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Global Employment Solutions

Global InSight

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Australia:
TD 2014/9: Reasonable food and drink amounts for FBT year commencing 1 April 2014

Overview

The Australian Taxation Office (ATO) has issued Taxation Determination 2014/9 which outlines what it considers to be the reasonable food and drink amounts for the purposes of section 31G of the Fringe Benefits Tax Assessment Act 1986. The determination specifically relates to food and drink expenses incurred by employees receiving a Living Away From Home (LAFH) allowance during the Fringe Benefits Tax (FBT) year commencing 1 April 2014.
URL: http://law.ato.gov.au/pdf/pbr/td2014-009.pdf

Reasonable food and drink amounts

Individuals within Australia – The reasonable food and drink amounts for individuals within Australia are based upon the family size (i.e., number of adults and children) per the table below:

Family size	Per Week
One adult	$236
Two adults	$354
Three adults	$427
One adult and one child	$295
Two adults and one child	$413
Two adults and two children	$427
Two adults and three children	$531
Three adults and one child	$531
Three adults and two children	$590
Four adults	$590

Where the family group size exceeds those listed in the above table, the Commissioner will accept that an additional amount of $118 for each adult and $59 for each child is reasonable. The weekly reasonable amounts have been based upon the latest Household Expenditure Survey which was conducted by the Australian Bureau of Statistics. Figures have been indexed to take into account movements in the food sub-group of the Consumer Price Index since the survey was completed (2009 – 2010) and therefore the reasonable amounts (including large family group amounts) have marginally

increased from those allowed in the 2014 FBT year. For the purposes of determining the reasonable food amounts, a person who has attained the age of 12 years before the beginning of the new FBT year (i.e., 1 April 2014) will be considered an adult.

Individuals who are overseas – For individuals on an overseas assignment, the reasonable food and drink amount is calculated by reference to the family size and the location of the individual. Overseas locations have been categorized into "Cost Groups," each of which has a specific weekly reasonable food and drink amount:

Cost Group	Food and drink for one adult
1	$137
2	$201
3	$246
4	$310
5	$419
6	$492

(Refer to the TD 2014/9 for specific country cost group information.)
URL: http://law.ato.gov.au/pdf/pbr/td2014-009.pdf#page=3

In situations where there is more than one adult in the family, the Cost Group amount above is multiplied by a factor which is determined by reference to the number of adults and children in the group. The factors are listed below:

Family group	Factor
Two adults	1.5
Three adults	2
One adult and one child	1.25
Two adults and one child	1.75
Two adults and two children	2
Two adults and three children	2.25
Three adults and one child	2.25
Three adults and two children	2.5
Four adults	2.5

For example, where a family group of two adults and two children has travelled to a Cost Group 3 country, the reasonable weekly food amount will be $492 (i.e., $246 x 2). Where the family group size exceeds that provided in the table above, the Commissioner will accept that reasonable food and drink amounts can be increased by 50% of the relevant single adult rate for each additional adult and by 25% of the relevant single adult rate for each additional child.

Substantiation requirements

The ruling has not imposed any changes to the substantiation requirements associated with LAFH allowances. As per last year, where a LAFH allowance for food and drink does not exceed the reasonable amounts (as discussed above), the employer will not have an obligation to substantiate food and drink expenses incurred. However, where the LAFH allowance paid exceeds the reasonable amounts, the employer will be required to substantiate all expenses in order to reduce the taxable value of the LAFH allowance by the full exempt food component.

We note that where food and drink expenses exceed the reasonable amount and are not substantiated in full, the reasonable amount will continue to be exempt. However, the employer will be subject to FBT on the portion of the allowance paid over and above the reasonable amount.

Deloitte's view

- The treatment of LAFH allowances discussed within TD 2014/9 aligns with that previously outlined in TD 2013/4 and does not reflect a significant change in ATO interpretation.
- The reasonable food amounts have generally increased as a result of indexation. Employers may therefore wish to review current LAFH allowance arrangements to ensure that concessional FBT treatment is being accessed in full.

Importantly, where employees are eligible for transitional LAFH allowance concessions, employers should consider whether changes to a contract will constitute a "material variation" and therefore place access to transitional LAFH concessions at risk.

