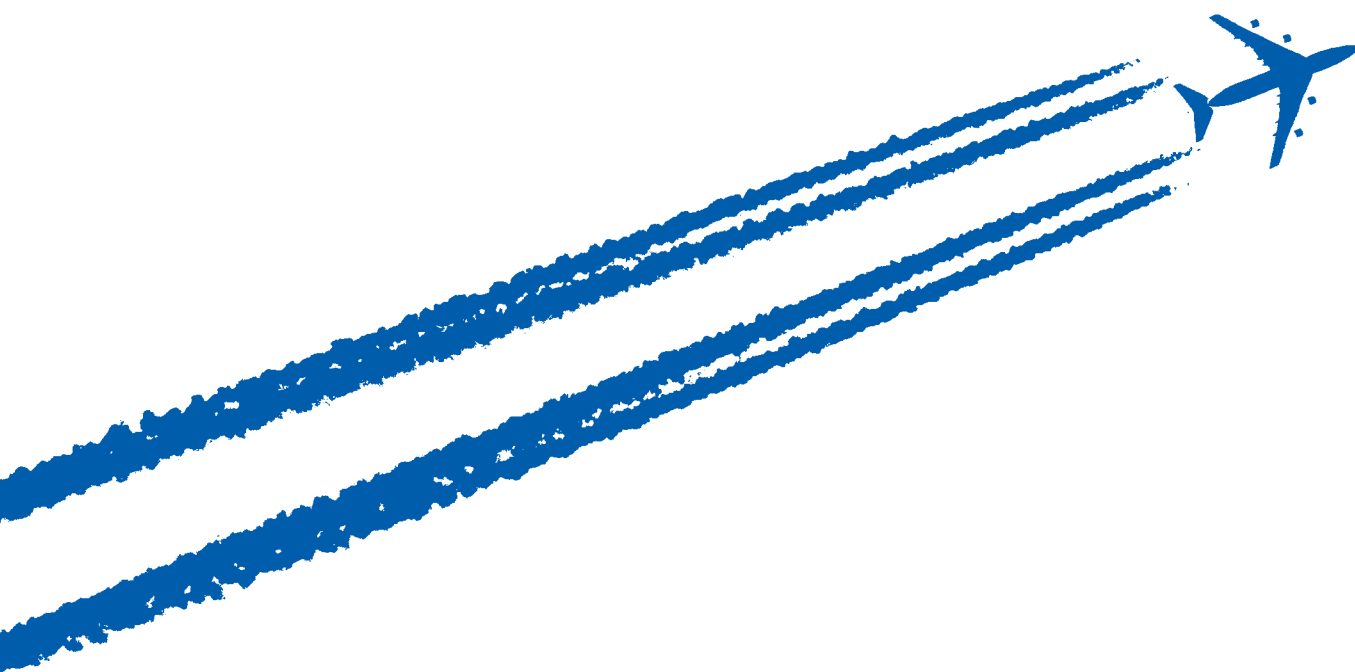


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Taxation of Australian nationals working overseas



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Introduction

This information guide is designed to provide you with an understanding of the Australian tax implications of undertaking an international assignment. It combines a general explanation of the law as at July 2004 with an overview of the tax issues that you need to consider in preparing for, and during the course of, your overseas assignment.

We know that if you are about to relocate overseas, you have many issues to consider. This booklet cannot be an exhaustive tax analysis but serves as an introduction to give non-tax experts quick access to the important tax considerations involved in relocating overseas.

Tax planning is critical to the success of any overseas assignment. It is important to address the tax issues in both the country of assignment and in Australia prior to the commencement of the assignment.

With proper planning, you and your employer can minimise your tax liabilities and avoid potential pitfalls.

Deloitte International Assignment Services tax specialists can assist with pre-departure tax planning. With tax specialists in our offices throughout the world we can advise you on both Australian and foreign tax issues. In addition, we can assist you with projections of the total remuneration, tax and relocation costs for your overseas assignment.

Please note, the information and analysis in this booklet are not a substitute for competent professional advice. While every effort has been made to ensure that the text is correct, we cannot assume any legal responsibility for the accuracy of any particular statement. No action should be initiated without consulting your professional advisors. If you require further information regarding the matters dealt with in this booklet, please contact any of our offices. Please refer to the IAS Tax Summary for our contact details.

1. Will I still have to pay tax in Australia while I work overseas?

1.1 The Australian tax system

Generally speaking, you are taxed on your income in the year that you receive it. You will be taxed differently depending on whether you are a resident or a non-resident for tax purposes. The Australian tax year for individuals ends on 30 June.

