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Australia – Division 293 Tax: Payment/Refund Consequences for Expatriates, Nonresidents

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An additional layer of tax of 15 percent (known as "Division 293 tax") is imposed on concessional Australian superannuation contributions for high-level income earners.¹ This provision has been in effect since 1 July 2012.

The ramifications for Australia inbound and outbound expatriates and Australian nonresidents of this often-misunderstood tax warrant some discussion and clarification.

Why This Matters

Employers sending expatriates to work in Australia need to be aware of this additional layer of taxation imposed on superannuation contributions for high-income earners.

It is important to understand whether expatriates working in Australia will be able to seek a refund of the Division 293 tax paid, and particularly for tax-equalized assignments, to determine the optimal payment method and who will be responsible for the tax liability.

Individuals who are nonresidents of Australia need to also understand what the implications are in the foreign country of residence for the payment method chosen to meets one's Division 293 tax liability.

Background

When an employer makes Australian superannuation contributions into an employee's Australian superannuation fund, these concessional contributions are taxed at a flat rate of 15 percent in the fund, subject to the annual concessional contributions cap. This rate of tax applies regardless of the individual's level of income.

Individuals whose adjusted taxable income (including concessional superannuation contributions) exceeds A\$300,000 are subject to the additional 15-percent Division 293 tax. As a result, the tax concession in respect of the pre-tax contributions into the superannuation fund has effectively been reduced for high-income earners from approximately 32* percent down to 17 percent – the difference between the highest marginal tax rate (currently 47* percent for 2014 tax year) and the 15-percent contributions tax rate. [*Note: These rates do not include the Medicare Levy]

Payment of Division 293 Tax Considerations

Once the Australian Taxation Office (ATO) has issued a Division 293 tax assessment, individuals with a defined contributions fund can arrange for payment of the tax using the following methods:

- Make payment to the ATO directly;
- Authorize their superannuation fund to arrange for payment from their account balance.

The payment options for those who have received a Division 293 assessment on contributions for a defined benefits scheme differ slightly to the payment options available, as outlined above. Further advice should be sought where individuals contribute to a defined benefits plan.

Failure to pay the liability by the date shown on the notice, or within the time frames allowed if the payment is to be made by the superannuation fund, may render the individual liable to penalties and interest.

Nonresidents

For individuals who are nonresidents of Australia, it will be important to understand whether there are any ramifications in the country of residence that follow on from the method of payment chosen to meet one's Division 293 tax liability. In certain foreign countries, electing to make payment from an individual's superannuation account while a tax resident may give rise to additional tax charges (due to early withdrawal of funds from the superannuation account).

It is recommended that further advice be sought where there are cross-border situations. Equally, U.S. citizens who remain taxable on a worldwide basis will need to seek advice on the best option for them to make payment of the tax.

Refund of Division 293 Tax for Former Temporary Tax Residents of Australia

Many expatriates working in Australia will be able to seek a refund of the Division 293 tax paid, once they have permanently departed Australia and had their Australian work visa cancelled.

Individuals who are former temporary tax residents of Australia are able to apply to withdraw their superannuation contributions from an Australian superannuation fund once they have permanently departed Australia and their visa has been cancelled. Upon withdrawal of the Australian superannuation contributions, the "departing Australian superannuation payment" ("DASP") will be subject to a final withholding tax of 38 percent (for the 2014/2015 tax year).

Once the DASP has been received by the former temporary tax resident, he or she will be eligible to apply for a refund of the Division 293 tax that has been paid. To apply for a refund, former temporary tax residents must apply to the Commissioner in the approved form. In addition to completing the approved form, the applicant must submit evidence of receiving the DASP and certified proof of identity documentation. Acceptable evidence includes the payment summary provided by the superannuation fund when making the payment, or other evidence that clearly demonstrates the payment had been made and the reason for the payment.

KPMG Note

Individuals who wish to explore whether they are entitled to apply for a refund, should consult with their professional tax advisers.

Footnote:

1 For more information on the Division 293 tax, see the Australian Taxation Office (ATO) Web page: <https://www.ato.gov.au/individuals/super/in-detail/contributions/division-293-tax---information-for-individuals/> .

For further information or assistance, please contact your local GMS or People Services professional, or one of the following professionals with the KPMG International member firm in Australia:

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