



## CHANGES IN TAXATION FOR TEMPORARY RESIDENTS

As from 1 July 2006 the treatment of the taxable income of temporary residents has changed.

The temporary residents were previously taxed much like Australian residents. Although temporary residents will continue to be taxed on all Australian source income and salary and wages generally the new taxation regime treats temporary residents more like non residents in respect of any capital gains derived.

The explanatory memorandum of the amending legislation states that the reforms are designed to attract skilled labour to Australia and to promote Australia as a business location.

### **The new taxation regime applies to "temporary residents" only.**

There is a little more to this term than might first be thought. The term temporary resident is defined in the *Income Tax Assessment Act 1977 (Cth)*. Section 995/1 of the Act provides that a person will be a temporary resident if:-

- (a) they hold a temporary visa granted under the *Migration Act 1958 (Cth)*;
- (b) they are not an Australian resident within the meaning of the *Social Security Act 1991 (Cth) (SSA)*; and
- (c) the person's spouse is not an Australian resident within the meaning of the SSA.

The key features of the new taxation regime are as follows:-

1. Most foreign source income derived by the tax payer is excluded from taxation under Australian tax laws.
2. Overseas employment income earned by a tax payer while a temporary resident of Australia is still assessable under Australian tax laws.

3. Capital gains arising in relation to shares acquired under employee share schemes will be disregarded if they were acquired in relation to employment undertaken or services provided by the tax payer outside Australia prior to becoming a temporary resident.
4. Capital gains and losses without the necessary connections to Australia are disregarded for Australian taxation purposes - except for capital gains on shares and rights acquired under employee share schemes where the taxing point has not been deferred until after the initial entitlement arises.
5. Interest paid by the tax payer to foreign lenders is not subject to withholding tax.
6. Controlled foreign company and foreign investment fund record keeping obligations are partly removed.
7. The existing four (4) year limitation on the exemption from the Foreign Investment Fund Rules for all temporary residents and exempts the tax payer from attribution under the controlled foreign company and transferor trust rules.
8. The time limits have been removed from the short term resident capital gains CGT exemption from the deemed disposal rule that applies where a person ceases to be an Australian resident.

These changes apply from 1 July 2006 except for key features 5 (above) which applies from date of royal assent to the amending legislation being 6 April 2006.

It is therefore important to seek clear legal advice. We would be happy to assist you.

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