- The Cost Group of various overseas countries has been adjusted for the year commencing 1 April 2014. Employers providing LAFH allowances to individuals in foreign countries who rely solely on the reasonable food amounts to reduce FBT payable should review the LAFH allowances being paid and ensure that they remain within the reasonable amounts.
- With ever increasing scrutiny from the ATO and Offices of State Revenue, employers should continue to focus on accurate collation and retention of substantive records and declarations. In particular, given the onus of proof surrounding food and drink expenses and reasonable food amounts rests with employers, we would recommend a review of the policies and processes surrounding maintenance of substantiation records (including LAFH declarations) is undertaken.

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Hong Kong:
Another taxpayer jailed for incorrect tax return

Overview

On May 28, 2014, a taxpayer was convicted for making false claims for dependent parent allowances in her tax returns and sentenced to four weeks' immediate imprisonment. It was not long after an earlier case where a nurse was sentenced to a two months' imprisonment on April 16, 2014 for making false statements in connection with claims for deduction of expenses of self-education in her tax returns. In the first incidence, the taxpayer claimed the Dependent Parent Allowance (DPA) in respect of her father who was found by the Inland Revenue Department (IRD) to have passed away before the years of assessment concerned. The total tax involved was $22,440.

In the second incidence, the defendant failed to produce any details or evidence in support of her claims for deduction of expenses of self-education. The total tax involved was $45,994.

Points to note

Tax evasion is a criminal offence. Upon conviction, the maximum penalty for each charge is three years' imprisonment and a fine of $50,000 plus a further fine of three times the amount of tax evaded. Hence, it is imperative that correct information is given in the tax return and any other documents provided to the IRD. The IRD has published the prosecution cases convicted of offences.
URL: http://www.ird.gov.hk/eng/ppr/pca.htm

Depending on the nature and/or the degree of culpability of the offence, The Commissioner of the IRD may institute prosecution, compound or assess additional tax (which is a form of penalty) in respect of the offence. Factors which may affect the course of action to be taken include the strength of evidence, the amount of tax undercharged and the period of time over which the offence was committed.

Our observations

Looking at the prosecution cases against employees in the last decade, one may note that many cases involved false claims of allowances/deductions such as DPA (deceased parents like the aforesaid case) and elderly residential care expenses.

One of the requisite criteria for claiming DPA was that the parent must be ordinarily resident in Hong Kong in the assessment year concerned. In 2009, there was a case where two sisters were both sentenced to two months imprisonment for claiming DPA where their parents had migrated to the USA and had not visited Hong Kong during the relevant assessment years.

Under the current compliance requirements, the taxpayers are not required to submit documentary evidence in support of their deduction or allowances claim together with the tax returns filed to the IRD. However, they are required to retain this supporting documentary evidence for 6 years after the expiration of the relevant assessment years. If the case is selected for review, the IRD will request the selected taxpayers to provide the evidence. From experience, the IRD may likely request evidence to support claims for the following deductions which reach or exceed the statutory limits:

Deductions	Maximum Limits
Expenses for Self-Education	HK$80,000
Elderly Residential Care Expenses	HK$80,000
Approved Charitable Donations	35% of income

In addition to deductions claims, it is also very likely that the IRD would request taxpayers to furnish evidence to support claims for full or partial tax exemption of income because of services rendered outside Hong Kong, and/or taxes similar to Salaries Taxes are paid elsewhere.

Deloitte's view

While Hong Kong's tax system and tax rates are known to be simple and low as compared to other jurisdictions, there have been reported prosecution cases because of incorrect tax returns time after time. Hence, individuals filing tax returns are advised to exercise due and reasonable care, or seek professional advice where needed. For individuals claiming full or partial tax exemption of income, it is particularly advisable that they have consulted professional advice to ensure their tax exemption claims are supported by valid technical grounds and documentary prove.

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Japan:
Increase in marginal tax rate and audit activity

Overview

In January 2015, the highest marginal national tax rate for Japan will increase to 45% for resident taxpayers bringing the marginal combined tax rate for resident tax payers to almost 56%. In the following, we look at planning opportunities for employers making payments to highly remunerated, tax-equalized employees before the higher tax rate becomes effective.