Residents of Australia (refer [2.1](#)) are subject to tax on gross income from worldwide sources. However, if foreign tax is payable on income derived overseas, the Australian tax payable will generally be reduced by a credit for the foreign tax paid (refer [3.5](#)). Where certain conditions are met, foreign employment income may be exempt from Australian tax (refer [3.3.1](#)).

Non-residents of Australia are taxable only on Australian source income, excluding interest, royalties and dividends which are subject to withholding tax at source.

1.2 Impact of overseas assignment

The extent to which you remain liable to tax in Australia while living and working overseas will depend upon:

- whether you remain a resident of Australia during your overseas assignment; and
- whether you continue to derive Australian source income after your departure.

As a general rule, you will minimise your Australian tax exposure if you can establish non-resident status while overseas.

2. Will I be an Australian tax resident even while I work overseas?

2.1 Residence for Australian tax purposes

Your residence for immigration purposes does not determine and is not affected by your residence for tax purposes. For Australian taxation purposes, you are a resident of Australia if you:

- reside in Australia or
- have an Australian domicile (see below), unless the Commissioner of Taxation is satisfied that your permanent place of abode is outside Australia or
- have been physically present in Australia for more than 183 days of any income year (an Australian tax year begins 1 July and ends 30 June), unless the Commissioner is satisfied that your usual place of abode is outside Australia and that you have no intention of taking up residence in Australia or
- are a contributing member, or spouse of a contributing member, of a Commonwealth Superannuation Scheme.

A non-resident is defined as being a person who is not a resident of Australia, that is, a person who does not meet any of the four criteria for residency set out above.

The concept of domicile is more permanent than residency. You have a domicile of origin in the country in which you were born. You may, at a later stage, acquire a domicile of choice in a different country if you regard that country as 'home'. While the determination of domicile is distinct from that of citizenship, residency or nationality, most Australian nationals working temporarily overseas remain domiciled in Australia.

Therefore, the principal test for residency in most cases is whether an individual who is domiciled in Australia has established a permanent place of abode outside Australia. This test requires consideration of the particular facts of each case, but the following factors will be important:

- the purpose of your stay outside Australia
- the expected and actual length of your stay outside Australia
- whether you maintain a place of abode in Australia
- whether you have significant assets in Australia
- whether you are accompanied by family members
- the type of accommodation available to you overseas
- the number and extent of your return trips to Australia during your overseas assignment.

If you leave Australia for an unspecified or a substantial period and establish a home in another country, subject to the factors above, you will generally be considered to have established a permanent place of abode outside Australia and will therefore cease to be a resident of Australia. As a general rule of thumb, a period of two years or more is regarded as a substantial period.

Your residence status must be determined for each year of income.

If you are a resident of Australia for only part of the year, you are taxable as a resident for that part-year.

2.2 Dual residence

In some situations you may be a tax resident and subject to tax in both Australia and your host country (the country to which you are going), under the domestic law of each country.

Australia has concluded a number of treaties with other countries to avoid double taxation in these circumstances. These double tax treaties override Australian tax laws in the event of conflicting provisions. 'Tie breaker' clauses set out criteria to determine the country in which you will be treated as a resident for the purposes of determining which country has first taxing rights on income covered by the treaty, in the event that you are a resident of both countries under their respective tax laws.

These 'tie-breaker' clauses vary from treaty to treaty (and the relevant treaty must therefore be referred to) but usually include some or all of the following factors:

- the country in which you have a permanent home available
- the country in which you have a habitual abode
- the country with which you have closer personal and economic relations
- your country of citizenship.

An Australian national working temporarily overseas who maintains a permanent home in Australia is generally solely an Australian resident under these treaty tie-breaker tests.

As a general rule, if you are not regarded as a resident of Australia for treaty purposes (even though you are an Australian resident under Australian domestic law) you will be subject to Australian tax only on income from sources in Australia.

The following checklist may give you an indication as to whether you will be an Australian tax resident during your assignment. However, you should note that this is an informal checklist and different factors have different weight. You should consult a Deloitte tax professional before making a final conclusion about your residency status. However, where 'YES' answers predominate, it is likely you will be a non-resident while on assignment.

If you are sure you will be an Australian tax resident you will want to read Section 3 'Taxation of residents'. If you are sure you will not be an Australian tax resident, you may wish to turn directly to Section 4 'Taxation of non-residents'. If you are unsure . . . keep reading.

