



Global InSight

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Australia: Budget Update

On Tuesday night, the Australian budget (the "Budget") for the 2013-14 Australian tax year was released. In the lead-up to the Budget, the government had already announced a number of changes and released draft legislation relating to proposed amendments to Australian tax law.

With the federal election looming in September this year, there are no guarantees that the changes announced will be enacted as law. However, the details below provide an outline of some of the proposed changes that may affect individual taxpayers and employers with expatriate employees.

Budget announcements and proposed changes

Personal tax rates -- The personal tax rates for the Australian tax year beginning 1 July 2013, remain as legislated. The previously proposed tax cuts, which were due to apply effective 1 July 2015, will not apply until a later date (yet to be determined). The tax rates for the 2013-14 Australian tax year are as follows:

Australian resident marginal tax rates --

Taxable income	Tax	% on excess
18,200	Nil	19
37,000	3,572	32.5
80,000	17,547	37
180,000	54,547	45

Foreign resident marginal tax rates

Taxable income	Tax	% on excess
Nil	--	32.5
80,000	26,000	37
180,000	63,000	45

Medicare levy -- The Medicare levy is an additional tax that is used to help fund Australia's public health system. The government has previously announced plans to increase the levy from 1.5 percent to 2 percent starting on 1 July 2014. The

proposed legislation to enact this change has already been introduced into Parliament to be debated during the period 14 May 2013 to 27 June 2013.

Any increase to the Medicare levy will also result in an increase to the Fringe Benefits Tax (FBT) rate. The current FBT rate is based on the highest marginal tax rate plus the Medicare levy. Accordingly, if the increase to the Medicare levy is legislated, the FBT rate will also change from 46.5 percent to 47 percent (the proposed effective date is 1 April 2014).

Self-education deductions -- The government had previously announced plans to cap the available deduction for work-related self-education expenses at \$2,000 per year (effective 1 July 2014). This is a significant shift away from the current rules, which do not apply a cap on expenses eligible as a deduction (e.g., formal qualifications and associated tuition fees, textbooks, stationery, travel expenses, conferences, seminars, and self-organized study tours). However, the government has declared that employers will not be liable to FBT for education and training provided to employees unless the employee enters into a "salary sacrifice" arrangement to obtain these benefits.

Superannuation -- A number of proposed superannuation changes have already been announced and introduced as draft legislation prior to the Budget. The proposed changes include:

- Tax applied to earnings-supporting income streams in excess of \$100,000;
- A requirement to make Superannuation Guarantee contributions for eligible employees 70 years of age or over (effective 1 July 2013; previously, it was not required for employees aged 70 years or older);
- Increase in the concessional contribution cap to \$35,000 for individuals aged 60 years and over, effective 1 July 2013, and 50 years and over, effective 1 July 2014;
- Allow the refund of excess concessional contributions from 1 July 2013 and taxation of excess contributions at the individual's marginal tax rate, rather than the highest marginal tax rate;
- An additional 15 percent tax applied to concessional contributions for individuals with an "income for surcharge purposes" of \$300,000 or more (e.g., taxable income plus reportable fringe benefits plus reportable superannuation contributions plus total net investment losses minus superannuation lump sum amounts). This would effectively increase the tax on contributions on entry into the fund from 15 percent to 30 percent; and
- Increases to the superannuation guarantee rate. (Refer to the table below.)

Commencement date	Superannuation Guarantee rate (charge percentage(%))
1 July 2013	9.25
1 July 2014	9.50
1 July 2015	10.00
1 July 2016	10.50
1 July 2017	11.00
1 July 2018	11.50
1 July 2019	12.00

Capital Gains Tax (CGT) -- Our previous NewsFlash (released on 12 March 2013) provided guidance on the draft legislation that has been introduced to remove the CGT discount for individuals who are considered foreign residents or temporary residents for Australian tax purposes. The proposed legislation to enact this change has already been introduced into Parliament to be debated during the period 14 May 2013 to 27 June 2013.

As part of the budget, the government also announced the introduction of a 10 percent non-final withholding tax on gross proceeds payable to foreign residents on disposals of "Taxable Australian Property" (e.g., Australian real estate). This proposed reform is unlikely to apply to the majority of foreign tax residents who hold Australian real estate, as the measure will not apply to residential property transactions under \$2.5 million. This reform is not expected to apply until after 1 July 2016.

