GMS Flash Alert

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Australia - Budget Measures on Tax Residency, Equity Schemes, Superannuation

The Federal Budget 2021-2022 was delivered by the Australian government on 11 May 2021.[1]

The key measures that we focus on in this *GMS Flash Alert* are related to individual tax residency, Employee Share Schemes (ESS), and Superannuation. (For coverage of last year's Budget, see *GMS Flash Alert* 2020-432, 19 October 2020.)

WHY THIS MATTERS

Changes to the individual tax residency rules have the potential to impact all globally-mobile employees, with tax residency being a key driver in determining an individual's Australian tax position. Flow-on impacts may also be felt by employers, as Australian employment tax obligations vary depending on an individual's tax residency.

Assignment costs may also be impacted following this budget, through either a change in one's tax residency position affecting the relevant tax rates, or through the increase to the compulsory Superannuation Guarantee rate (in accordance with the currently-legislated rate increase to 10 percent from 1 July 2021).

Updates to the ESS rules will impact the annual ESS reporting obligations for employers in relation to equity incentives provided to employees.

Individual Tax Residency

Individual tax residency rules will be simplified, with the introduction of a new primary test that deems individuals as Australian tax residents if they are physically present in Australia for at least 183 days during the tax year. Where the primary test is not met, secondary tests will apply based on a combination of physical presence and measurable, objective criteria.

The new rules will not come into effect until the first income year after the date the legislation is enacted.

KPMG NOTE

The current tax residency rules in Australia do not include any "bright-line" tests, so it can be difficult at times to provide certainty on an individual's tax residency position.

The new proposals would modernise Australia's individual tax residency system and help provide greater clarity for globally-mobile employees.

Whilst the legislation for these new rules has not yet been drafted, and specific details have not been provided on the secondary tests, the government has stated that the framework will be based on recommendations made by the Board of Taxation in its 2019 report (for prior coverage, see *GMS Flash Alert* 2019-191, 20 December 2019). The key features of this report were:

— An individual who spends 183 days or more in Australia in an income year would be a tax resident for that income year, regardless of the person's broader circumstances.

— An individual who spends less than 183 days in Australia in an income year could also be a tax resident for all or part of that year, if the person meets certain tests.

— An individual who had been resident for three or more consecutive years would have to satisfy more requirements in order to cease Australian tax residence.

— An individual who is employed overseas for more than two years, has accommodation available to him at the place of employment throughout, and spends less than 45 days in Australia during each income year of the overseas employment period, would be a nonresident during the overseas employment period.

Employee Share Scheme (ESS) Rules

ESS rules will be altered to remove "cessation of employment" as a taxing point for ESS interests (i.e., equity incentives) provided to employees.

KPMG NOTE

Currently, where an employer grants tax-deferred ESS interests, termination of employment will trigger an ESS taxing point if an ESS taxing point has not already occurred and the ESS interests are not forfeited upon termination of employment. This rule has always been problematic for employees in Australia who are required to pay tax on the ESS interests for the income tax year in which their employment was terminated, but are not yet in a position to be able to liquidate the interests because they have not vested or are not able to be exercised.

This change in rules will bring Australia in line with the rest of the world and will apply to new ESS interests granted from the first income tax year after the date the legislation is enacted, noting the legislation has not yet been drafted.

Superannuation

The compulsory Superannuation Guarantee rate is already currently legislated to increase from 9.5 percent to 10 percent from 1 July 2021.

It was announced under the Budget measures that the government will remove the current A$450 per month minimum income threshold, under which employers are currently not required to pay Superannuation Guarantee for employees.

KPMG NOTE

There was speculation that this Budget would include plans to defer the Superannuation Guarantee rate increase to a later date, but this did not occur.

Payroll teams will need to be ready to increase the Superannuation Guarantee contributions that are made for employees from 1 July 2021.

This may increase assignment costs for employers depending on the structure of the international assignment package.

The removal of the A$450 per month minimum income threshold is welcomed, making more employees eligible to receive Superannuation Guarantee contributions.

FOOTNOTE:

1 For the Budget speech and related documents, see: https://budget.gov.au/ .

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RELATED RESOURCE

For additional coverage of the Budget by the KPMG International member firm in Australia, click here.

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