Major factors	Yes	No	N/A
Do you have long term permanent accommodation in your host country?			
Does the wording of your employment contract indicate that the assignment will be for at least 2 years?			
Is it likely that your overseas assignment will be extended beyond the original duration?			
Do you intend to accept another overseas assignment following the completion of this assignment?			
Are you selling your Australian main residence as a result of the overseas assignment?			
Are you making your main residence available for long term rental in your absence?			
Are all dependant family members accompanying you on assignment?			
If you have children, are they going to be educated in your host country?			
Will your visits to Australia during the assignment be limited to business trips and annual holidays?			
Have you applied for a long term residency visa in the host country (i.e. more than 2 years)?			
If you haven't already applied for a long term residency visa, do you intend to at a later date?			
Are you a citizen of a country other than Australia?			
Do you intend to become a citizen of a country other than Australia?			
Is a country other than Australia your country of domicile (i.e. the place you call 'home')?			
Do you intend to change your domicile to a country other than Australia?			
A number of social/economic factors can be seen to reinforce a non-residence status. Have you:	Yes	No	N/A
Completed an 'Overseas Elector Enrolment' form or deleted your name from the electoral rolls?			
Postponed or cancelled any subscriptions and club memberships in Australia?			
Advised your banks and other financial institutions of your non-resident status so that tax is withheld at source from interest income?			
Advised any companies in which you hold shares of your non-resident status so that tax is withheld at source at the rate of 30% (or 15% for residents of most treaty countries) from unfranked dividends?			
Suspended or cancelled membership in private health funds?			
Informed the Department of Social Security of your non-resident status for cancellation of parenting allowance, family allowance etc.?			
Registered for family allowances in host country?			
Arranged for the forwarding of your mail to the host country?			
Suspended or cancelled Australian superannuation membership?			
Sold your car in Australia?			
Planned to undertake language lessons in host country (if appropriate)?			
Transferred significant assets to the host country (e.g. cash, furniture, etc.)?			

3. Taxation of residents

3.1 General principles

As a resident taxpayer you are liable to tax on income from both Australian and foreign sources.

You are also taxable on net capital gains from disposal of worldwide assets acquired, or deemed to be acquired, after 19 September 1985. Assets comprise any form of property and include intangible property.

You are subject to the Medicare Levy on taxable income, regardless of whether you are physically present in Australia.

A tax-free threshold on taxable income is available to you as a resident (refer to 'Personal Tax Rates' in the IAS Tax Summary).

Where you have paid foreign tax on foreign sourced income, credit for that tax is allowed against Australian tax payable on that income, limited to the amount of Australian tax on that income (refer [3.5](#)).

Foreign sourced employment income derived from a continuous period of foreign service may be exempt from Australian tax (refer [3.3.1](#)).

If you are a tax resident you are eligible for certain personal rebates which can reduce your Australian tax liability (refer [3.6](#)).

3.2 Calculation of taxable income

As a resident individual you are taxable on your 'taxable income' for each year of income ending 30 June.

Taxable income is calculated by deducting from 'assessable income' all 'allowable deductions' relating thereto for a particular year of income. 'Assessable income' does not include 'exempt income'.

Resident tax rates are applied to taxable income to determine gross tax payable from which any foreign tax credits and rebates are deducted to determine the net tax payable.

3.3 Assessable income

Generally, your assessable income as a resident can be classified under the following headings:

3.3.1 Employment income

Your gross income includes most cash remuneration arising from your employment. Cash remuneration comprises salaries, wages, commissions, bonuses and allowances.

Foreign employment income will be 'exempt' from Australian tax providing you work overseas for a continuous period exceeding 90 days and the income is either:

- subject to tax in the country of source; or
- exempt from tax in the country of source for reasons other than the operation of a double tax treaty or a general feature of the source country's tax law.

The continuous foreign service period can include temporary absences on:

- recreation leave attributed to the foreign service
- sick leave
- short business trips in connection with the foreign assignment to other countries, including Australia.

If you return to Australia while on foreign assignment you should keep detailed records of travel dates to ascertain whether you meet the 90 day qualification period.

While the foreign employment income is exempt from tax, it is taken into account when calculating the tax payable on non-exempt income. The average rate of tax that you would have paid if the foreign earnings were not exempt from tax is determined and this rate is then applied to your non-exempt income. The exemption is therefore effectively provided by way of a full tax rebate for the Australian tax payable on the foreign earned income. The following example illustrates the mechanics of this system.