Other announcements

The following announcements may also be relevant:

- The changes to the Medicare Levy Surcharge and Private Health Insurance Offset remain as previously legislated;
- The Net Medical Expenses Offset will be phased out;

- The Baby Bonus will be replaced by a means-tested payment available as part of Family Tax Benefit Part A (effective 1 March 2014);
- The Australian Taxation Office will be provided with funding to increase and expand data-matching capabilities (e.g., sales data for real property, shares and units in managed funds);
- Foreign source income attribution, currently proposed under the Foreign Accumulation Fund legislation (previously enacted as Foreign Investment Fund rules), will be reconsidered after the Organisation for Economic Cooperation and Development has completed work in relation to this subject matter (i.e., profit shifting);
- Immigration changes will be covered in a separate *NewsFlash* to be released; and
- Removal of the discount for upfront and voluntary payments made under the Higher Education Loan Program (effective 1 January 2014).

Deloitte's view

- A number of the changes above had previously been announced and the Budget reconfirmed the government's commitment to the changes;
- Employers with tax-equalized/protected employees will need to consider the effect of the increase to the Medicare levy on remuneration packages. Additionally, the potential use of PAYG withholding variations for individuals eligible for a Medicare levy exemption could be considered (as a cash flow benefit);
- Employers who currently pass on FBT costs to their employees (from salary sacrifice arrangements) may need to recalculate any compensation arrangements as a result of the proposed increase to the FBT rate and communicate this change to affected employees;
- Employers who do not pass FBT costs on to their employees will need to start accruing for additional FBT costs expected as a result of any change to the FBT rate;
- Employers will need to prepare for all of the superannuation changes already in place and those which have been proposed and appropriately communicate these changes to employees/consider any revisions required to employment contracts as a result of the changes; and
- The cap on self-education deductions will have a significant effect on individuals who currently personally fund their higher education costs.

— Shelley Nolan (Brisbane)
 Director
 Deloitte Australia
 +61 (7) 3308 7232
 shnolan@deloitte.com.au

Sarah Lane (Melbourne)
 Partner
 Deloitte Australia
 +61 (3) 9671 7081
 salane@deloitte.com.au

Paul Rubinstein (Melbourne)
 Director
 Deloitte Australia
 +61 (3) 9671 7603
 prubinstein@deloitte.com.au

George Kyriakakis (Perth)
 Partner
 Deloitte Australia
 +61 (8) 9365 7112
 gkyriakakis@deloitte.com.au

Rob Basker (Sydney)
 Partner
 Deloitte Australia
 +61 (2) 9322 7551
 rbasker@deloitte.com.au

Stephen Coakley (Sydney)
 Partner
 Deloitte Australia
 +61 (2) 9322 7814
 scoakley@deloitte.com.au

Kathy Saveski (Sydney)
 Partner
 Deloitte Australia
 +61 (2) 9322 5722
 ksaveski@deloitte.com.au

People's Republic of China: Intensified SAFE and tax registration requirements for equity awards in China

Background

Many multinational companies have implemented equity plans in China and learned that it is not always a straightforward task. In addition to designing a suitable equity plan to support human resources and business strategies in China, companies should also consider various registration requirements from local compliance and planning perspectives. These include registration of equity plans with the local tax bureau and, if participants in the equity plan include PRC nationals, registration with China's State Administration of Foreign Exchange (SAFE).

With a growing volume of equity plans already registered and increasing interest from companies in equity incentives, the tax and SAFE authorities in China have increased their scrutiny of the registration process.

SAFE Registration

On 20 February 2012, SAFE issued Circular 7 to supersede the previous Circular 78 and introduce new guidance on the initial registration and ongoing reporting requirements for equity plans. Circular 7 emphasizes employers' obligations to comply with the registration requirements and signals the authorities' continuous efforts to strengthen reporting and administration in this area.

Beijing --

- Further to the issuance of Circular 7, Beijing SAFE now requires all companies to strictly follow the new circular for SAFE registration purposes. A reregistration of equity plans according to the new circular is required even if a company has registered its equity plan under Circular 78. Without proper reregistration, companies may face challenges when performing ongoing quarterly SAFE reporting, annual quota application, and/or repatriation of equity funds to China.
- An in-depth review process will take place in Beijing before SAFE registration can be completed. Local SAFE authorities have recently become more attentive to details, such as specific wording that must be clearly stated on the relevant documents to support the authenticity of the equity plan(s) to be implemented.

Shanghai --

- Given that Circular 7 has, to some extent, shifted the responsibility for monitoring the transfer of foreign currency in connection with equity plans to local financial institutions, banks in Shanghai are tightening internal controls on equity-related transactions.
- Equity-related funds that relate to PRC nationals may be rejected by banks where ongoing SAFE reporting is not performed on time.
- Some banks request a statement of the inbound annual quota for equity funds when companies submit an annual report to SAFE, although this is not explicitly required under Circular 7.

Jiangsu --

- In Jiangsu province, internal training has been conducted at the municipal level of SAFE bureaus to highlight noncompliant transactions with respect to equity awards offered in China.
- Some municipal SAFE bureaus have also raised inquiries about the current foreign exchange status of prior grants as part of the SAFE registration process of new equity plans. Internal guidelines setting out penalties for noncompliance have also been circulated.

