

Taxation of Foreign Earnings

IMPORTANT CHANGES TO THE LAW RELATING TO THE TAXATION OF FOREIGN EARNINGS

In a major shakeup of the foreign earnings tax exemption that was previously in place, from 1 July 2009 foreign employment income earned by Australian resident taxpayers will in most cases no longer be exempt.

Under the measures in the new legislation, the general exemption from income tax on foreign employment income will only be available if the foreign service of the employee is directly attributable to any of the following activities:

- an aid worker employed in the delivery of Australian official development assistance;
- an aid or charitable worker employed by an organisation in providing overseas aid relief;
- a specified government employee deployed overseas as a member of a disciplined force; or
- an employee undertaking an activity of a kind specified in the regulations.

For all others, foreign employment income will be fully taxable in Australia at resident tax rates. Individuals will be able to claim a non-refundable tax offset for foreign income tax paid in the foreign jurisdiction.

Many foreign countries levy tax at a lower rate than Australia so most Australian residents who earn income overseas would pay less tax than they would if they had earned the income solely in Australia. As a result of the tax change, individuals will end up paying more tax in Australia than what they previously used to pay.

In order for employees to be able to claim the exemptions referred to above, the organisation needs to be one that is recognised by the Australian Taxation Office as a non-government charitable organisation. The Explanatory Memorandum to the Tax Laws Amendment (2009 Budget Measures No. 1) Bill 2009 details what type of charitable entities are eligible for this exemption and states:

`These paragraphs apply to a prescribed charitable or religious institution that is exempt from Australian income tax pursuant to item 1.1 or 1.2 of section 50-5 of the ITAA 1997`.

Note that the organisations do not necessarily have to be located in Australia and can include organisations that have a physical presence in Australia but incur their expenditure and pursue their objectives principally outside Australia.

If you are not recognised as an exempt charitable body under this new legislation, you will need to continue withholding PAYG from your employees working overseas as well as the possibility of superannuation and payment of

FBT.

If you have any further questions relating to these tax changes, please feel free to contact either Shannon Burdeu or Tim Olynyk of Moore Stephens on (03) 9614-4444.

IMPORTANT Disclaimer: This is not legal or other professional advice. Readers should not act solely on the basis of the material contained in this article. Articles are general comments only and do not constitute or convey advice per se. Formal professional advice should be obtained before applying information in this article to particular circumstances. Enterprise Care is not in any way responsible for any loss or liability by anyone acting on the basis of information in this article or for any error in or omission from it. © Copyright 2010