In addition, we review the increase in audit activity in Japan focusing in particular on individual taxpayers' personal income and equity income reporting. As the employer equity report is now in its second year, we look at how the tax office is using the data and what action employers should be taking as a result.

The 45% tax rate

With effect from January 1, 2015, the highest marginal national tax for a Japan tax resident will increase from 40% to 45%. This rate will apply on ordinary taxable income over JPY40 million (approximately USD400,000).

Resident taxpayers are currently subject to national tax on progressive rates and the tax bands through to December 31, 2014, and from January 1, 2015, are shown below:

To December 31, 2014 Taxable income (JPY)	Tax Rate
0 – 1,950,000	5%
1,950,001 – 3,300,000	10%
3,300,001- 6,950,000	20%
6,950,001 – 9,000,000	23%
9,000,001 – 18,000,000	33%
18,000,001 and over	40%

From January 1, 2015 Taxable income (JPY)	Tax Rate
0 – 1,950,000	5%
1,950,001 – 3,300,000	10%
3,300,001- 6,950,000	20%
6,950,001 – 9,000,000	23%
9,000,001 – 18,000,000	33%
18,000,001 – 40,000,000	40%
40,000,001 and over	45%

The increase in the highest national tax rate, takes the highest marginal rate in Japan to 55.945% when national tax, national surtax, and local inhabitants tax are combined. For those employers with tax-equalized employees in Japan, this potentially brings the resident gross up to 130% (i.e., to deliver a net allowance of USD100 at the highest marginal tax rate, the gross amount would be USD230) compared to the current rate of 100% (to deliver the same USD100 net now the gross amount would be USD200).

Accelerating payments

Employers with high earning assignees in Japan who are tax equalized or have net benefits on which the Company settles the tax, may wish to consider estimating tax reimbursements for any taxes that would normally be paid in 2015 and bring the payment into 2014 and therefore be subject to national tax at a marginal rate of 40% rather than 45%.

Where possible, reviewing the payment timing of other discretionary compensation and keeping payments within 2014, such as a bonus payment, may also result in significant tax savings to the employer, especially once the gross up is factored in. It should be noted that for bonus plans, a review should be made to see that the income is recognized in 2014. Merely advancing the cash would not necessarily meet the income tax requirements.

Employees with equity income, such as stock options may also wish to consider exercising options before the year-end.

Individual tax audits

Audits into individual income tax returns are being opened at unprecedented levels. In particular, we see a focus upon high net-worth foreign individuals by auditors who are skilled in understanding the income sources of such individuals and reviewing foreign financial statements. In some cases, the auditors are using sharing of information clauses in tax treaties to obtain tax reporting information from foreign countries.

Significant fluctuations in income between tax years (which might occur if there is equity/variable compensation one year and not the following), rental loss deductions against ordinary income, and discrepancies between information reported on returns and other sources of information available to the tax office are factors which now appear to trigger audits into an individual's tax affairs.

Currently, audits generally cover a three-year period. During the initial meeting with the auditors, the areas they wish to focus on will be explained along with the information the auditors wish to receive so that the amounts reported on the return can be substantiated. Due to a tax law change in 2011, tax audits for individuals' income tax returns can be extended to cover five tax years from the 2011 tax year. Therefore, from March 15, 2015, individual audits should be expected to cover four tax years (2011-2014) and from March 15, 2016, up to five years (2011-2015) may be included.

With the latest audits to be opened now covering the 2013 tax year, we also see auditors reviewing the new foreign asset reports. The first reports were due March 17, 2014, to report aggregated foreign asset holdings in excess of JPY50 million (approximately USD500,000) held by permanent resident taxpayers at December 31, 2013, and already these are being validated by auditors as a way of checking the income streams that would be expected to be seen on a return.

Do not go it alone

It is recommended that individual taxpayers undergoing an audit in Japan obtain professional advice and audit support. A professional advisor with experience in handling such auditors can be invaluable to an individual taxpayer through:

- Understanding the information requests from the auditor
- Preparing the information for presentation to the auditor
- Contributing to a smooth and concise audit period
- Facilitating an environment of cooperation and engagement with the auditor.

