



Thinking beyond borders: Management of extended business travelers - Australia

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01

Key message

Residents are taxed on worldwide income whereas non-residents and temporary residents are generally taxed on Australian-sourced income only.

A person's liability to Australian tax is determined by residence status for taxation purposes and the source of income derived by that individual. Income tax is levied at progressive rates on an individual's taxable income for the year, which is calculated by subtracting allowable deductions from the total assessable income.

Immigration considerations are also important for both the employee and the employer.

Obtaining the correct visa will not only ensure that an employee can attend to their duties in Australia with confidence, but will protect the company from compliance, operational and reputational risks.

1 Key message

Extended business travelers are likely to be taxed on employment income relating to their Australian workdays. To the extent that the business traveler qualifies for relief under the terms of a double tax treaty Australia has with the country from which the individual is resident, an exemption may be available.

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Income tax

2 Income Tax

2.1 Liability for income tax

A person's liability to Australian tax is determined by residence status. A person can be a resident, non-resident, or temporary resident for Australian tax purposes.

A resident of Australia generally refers to an individual who enters Australia with the intention of remaining for more than 6 months (or who actually spends more than 6 months in Australia during an income year). A temporary resident is a resident of Australia who is on a specific temporary visa and meets other prescribed conditions. A non-resident of Australia is generally someone who spends less than 6 months in Australia. The general rule is that a person who is a resident of Australia is assessable on worldwide income.

Non-residents are assessed on income derived directly or indirectly from sources in Australia (subject to the interaction of a double tax agreement). Temporary residents are assessed on employment income from all sources derived after arrival in Australia and all Australian-sourced investment income (subject to the interaction of a double tax agreement). Extended business travelers are likely to be considered non-residents of Australia for tax purposes unless they enter Australia with the intention to remain for more than 6 months.

2.2 Definition of source

Employment income is generally treated as Australian-sourced compensation where the individual performs the services while physically located in Australia.

2.3 Tax trigger points for employment income

Technically, there is no threshold/minimum number of days that exempts the employee from the requirements to file and pay tax in Australia. To the extent that the individual qualifies for relief in terms of the dependent personal services article of the applicable double tax treaty, there will be no tax liability. The treaty exemption will not apply if the Australian entity is the individual's economic employer.

2.4 Types of taxable income

For extended business travelers, the types of income that are generally taxed are employment income and Australian-sourced personal income, as well as gains from disposal of taxable Australian assets (such as real estate). Fringe benefits, which are broadly noncash employment income, are subject to Fringe Benefits Tax, which is levied on the employer at an effective rate of 97 percent of the value of benefits provided.

2.5 Tax rates

Net taxable income is taxed at graduated rates ranging from 19 percent to 45 percent for resident taxpayers. Non-residents are subject to tax at 32.5 percent on the first 120,000 Australian dollars (AUD) of income, and graduated rates ranging from 37 percent to 45 percent for the remaining income. The maximum tax rate is currently 45 percent on income earned over AUD180,000 in the case of both residents and non-residents (FY 2024 rates quoted).

Fringe benefits tax is levied on the employer at a rate equivalent to the top marginal tax rate plus Medicare Levy (47 percent for FY 2024). Fringe benefits tax applies on the grossed-up value of the benefits provided.

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Social Security

3 Social Security

3.1 Liability for social security

Superannuation is a mechanism requiring individuals to save money for retirement. It prescribes that employers make a contribution of 11 percent of earnings, up to a maximum contribution of AUD \$6,849.70 per quarter for FY2024 into an Australian superannuation account. For the 2024/2025 tax year, the superannuation rate will increase to 11.5 percent.

An exemption from the superannuation requirement can apply for certain senior executives or where there is a totalization agreement between Australia and the employee's home country/jurisdiction.

Medicare levy is payable only by residents and temporary residents from countries/jurisdictions that have reciprocal health agreements with Australia. The Medicare levy rate is 2 percent of taxable income. The Medicare levy surcharge may also be payable depending on the employee's level of income and whether the employee has appropriate Australian private health insurance. If applied, the Medicare levy surcharge rate ranges between 1 percent and 1.5 percent of the total of taxable income, plus other income for surcharge purposes (e.g. reportable fringe benefits). The Medicare levy surcharge rate depends on the level of income for surcharge purposes.

Non-residents are not liable for the Medicare levy or Medicare levy surcharge.

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Compliance obligations

4 Compliance obligations

4.1 Employee compliance obligations

Tax returns are due by 31 October following the tax year-end, which is 30 June. Where a registered tax agent is used, there is an extension available, usually to 31 March or 15 May of the following year. All individuals must file their own tax return, spouses cannot submit joint returns.

