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Australia – Trans-Tasman Superannuation Portability, Temporary Residents' ESS Reporting by Employers
by KPMG, Australia (a KPMG International member firm)

This *Flash International Executive Alert* highlights some recent tax-related developments in Australia potentially affecting individuals – including those on international assignments – and their multinational employers. The developments covered in this newsletter include (1) a new guideline from the Australian Taxation Office (ATO) to employers on reporting obligations and modifications concerning Employee Share Schemes for temporary residents, and (2) new rules for transfers of complying superannuation (retirement) savings between Australia and New Zealand, beginning 1 July 2013.

Reduced Reporting of Share Scheme Income for Temporary Residents

The ATO released an Employee Share Scheme (ESS) guideline to employers regarding the employer reporting obligations in connection with temporary resident employees and resident employees engaged in foreign service.[1]

Employees who are temporary residents or residents engaged in foreign service, may be assessable on only a portion of the ESS interests acquired.

In the past, the ATO has required employers to report the gross amount (disregarding any period of foreign service). Now the employer can report that part that will be assessable in Australia, excluding any exempt foreign portion, if they have the information to do so.

In its guideline, released on 6 June 2013, the ATO indicated that for the year ending 30 June 2013, where the employer is able to calculate the portion of the discount assessable to an employee (i.e., taking into consideration the discount for employment services performed outside Australia which is exempt from tax in accordance with ESS rules), the employer may do one of the following:

- Report the actual assessable amount of the discount (after taking into account foreign service) to the employee and to the ATO by the due date instead of the gross amount; or
- If the actual amount cannot be reported by the due date,
  - report the gross amount by the due date, and
  - when known, the employer may report the actual amount on an amended ESS statement to the employee and send an amended ESS annual report to the ATO.

Employers should also consider advising their employees whether the actual amount or the gross amount has been reported.

The ATO expressed that the above changes are made to avoid mismatched enquiries resulting from the employer reporting the gross amount and the ATO subsequently comparing data from the ESS annual report with employees' tax returns.

New Rules Enhance New Zealanders', Australians' Superannuation Portability

In Australia, the parliament recently passed new rules which provide for transfers of complying superannuation (retirement) savings between Australia and New Zealand, beginning 1 July 2013.[2] The new law matches an equivalent piece of legislation passed in New Zealand. The changes to the rules enhance the portability of superannuation interests by New Zealand and Australian nationals working in the other's country, participating in their host-country's superannuation schemes, and facing challenges when returning to their home countries due to having left their superannuation accounts behind.

Background

Australians and New Zealanders have been able to travel and work freely in either country since the 1920's; however there have been tax and regulatory barriers in the way of taking retirement savings back to the home country.

Unlike citizens of other countries who enter Australia on temporary visas and can withdraw their superannuation upon permanent departure, New Zealand citizens have been unable to withdraw superannuation from Australia prior to reaching preservation age. Australians who now reside in New Zealand are also able to transfer their funds.

In Australia, it is estimated that there is as much as A$13 billion in 'lost' superannuation sitting in untended individual accounts.[3] A considerable part of these lost funds belong to New Zealanders, who have spent time working in Australia and then left Australia to return to New Zealand but left their superannuation behind.

Since many return to New Zealand before reaching the age of 55, the age at which they are eligible to access their superannuation, many accounts get lost and/or forgotten.

The new rules seek to address this and enhance accessibility to and portability of superannuation.

In Brief, New Zealand-Australia Superannuation Portability Rules

In order to transfer complying retirement savings from one country to the other, the plans must follow a number of rules and guidelines:

- The transferring member must be making a permanent migration to the other country, rather than a short-term change in residency.

- Transfers must be between Australian complying, Australian Prudential Regulation Authority regulated funds (not self-managed super funds), and KiwiSaver schemes.

- All transfers must be made voluntarily, both on the part of the transferring scheme member and the provider.

- All transfers must move the entirety of the fund in question; no part transfers are allowed under the new legislation.
- Transferred savings must be separately identifiable within the account to enable the relevant tax rules to be applied.

In general, neither Australia nor New Zealand will tax the transfers of retirement savings; however there are certain caveats and exceptions to this principle, and other limitations and conditions may apply.

Individuals who may be impacted by these rules should consult with their professional retirement plan or tax professionals.

Footnotes:

1 Information conveyed in e-mail correspondence dated 6 June 2013 to employers and practitioners by the ATO. For the ATO Web site, see: http://www.ato.gov.au/ .

2 See the Australian government media releases:

"Super Bills Pass Parliament and Mark Completion of Reform Agenda" at: http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/053.htm&pageID=003&min=brs&Year=&DocType=0 .

"Trans-Tasman Super Portability" at: http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/047.htm&pageID=003&min=brs&Year=&DocType=0 .

Also, see "Government Reforms Boost Super Savings and Lower Industry Costs": http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/069.htm&pageID=003&min=brs&Year=&DocType .

2 A. Bennett, "Australia frees returning Kiwis' super funds," *The New Zealand Herald* (online), 19 September 2012.

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Save the Date!

KPMG's 2013 Global Mobility Forum will be held in Barcelona, Spain from 8-10 October 2013, at the Hilton Diagonal Mar Hotel.

The 2013 Global Mobility Forum is designed to provide insights, leading practices, and ideas to help turn marketplace challenges into opportunities. We have invited corporate professionals – with experiences ranging from international human resources and tax, to immigration and employment law – to join together and discuss new strategies for integrating global mobility and talent management.

Please 'Save the Date' in your calendar today and join us in Barcelona, Spain, at KPMG's 2013 Global Mobility Forum. We have planned a fantastic line-up and look forward to seeing you there!

For more information, please visit http://www.kpmg.com/GLOBAL/EN/SERVICES/TAX/GLOBAL-MOBILITY-FORUM/Pages/default.aspx and/or contact your local KPMG IES/People Services professional.

The information contained in this newsletter was submitted by the KPMG International member firm in Australia. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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