As audits become more common, it is clear that being selected for audit should not be considered a sign that the tax office thinks a tax return is wrong. However, as many amounts reported on a return are aggregated amounts, the tax office is seeking to have the amounts validated and protect its tax base. For taxpayers, it can be stressful to undergo audit, but the process can be made less so with the assistance of a tax advisor's support.

Employer Equity Reports: How is the data used?

We have now had the employer equity reporting requirement for two years, and qualifying employers in Japan are required to file a report of transactions relating to taxable equity compensation received by resident employees (local hires and foreign employees) in the tax year.

The most recent reports for the 2013 Japan tax year were due March 31, 2014. There are currently no penalties being assessed for late submission of the report, therefore, employers who have not yet filed for 2012 or 2013 should take immediate action to review this reporting requirement and ensure that they are fully compliant and up to date with any required submissions.

The contents of the reports are being reviewed on a regular basis in the course of a withholding tax audit (even though it may be the case that there was no withholding tax obligation on the equity compensation paid by an overseas' parent company). In addition, the tax office is using data received in the equity report to check against individual income tax returns submitted to confirm the income has been correctly reported. It is important to note that any discrepancy in data could lead to the individual being audited for tax returns filed over the maximum statutory period (currently three years, increasing to five years as noted above), not just the two years for which the employer equity report was filed.

Educating employees

Many Japanese are unfamiliar with filing tax returns especially when the filing requirement relates to additional sources of employment income. There is an expectation that all employment income is reported through the Japan payroll and subject to payroll withholding. Whilst the responsibility for filing an individual tax return lies with the individual, the tax office is asking employers who file the equity report to confirm what steps the employer takes to educate employees about reporting equity income, which is not subject to payroll withholding. We are assisting clients by holding seminars and tax briefings for their employees, as well as drafting employee guidance and communications, which the employer can distribute to its affected employees. Given the reputational risk to the employer if the tax office finds that no support is given to employees in understanding their filing requirements, we recommend that employers review their policy in this area.

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South Africa: Commencement of the Immigration Amendment Act, 2011 (Act No. 13 of 2011)

The new regulations governing immigration law to South Africa were published on Friday, 23 May 2014 and will be effective beginning Monday, 26 May 2014.

Overview

- Categories initially termed as "permits" will now be called "visas." The only category that will make use of the word "permit" will be the permanent residence permit.
  URL: http://www.nwivisas.com/south-africa/permanent-residency/
- One will not be allowed to change his or her status from a visitor visa to another type of visa in South Africa. One will need to return home to obtain a visa application in his or her home country or country of permanent residence.
- Only renewal of temporary residence visa applications may take place in South Africa; applications will no longer be submitted at the Regional Department of Home Affairs, but rather through a Visa Facilitation Service (VFS) center. The VFS pilot centers will be launched on 1June 2014.
- The first work visa application must be applied for and obtained in the applicant's home country prior to travelling to South Africa to commence work.

Important Changes: Highlights

- A foreign national who is in the Republic of South Africa and applies for a change of status or terms and conditions shall submit an application no less than 60 days prior to the expiration of the visa, provided that he or she has been admitted lawfully into the Republic of South Africa. No person holding a visitor's visa or medical treaty visa

may apply for a change of status to his or her visa while in the Republic of South Africa, unless exceptional circumstances exist.

- A foreign national who is in a relationship with a South African citizen can only apply for a spousal visa provided that he or she has been in the relationship for more than two years, and proof of the relationship is required when submitting the application.
- The quota work permit and exceptional skills work permit no longer exist in the new legislation. The two work permits have been combined into a new category known as the critical skills visa. The critical skills visa can be used by foreign nationals who have "critical skills," and these skills will be announced soon after the legislation takes effect. The Department of Home Affairs is in consultation with other government departments to establish and regulate the list of critical skills. Employers whose staff holds permits in the two defunct categories will probably not be allowed to renew these work permits which could mean that a risk exists that the individual may not qualify for any other type of work visa.
- The intra-company transfer visa will now be issued for a period not exceeding four years, with no option of renewal thereafter. The foreigner's contract of employment with the company abroad must be valid for not less than six months. The employer needs to ensure that a plan is developed for the transfer of skills to a South African citizen or permanent resident.
- A South African company wanting to employ a foreign national, who does not qualify under an intra-company transfer visa or the critical skills visa, can apply for a general work visa. Under the general work visa, the company is required to perform a diligent search for a South African citizen or a permanent resident permit holder before considering employing a foreigner. The Department of Labour will advise the Department of Home Affairs whether an employer has performed a diligent search for the position and whether the skill is available in South Africa. This new requirement to obtain a labour certificate from the Department of Labour will cause a delay in processing applications, as most of government departments take time to resolve matters.
- The regulations are very clear about people who overstay in the country after the validity of their visa for a period not exceeding 30 days; a person will be declared undesirable for a period of 12 months; in the case of a person who overstays for the second time within a period of 24 months, the person will be declared undesirable for a period of two years; and in the case of a person who overstays for more than 30 days, declared undesirable for a period of five years.