Tax returns must be filed by non-residents who derive any Australian-sourced income (other than Australian dividend income, interest income, managed investment trust income, royalties or departing Australia superannuation payments, which are subject to final withholding tax).

For many types of income, including any income other than employment income paid to a non-resident, the payer must withhold tax at the source and remit taxes withheld to the tax authorities.

4.2 Employer reporting and withholding requirements

Withholdings from employment income are covered under the Pay-As-You-Go (PAYG) system. If an individual is taxable with respect to employment income, the payer has a PAYG withholding requirement. Where the payer is a non-resident, this may be varied to zero in certain circumstances by application to the Australian Tax Office (with the liability arising instead on lodgement of the individual's income tax return).

In addition, employers may be liable to Payroll tax at a state level where the annual payroll exceeds certain threshold levels, and an exemption does not apply. Payroll tax is levied on wages paid or payable by an employer to its employees working in the relevant State or Territory. Rates, thresholds, and exemptions vary between States and Territories.

Workers' compensation insurance is compulsory and is payable by employers. This also varies between states.

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Immigration

5 Immigration

5.1 Work permit/visa requirements

Sponsors are monitored by the Department of Home Affairs to ensure that they comply with their obligations in relation to the business and sponsored persons, including any sponsored family members. Sponsors may be monitored and audited via a number of avenues, including site visits, official audits, referral to other agencies and/or other sections of the Department.

For companies, the consequences of immigration breaches are financial, operational and reputational, with the potential for CEOs, CFOs and Directors to be held individually liable for immigration breaches.

At the individual level, holding an incorrect visa can cause difficulties on entering Australia, can lead to having to leave Australia at short notice, and in extreme cases can lead to an inability to re-enter Australia.

In this context, there is a greater motivation for both employers and employees to ensure that correct Australian visas are obtained for all travel to Australia.

5.2 Visas available

The type of visa required will depend upon length of stay, nature of duties and the citizenship of the individual. The most common visa types obtained for employees include:

- business visit
- temporary work (short stay) for highly specialized work for periods of up to 6 months (subclass 400 visa)
- temporary work (skilled) up to 4 years (subclass 482 visa)
- permanent residency

5.3 Sponsorship obligations

When companies are approved as 482 visa sponsors, they take on a variety of sponsor obligations under the Migration Regulations. These include:

- ensure equivalent terms and conditions of employment to local employees
- keep certain records
- provide records and information to the Minister for Immigration
- advise when certain events occur
- ensure the visa holder participates in the nominated occupation, program or activity
- not recover from, transfer or charge certain costs to another person
- pay travel costs to enable sponsored people to leave Australia
- pay costs to remove unlawful non-citizens
- cooperate with inspectors

It is important that employers have the necessary controls and procedures in place to enable them to meet their obligations.

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Other issues

6 Other issues

6.1 Double taxation treaties

Australia has an extensive tax treaty network. In addition to Australia's domestic arrangements that provide relief from international double taxation, Australia has entered into double taxation treaties with more than 40 countries/jurisdictions to prevent double taxation and allow cooperation between Australia and overseas tax authorities in enforcing their respective tax laws.

6.2 Permanent establishment implications

There is the potential that a permanent establishment (PE) could be created as a result of extended business travel, but this would depend on the type of services performed and the level of authority the employee has and the time spent in Australia.

6.3 Indirect taxes

Goods and services tax (GST) is applicable at 10 percent on taxable supplies. GST registration may be required in some circumstances.

6.4 Transfer pricing

Australia has a transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, when a cross-border benefit is being provided. This is also dependent on the nature and complexity of the services performed. It is important to mention that the Tax Authorities have also set forth compliance obligations in relation to certain transactions between local related parties.

6.5 Local data privacy requirements

Australia has data privacy laws.

6.6 Exchange control

Australia does not restrict the flow of Australian or foreign currency into or out of the country/jurisdiction. However, certain reporting obligations are imposed to control tax evasion and money laundering. Legislation requires financial institutions and other cash dealers to give notification of cash transactions over AUD10,000, suspicious cash transactions, and certain international telegraphic or other electronic funds transfers (there is no minimum amount). All currency transfers (in Australian or foreign currency) made by any person into or out of Australia of AUD10,000 or more in value must be reported.

6.7 Non-deductible costs for assignees

Non-deductible costs for assignees include contributions by an employer to non-Australian pension funds.

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