Example 1	A\$
Australian sourced income - actual taxable income	10,000
Exempt foreign employment income	65,000
Notional taxable income	75,000
Tax on notional taxable income incl. Medicare Levy (at rates in effect 1 July 2004)	20,962
Average rate of tax (20,962/75,000)	27.95%
Actual tax payable: (10,000x27.95%)	2,795

Certain cash allowances, being living-away-from-home allowances ('LAFHAs'), are subject to the fringe benefits tax ('FBT') regime and are therefore not income. An allowance is a LAFHA if it is provided to you while you are living away from your usual place of residence to compensate for additional expenses incurred and other disadvantages suffered in order to fulfill employment duties.

Benefits-in-kind, such as accommodation, low-interest loans and motor cars, provided to you or your associate by your employer are not included in your assessable income (or exempt income). Instead, your employer is liable to FBT on the taxable value of these benefits. However, if your earnings from foreign employment are exempt from Australian tax then any benefits provided in respect of the foreign service period will also be exempt from FBT.

A lump sum payment that you receive as a consequence of termination of employment or office (other than a contractual termination payment) is taxable on a concessional basis. 'Bona fide' redundancy payments are tax-free up to certain limits (refer to 'Superannuation and termination payments' in the [IAS Tax Summary](#)).

Termination payments are subject to a surcharge if your adjusted taxable income exceeds the 'Surcharge Threshold' (refer to 'Superannuation and termination payments' in the IAS Tax Summary). The surcharge is levied only on the portion of the termination payment relating to the period post 20 August 1996. Bona fide redundancy payments are not subject to the surcharge.

Lump sums received on termination of employment can be rolled over, i.e. deposited directly into an Australian superannuation fund, approved deposit fund or other approved roll-over fund. Tax then becomes payable by the fund on the contribution. You will be liable to further tax when you withdraw an amount from the fund.

3.3.2 Capital gains

Capital gains on sale of assets acquired after 19 September 1985 are assessable. Assets comprise any form of property and include intangible assets such as options, rights under restrictive covenants, etc., but exclude motor vehicles. The net capital gain is included in your taxable income and subject to income tax, generally at your marginal tax rate.

Capital losses may be used to offset your capital gains. Any excess capital loss may be carried forward indefinitely to offset any gains realised in future years.

Where assets have been held for less than 12 months prior to disposal, the entire capital gain is included in your taxable income.

For sales after 21 September 1999, where you have held the asset for 12 months or more prior to disposal, you can elect between two methods for calculating the amount of capital gain to be included as assessable income. These methods are the old 'Indexation Method' and the new 'Exemption Method' (see below).

- under the 'Indexation Method', the capital gain is determined after indexing the capital cost of the asset for the appropriate inflation rate as published by the Australian Statistician. As part of the transition to the new 'Exemption Method', indexation has been frozen at 30 September 1999
- under the 'Exemption Method', you can elect to claim an exemption of 50% of the nominal capital gain from the disposal of each asset. In other words, this method allows you to report a capital gain equal to 50% of the excess of the sales proceeds over the unindexed cost base of the asset disposed. Indexation is not applicable under this method.

If you remain a resident of Australia throughout your overseas assignment, there are no specific capital gains tax ('CGT') consequences on departing Australia. The CGT rules will apply to any assets (other than assets acquired before 19 September 1985) disposed of during the assignment.

Your main residence is exempt from CGT provided that the property has been your main place of residence at all times prior to the disposal and has not been used for income producing purposes.

If you cease to occupy your main residence whilst on overseas assignment, you can elect that the property continue to be regarded as your main residence for CGT purposes, until the earliest of the following times:

- when the dwelling again becomes your main residence
- when you dispose of the dwelling or
- when the dwelling has been used for income producing purposes for a total of six years.

The exemption from CGT is available even if the residence is used for income producing purposes (i.e. rented out) during your absence and you do not resume residence prior to the disposal.

Where the dwelling is used for income producing purposes for more than six years, part of any gain on disposal will be taxable, calculated on a time apportionment basis.

Once an election is made to continue to regard a property as your main residence, you cannot generally regard any other property as your main residence during the same period. An exception to this is where, prior to disposing of your main dwelling, you acquire another dwelling which becomes your next main residence. In this case, both dwellings may be treated as your main residence until you sell the first property for up to six months.