Please note that there are other changes to regulations governing immigration laws in South Africa, and if you would like to enquire about what these changes are, kindly contact one of the resources below.

Deloitte's view

The regulations have a positive objective to improve the processes within the Department of Home Affairs. Multinational companies who are simply transferring staff between offices will benefit since the four year intra-company transfer visa will lead to lower costs, and the first work permit is no longer issued for two years. Direct employment of foreigners will require the recruitment team to be guided by the mobility professionals to ensure that the correct proofs are produced in terms of diligent search requirements. The compliance with the Department of Labour will, however, mean that a great deal of human resources time will need to be expended to remain compliant as a company, especially in light of the impending promulgation to the employment services bill.

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United Kingdom:
Immigration Update: Immigration Act 2014 receives Royal Assent

Overview: Immigration Act 2014

On 14 May 2014 the Immigration Bill 2014 received Royal Assent.

The provisions of the Act cover wide-ranging issues relating to immigration, the restriction of benefits and appeal rights.

A number of the new measures are designed to assist UK Visas and Immigration in combatting perceived bureaucracy in removing those not lawfully present in the UK and encouraging those in the UK unlawfully to leave by removing the rights to rent property, access healthcare, access bank accounts and drive legally.

Important provisions of the Act

The Act is divided into 6 parts;

- Removals – Streamlines the removal of persons unlawfully present in the UK.
- Appeals – Limits immigration appeal to asylum and human rights grounds. Set up of an administrative review system to provide a proportionate and less costly mechanism for resolving case working errors.
- Access to Services – Requires landlords to check the tenants' rights to be in the UK; prevents migrants who may not have the right to stay in the UK from obtaining UK driving licences and opening bank accounts. Temporary migrants will also be required to make a financial contribution to the NHS. This part will be subject to further regulations and pilot schemes before implementation.
- Marriage and Civil Partnership – Increases powers to investigate sham marriages and clarifies Parliament's view of Article 8 of the European Convention on Human Rights (the right to family and private life).
- Oversight – Introduces the ability for the Home Office to charge additional fees for new services.
- Miscellaneous – Amends other related Enactments.

Other highlights of the Act

- Introduction of biometric information to be provided when applying for British citizenship.
- Commission of an independent review of the Home Office administrative review process (which substitutes the appeals process for most immigration applications) by the Chief Inspector within 12 months.
- Introduction of a £3,000 fine to landlords letting residential properties to those no longer entitled.
- Tied accommodation provided by an employer is to be exempt from the immigration check requirement in relation to residential letting.

Anticipated implementation date

Major provisions of the Act are due to be implemented from Summer 2014 with some provisions being implemented after a pilot scheme.

Deloitte's view

Key parts of the legislation relating to the healthcare contribution and landlords' checking tenants' right to rent will be piloted before implementation.

We question whether landlords are equipped to review a tenant's right to stay in the UK. Individuals wishing to rent accommodation will be faced with delay if they cannot prove their right to reside in the UK. This may also have an impact on British nationals without a valid British passport, who will be required to provide extra documentation to prove their nationality.

The removal of the right of appeal against a refusal of an immigration application and the introduction of an internal administrative review function may lead to quicker resolution of erroneous refusals, but with limited independent oversight.

