swedish Public Employment Service will have direct access to the PAYE returns for certain purposes.

Deloitte's view

The subject of monthly reporting on an individual level has been discussed before, but has not previously led to legislation. For example, similar reporting is already used in Norway.

Even if lawmakers introduce the new legislation by July 1, 2018, at the earliest, it will require companies to take rather immediate action in order to prepare their accounting and payroll systems to meet the new demands of monthly reporting on an individual level.

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United States:
IRS private debt collection program will exclude overseas taxpayers

Overview

In December 2015 the President signed into law the Fixing America's Surface Transportation Act (the "Act"); although the Act was primarily a highway bill to fund repairs and infrastructure, it contained several important revenue provisions impacting US taxpayers. One such provision authorized the IRS to begin collection of certain overdue federal tax debts through private debt collection agencies. The Act allows these designated agencies to work on behalf of the IRS. The IRS is expected to begin notifying taxpayers this summer if their debts have been assigned to a private collection agency.

On May 10, 2017 Bloomberg BNA reported that the IRS informed them that these debt collectors were only licensed to operate in the US and would exclude from the program any taxpayers living overseas. The IRS spokesperson emphasized that overseas taxpayers should ensure that the IRS has their correct foreign address on record to be properly excluded from the program. The comments from the IRS were in response to a letter received May 5, 2017 from the group American Citizens Abroad, a non-profit group that regularly advocates for the rights of overseas taxpayers.
URL: https://www.bna.com/no-us-private-n73014450759/

Additional background

Notably, the Act also allowed for the revocation of US passports for individuals with outstanding US tax debt in excess of $50,000. Refer to *Global InSight*, December 18, 2015 on this topic. This rule remains in place and continues to apply to overseas taxpayers.
URL: http://newsletters.usdbriefs.com/2015/Tax/GIS/151218_5.html

Vigilance against scams

With the start of the private debt collection program, the IRS is reminding taxpayers on its website to stay vigilant against scams, which may take the form of unexpected phone calls. The IRS will always send several collection notices through the mail before making phone calls. In addition, the IRS will not threaten taxpayers with imprisonment or lawsuits, ask for credit or debit card numbers over the phone, or request payment via prepaid debit cards or gift cards. Read more on the IRS website about how to know if it's really the IRS calling.
URL: https://www.irs.gov/businesses/small-businesses-self-employed/private-debt-collection
URL: https://www.irs.gov/uac/newsroom/how-to-know-it-s-really-the-irs-calling-or-knocking-on-your-door

Deloitte's view

Although many overseas taxpayers may not have been aware of the forthcoming debt collection efforts by the IRS, it is a welcome relief that they will be excluded from the program.

However, many taxpayers residing overseas continue to use a US address on their federal tax return for ease of receiving mail from the IRS. Foreign addresses are often incompatible with IRS system limitations in the number of characters permitted to be listed with an address. Because the IRS is using taxpayer addresses as the determining factor in which taxpayers will be included in the private debt collection program, overseas taxpayers may inadvertently be included by virtue of listing a US address on their tax return.

In addition, although overseas taxpayers will not be subject to private debt collection efforts, they still risk revocation of their US passport if they have outstanding US tax debt in excess of $50,000. It continues to remain critical for US citizens living overseas to stay current on their tax liabilities.

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Global Rewards Updates: European Union Prospectus Requirements: A relaxation of restrictions imposed on the employee share scheme exemption

Key Points to Know

On May 16, 2017, the Council of the European Union announced that it had adopted without debate the proposed EU Prospectus Regulation (the "Regulation"), which the European Parliament had resolved to adopt in the previous month. The Regulation is intended to repeal and replace the existing legislation, which includes the EU Prospectus Directive ("EUPD").

The Regulation aims to ensure investor protection and market efficiency by harmonizing the prospectus disclosure requirements for offers of securities to the public and admission of securities to trading on regulated markets within the European Economic Area ("EEA"). The Regulation will also have global share scheme implications for non-EEA companies with EEA-based employees, as it will include a broadening of the scope of the employee share schemes exemption from the requirement to publish a prospectus.

Unlike the EUPD, the Regulation will be legally binding and directly applicable across the EU without any implementing legislation by EU Member States. The Regulation will come into effect 24 months after its entry into force, which is expected in mid-2017.