Tax Registration

All equity plans offered in China must be registered with the company's in-charge tax bureau(s), and technically, this must be done before the rollout of the equity plan. Failure to fulfill this regulatory requirement will result in penalties to the company and may disqualify participants from adopting the preferential tax treatment on stock option income.

Beijing --

- Most Beijing tax bureaus have developed formal procedures and requirements concerning the tax registration of equity plans, under which a detailed list of documents is requested for review and approval purposes.
- In some tax bureaus, the tax officer may request an on-site interview with the company or the company's authorized agent to conduct a thorough review of the documents submitted in order to complete the registration.

Shanghai --

- Local tax bureaus have the power to impose penalties on a company when they determine the company has failed or delayed to comply with the tax registration requirements for equity plans. Recent practices and trends in Shanghai indicate that an increasing number of companies are facing challenges if they fail to perform tax registration on time. This may lead to further inquiries about the tax compliance status of equity gains realized from these equity plans.
- Some tax bureaus require that ongoing tax reporting be performed upon new grants of equity awards by providing detailed grant information. Failure to fulfill this requirement on time would disqualify the participants concerned from adopting the preferential tax treatment on stock option income even if the initial tax registration was performed with the local tax bureau.
- Furthermore, companies should notify the local tax bureau of any subsequent amendments made to the registered equity plan by providing updated documentation.

Jiangsu --

- Both initial tax registration and ongoing reporting for equity plans is required and standardized processes have been established.
- Registration of equity plans is becoming one of the important areas of scrutiny. When tax de-registering individuals who were offered equity awards, some local tax bureaus may even request the registration certificate of the equity plan.

Action

Given the increased level of scrutiny, it is recommended that:

- Companies that have not yet registered their equity plans under the tax and/or SAFE rules should evaluate any previous compliance failures and take a proactive approach to addressing these to mitigate future risk.
- Companies that have already registered their equity plans should monitor local requirements to ensure that ongoing reporting is aligned with the new processes for both tax and SAFE filings.

— Gus Kang (Beijing)
Partner
Deloitte People's Republic of China
+86 (10) 8520 7600
gukang@deloitte.com.cn

Huan Wang (Beijing)
Partner
Deloitte People's Republic of China
+86 (10) 8520 7510
huawang@deloitte.com.cn

Vincent Lo (Hong Kong)
Partner
Deloitte People's Republic of China
+(852) 2852 5835
vinlo@deloitte.com.cn

Tony Jasper (Hong Kong)
Partner
Deloitte People's Republic of China
+(852) 2238 7499
tojasper@deloitte.com

Mona Mak (Hong Kong)
Partner/Principal
Deloitte People's Republic of China
+(852) 2852 1051
monmak@deloitte.com.hk

Joyce W. Xu (Shanghai)
Partner
Deloitte People's Republic of China
+86 (21) 6141 1178
joycewxu@deloitte.com.cn

Mark Ni (Shanghai)
Partner
Deloitte People's Republic of China
+86 (21) 6141 1458
mni@deloitte.com.cn

Sandy Cheung (Shanghai)
Partner
Deloitte People's Republic of China
+86 (21) 6141 1156
sancheung@deloitte.com.cn

Isabel Liu (Guangzhou and Shenzhen)
Director
Deloitte People's Republic of China
+86 (755) 3353 8382
isliu@deloitte.com.cn

Feifei Li (Guangzhou and Shenzhen)
Director
Deloitte People's Republic of China
+86 (755) 3353 8160
ffli@deloitte.com.cn

United States: Treasury releases updated housing cost amounts for 2013

Overview

The IRS has released Notice 2013-31, which provides adjustments to the limitations on housing expenses that are eligible for exclusion or deduction in specific locations in 2013.

URL: <http://events.deloitte.com/GES/NewsFlash/Notice2013-31.pdf>

Under section 911 of the Internal Revenue Code, a qualified individual is allowed to exclude from gross income the foreign earned income and housing costs of that individual. Housing costs for exclusion or deduction purposes are limited to the allowed "housing cost amount" over a base housing amount. The housing cost amount is limited to 30% of the foreign earned income limitation. For 2013, the foreign earned income limitation is \$97,600, so the housing cost amount is limited to \$29,280 ($\$97,600 * 30\%$). The base housing amount is 16% of the foreign earned income limitation, or $16\% * \$97,600$, which equals \$15,616. Therefore, the housing exclusion for 2013 is limited to \$13,664 ($\$29,280 - \$15,616$).

Notice 2013-31 provides guidance for specific locations in 2013 where a taxpayer can claim a housing cost amount above this 30% limitation. Hong Kong, Moscow and Tokyo continue to be the locations with the highest allowed housing expense limitation, with Tokyo the highest at \$117,100.