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Global Rewards Updates:
United Kingdom: Annual share plan returns for 2014/2015 onwards

Background

As discussed in our previous GRUs of February and April 2014, companies will be obliged to file their annual share plan returns (including Form 42) online for the 2014/2015 tax year onwards (due 6 July 2015).

HMRC has recently published the draft templates setting out the information which employers will be required to provide to HMRC as part of the return. These are now available on the HMRC website for companies to download and save on their own systems. The draft templates are found at:
URL: http://www.hmrc.gov.uk/shareschemes/annualreturns-index.htm

Reportable Information

The changes being introduced will significantly increase the amount of information that companies will need to provide to HMRC. In some cases, the information should already be available but in other cases, new information is being requested.

One particular theme is that companies will need to include additional information in respect of share valuations – for example, whether shares being acquired are listed on a recognised stock exchange, whether valuations were agreed with HMRC and/or providing both the 'actual market value' (AMV) and the 'unrestricted market value' (UMV) of shares when a chargeable event occurs.

The changes are numerous but the key changes as follows.

Other Employment Related Security schemes or arrangements – non-tax advantaged template (currently known as Form 42)

- Companies must report the lapse/cancellation of options. As currently drafted, reporting also appears to be required even where options have lapsed for nil consideration.

- Where restricted securities are reportable, companies will be required not only to identify the nature of the restriction (e.g. a risk of forfeiture, a restriction on sale) but also the period for which the restriction applies. The extent to which the market value of the shares is impacted by the restriction should also be detailed.
- Confirmation should be provided to HMRC in relation to whether any adjustment has been made for non-UK workdays. This would seem to have potentially wide application in the context of internationally mobile employees. However, the guidance indicates that an entry should only be made here where the 'adjustment' applies because the employee pays tax on the remittance basis (and not, for example, because the employee has moved to a country with which the UK has a double tax treaty).
- Disclosure of Tax Avoidance Schemes (DOTAS) – HMRC now require companies to disclose whether awards are made under a scheme which has a DOTAS reference. Where this question is answered yes, details of the relevant DOTAS reference number must also be provided.

Save As You Earn (SAYE) and Company Share Option Plan (CSOP) templates

- As with non-tax advantaged options, companies must report options which have lapsed during the tax year (even if for nil consideration).
- Where options are exercised, companies must report both the AMV and UMV of the shares. Companies must also indicate whether shares were sold on the day of exercise or in connection with the exercise.
- Companies were previously required to provide a summary of plan activity during the year. This requirement has now been removed.

Share Incentive Plan (SIP) template

- There has been an overall simplification of the format in which SIP information is to be reported. For the 2014/2015 tax year, two schedules will need to be completed, the first covering awards made under the SIP and the second dealing with SIP shares withdrawn. Considerable amounts of information must, however, be provided on each of the schedules.

Enterprise Management Incentive (EMI) template

- As with the SAYE and CSOP returns, companies must indicate whether shares were sold on the day of exercise or in connection with the exercise.
- There is no longer a separate section relating to disqualifying events – such events must, however, be reported elsewhere on the return.

Other points

Although the published templates are not yet final, it is clear that the information needed for the 2014/2015 returns will be different and more substantial than in previous years. In particular, it seems clear that HMRC is keen to make sure that valuations do not fall under the radar.

HMRC has also made it clear that where the returns do not provide the requisite information in the appropriate format, the returns may/will be rejected and this could lead to penalties being levied. For example:

- The dates must be entered in an exact format (yyyy-mm-dd); and
- Monetary values must be entered in pound sterling up to 4 decimal places.

Action

- Companies should review the draft templates and consider whether they are able to capture all the necessary data. In certain cases, making amendments to the company's systems now should help them to remain fully compliant as they move forward. Companies should also ensure that dates and values are collected in the correct format.
- Companies should ensure that they are comfortable with the fiscal valuations reported. In particular, companies should consider what is the best time for them to negotiate values with the HMRC – following acquisition of shares or filing of self-assessment returns.

- Companies should watch out for the publication of the final templates (expected Autumn 2014) and any further guidance.

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Have a question?
If you have needs specifically related to this newsletter's content, send us an email at **clientsandmarketsdeloittetax@deloitte.com** to have a Deloitte Tax professional contact you.