Overview

The Regulation, like the EUPD, will set out the circumstances in which a company must publish a prospectus in connection with a public offer of its securities, the information that the prospectus must contain and the timing and format of publication.

Although primarily aimed at harmonizing the prospectus disclosure requirements for offers of securities to the public and the admission of securities to trading on regulated markets within the EEA, the Regulation will also include a significant legislative change for non-EEA companies wishing to operate employee share schemes in the EEA.

Under the existing EUPD offers of shares under an employee share scheme may amount to a public offer of securities requiring a prospectus (although certain de minimis exemptions may apply). Companies with a registered office in the EEA or with securities listed on an EEA regulated market are, however, able to rely on a specific exemption for offers to existing and former employees and directors. In order to rely on this exemption, the company is required to make an employee information document available to the relevant employees. In practice, this obligation can be satisfied by including the relevant information in the normal share scheme documentation sent to participants.

In an effort to align the interests of relevant stakeholders in the success of a business, the Regulation will ensure 'equal access' to employee share schemes for employees by allowing global companies (regardless of whether or not they are based within the EEA) to rely on an employee share schemes exemption. As is the case under the EUPD, companies must make an information document available to employees in order to rely on the exemption.

The extension of the scope of the employee share schemes exemption means that a major barrier previously faced by global companies looking to provide equity-based incentives to EEA-based employees will be removed.

While the UK remains a full member of the EU and EEA, the UK will continue to be subject to EU legislation, including the Regulation when it comes into force. The extent to which EU legislation will continue to apply post-Brexit is uncertain and will depend on the negotiated terms of Brexit. If the UK ceases to be a member of the EEA, UK companies operating employee share schemes elsewhere in Europe will also benefit from the broadening of the scope of the employee share schemes exemption.

Deloitte's view

The Regulation is a welcome update for global companies operating employee share schemes, as it will remove a major barrier previously faced by companies based outside the EEA which were looking to provide equity-based incentives to directors and employees within the EEA. The Regulation will be legally binding and directly applicable across the EU without the need for any implementing legislation by the EU Member States. We will continue to monitor the Regulation and the EU Parliament regarding the Regulation's entry into force.

For assistance with these issues, or any other issue related to the operation of your global equity plans, please contact your usual Deloitte advisor or email us at globalshareplans@deloitte.co.uk, and an advisor will contact you.
URL: mailto:globalshareplans@deloitte.co.uk

Global Rewards Updates:
Ukraine: New Decree Impacting License Requirements for Ukrainian Residents

On February 23, 2017, the National Bank of Ukraine ("NBU") issued Decree No. 14, which became enforceable on February 25, 2017. The decree amends previous NBU decrees and updates licensing requirements regarding the acquisition of foreign shares and the holding of funds or investments in foreign accounts.

Overview

Prior to these changes, Ukrainian residents were required to obtain an individual license in order to remit funds outside of the Ukraine. In the context of an employee share plan, this meant that Ukrainian residents were required to obtain a license if they were acquiring foreign shares in exchange for consideration (*e.g.*, shares acquired via a stock option exercise or employee stock purchase plan). Additionally, Ukrainian residents were required to obtain an individual license in order to place shares or cash in a foreign account.

In practice it was often difficult for individuals to obtain these licenses, and as a result it was typically impractical for non-Ukrainian companies to grant share-based awards to Ukrainian resident employees.

As a result of the issuance of NBU Decree No. 14, Ukrainian residents are no longer required to obtain an individual license to place funds or investments outside of the Ukraine. However Ukrainian residents are still required to obtain an individual license in order to acquire foreign shares in exchange for consideration or to place cash in a foreign account, if funds are remitted from the Ukraine.

As a result of these changes, companies may now grant share-based awards that do not require consideration to be remitted outside of the Ukraine (*e.g.*, restricted stock and restricted stock units) to Ukrainian resident employees without triggering the obligation to obtain an individual license. It may, however, remain impractical for foreign companies to offer employee share purchase plans and stock options to Ukrainian resident employees.

Deloitte's view

NBU Decree No. 14 is a welcome amendment to previous legislation. Under the new rules, it is more practical for foreign companies to issue restricted stock and restricted stock units to Ukrainian resident employees. However it remains impractical to award stock options or employee stock purchase plans if consideration is remitted by participants outside of the Ukraine, as the individual would still be required to obtain a license.

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