Election to apply 2013 adjusted limitations to 2012

In Notice 2013-31, the limitation on housing expenses for 2013 in some locations is higher than the prior limitations in those locations in 2012 (See Notice 2012-19). Similar to the option that was provided in prior years, an option has again been provided that allows a qualified individual incurring housing expenses during 2012 in one of these locations to apply the adjusted limitation provided in this Notice 2013-31 for purposes of the individual's 2012 tax return. Treasury and the IRS anticipate that this election to apply housing expense limitations in the immediately preceding year will be made available in future annual notices adjusting the housing limitations as well.

— Kent Klaus (Chicago)
Partner
Deloitte Tax LLP
+1 (312) 486 2571
kklaus@deloitte.com

Michael Loskove (Chicago)
Director
Deloitte Tax LLP
+1 (312) 486 2026
mloskove@deloitte.com

Global Rewards Updates: United Kingdom: Form 42 submission: July 6, 2013

Background

HM Revenue and Customs (HMRC) require companies to report any employee-related stock or stock option transactions that have taken place during the UK tax year (April 6–April 5) and may fall into the UK income tax net. The relevant

information must be reported on a "Form 42," which must be submitted by July 6 following the end of the UK tax year. Penalties can arise if companies fail to meet this obligation. A wide range of employee related stock transactions should be included on the form.

Relevant to non-UK parent companies

A reporting obligation arises in respect of employees who reside or work in the UK, regardless of where the company making stock awards is established. Therefore, if non-UK-based parent companies are making stock awards to UK tax resident employees, or to employees who may be subject to UK tax or social security on some or all of their gains on stock awards, then they will need to complete a Form 42. In our experience, many parent companies are unaware of this obligation.

Impact of late filing

HMRC can charge penalties for late submission. This includes an initial penalty of £300 per reportable event (and each stock option exercise, for example, is a reportable event). There can be further penalties of up to £60 per day. Penalties for incorrect returns can also be up to £3,000.

In addition, late or incorrect submissions affect the tax risk profile of the company; HMRC are more likely to focus their attention on those companies that miss filing deadlines or make errors in their reporting.

"Reportable events"

The definition of reportable events in the context of employee-related stock transactions is extremely widely drawn and can include the grant and exercise of stock options, the award and vesting of restricted stock units, and even the acquisition of stock at market value (i.e., even if no income tax or social security charge will arise). Therefore, any activity in this area may well trigger the need to submit a Form 42.

In our experience, particular difficulty can arise in respect of:

- Lack of communication between parent company and UK subsidiary, so that the UK company is unaware of stock awards being made to UK employees;
- The treatment of stock awards held by internationally mobile employees; and
- The treatment of stock awards on a corporate transaction.

Where there are no reportable events in a tax year but a company has been notified of a requirement to file a return, companies are still required to file a Form 42 "nil return" with HMRC by July 6. (Where a parent company has an HMRC "approved" stock plan in place in the UK, then a different form will need to be completed).

Submission of the form

A "responsible person" must submit the Form 42. Normally this will be an officer of the UK employer or the parent company. An officer of that company must sign the form; it cannot be submitted electronically.

Deloitte's view

A Form 42 reporting obligation for non-UK parent companies can arise where stock awards are held by:

- UK employees in a non-UK-based parent company;
- Non-UK employees in respect of duties or workdays in the UK; and
- Internationally mobile employees.

In our experience, this can also highlight errors in the UK tax treatment of stock awards. This is an area of particular focus for HMRC.

Action

- Non-UK parent companies operating stock or stock option plans for UK tax resident employees should consider whether a Form 42 reporting obligation has been triggered.
- Non-UK parent companies should be communicating with UK subsidiaries about whether any employee-related stock or stock option transactions have taken place during the UK tax year, and who will be responsible for submitting the Form 42. Communication between the parent company and the UK subsidiary will also help to ensure that UK income tax and social security is being applied correctly to the stock awards.

— Sean Trotman (New York)
Partner
Deloitte Tax LLP
+1 (212) 436 2211
strotman@deloitte.com

Rive Rutke (Chicago)
Director
Deloitte Tax LLP
+1 (312) 486 3483
rrutke@deloitte.com

Kate Forsyth (Los Angeles)
Senior Manager
Deloitte Tax LLP
+1 (213) 593 4279
kforsyth@deloitte.com

Mark I. Miller (San Jose)
Senior Manager
Deloitte Tax LLP
+1 (408) 704 4308
mamiller@deloitte.com

Michael Prewitt (Houston)
Senior Manager
Deloitte Tax LLP
+1 (713) 982 4273
mprewitt@deloitte.com

Peter Simeonidis (New York)
Senior Manager
Deloitte Tax LLP
+1 (212) 436 3092
psimeonidis@deloitte.com

Have a question?

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