A capital gain arising from the sale of an asset may attract tax in your country of assignment as well as in Australia. If a capital gain arising from a foreign source is taxable both in the source country and in Australia, you may claim a foreign tax credit for the foreign tax paid, up to the amount of Australian tax payable on the gain (refer [3.5](#)).

3.3.3 Dividend income

As a resident you are subject to Australian tax on dividends received, regardless of their source.

Australian sourced dividends are subject to the dividend imputation system, whereby as a shareholder you are entitled to a tax rebate for the company tax paid on underlying profits.

You are also taxable on the gross amount of foreign sourced dividends received.

3.3.4 Rental income

If you rent out your Australian home while you are on a foreign assignment, any rental income is assessable and expenses incurred in connection with the property are generally tax deductible. If the rental property is jointly owned with your spouse, you are each liable to tax on your half share of the net income from the property.

Where there is an overall net rental loss, the amount that you can carry forward to claim as a deduction in a future year is limited to the excess of the loss over the sum of your assessable income and exempt income for that year. Thus a net rental loss may be completely absorbed by your exempt foreign employment income such that you lose any tax benefit that would normally arise from a negatively geared investment.

Expenses commonly claimed as a tax deduction against rental income include:

- advertising and letting expenses
- borrowing costs on a loan used to purchase the property, deductible over the lesser of the period of the loan or five years
- cleaning and maintenance expenses
- commissions paid to agents for rent collection
- depreciation in respect of furniture, fittings and other assets in the property
- capital allowance (2.5%–4% p.a. cost write-off) on original construction costs and capital improvements to the building made after 18 July 1985
- insurance
- land tax
- lease costs
- interest paid on a loan used to purchase the property
- repairs (provided not of a capital nature)
- utility costs e.g. council and water rates.

When a property ceases to be occupied as a main residence, there may be land tax implications. As land tax is a State tax, the rules differ between States. In some States there is a tax-free threshold which may be exceeded, once your main residence no longer qualifies for land tax exemption. In some States, such as New South Wales, the owner has an obligation to register a liability to land tax in order to receive a notice of assessment. Penalties can apply if the State Revenue department detects a previously undisclosed land tax liability.

3.3.5 Other income

As a resident you are subject to tax on interest, partnership, trust, royalty, pension, business and any other income from any activity derived from any source, worldwide. You may also be required to report foreign exchange gains and losses on any foreign currency accounts, loans or other transactions which are not private and domestic in nature.

Foreign losses cannot generally be offset against Australian source income (refer [3.5](#)).

3.3.6 Employee share plans

The taxation of shares and options granted under employee share plans depends upon whether you acquired the shares and options before or after 28 March 1995.

Where you were granted the shares or options to acquire shares under an employee share acquisition scheme ('ESAS') before 28 March 1995, the rules governing their taxation are as follows.

As a general rule, you are subject to tax at the time that 'unrestricted shares' are acquired under an ESAS. The assessable benefit is the difference between the market value at that time and the amount paid to acquire the shares.

However, where you elected to bring forward the taxing point to either the time when the options were granted or 'restricted shares' acquired, no gain is recognised at the time that the options are exercised or restrictions on shares are lifted.

On disposal of shares acquired under an ESAS, you will be subject to capital gains tax (refer [3.3.2](#) for more details) on any further gain arising on disposal.

Where you were granted the shares or options to acquire shares under an ESAS on or after 28 March 1995 (subject to transitional rules which allow some rights or shares acquired after 28 March 1995 but before 1 July 1996 to be treated under the old rules), the rules governing their taxation are as follows:

- where an ESAS meets certain conditions, it will be 'qualifying', and liability to tax can be deferred for up to 10 years from date of grant. A 'qualifying' ESAS must involve ordinary shares (or options in respect thereof) in either the employer company or holding company of the employer. The shares or options will not be 'qualifying' when offered to employees with a shareholding of more than 5% in the company. The shares (but not options) must be offered to at least 75% of all permanent employees of the employer
- where the conditions are not met an ESAS will be 'non-qualifying', and you will be subject to tax on the value of the discount inherent in the option or share at the date of original grant, regardless of any restrictions on exercise or sale thereof
- there are specific rules for determining the market value of unlisted options, taking into account the share price, exercise price and exercise period of the options. Under these rules most options will have a value at grant date
- if a qualifying ESAS satisfies certain additional conditions including being offered on a non-discretionary basis with a three year minimum disposal restriction, a \$1,000 exemption of taxable value per annum is available to you, if you elect to be taxed up front on all ESAS benefits
- on disposal of shares acquired under an ESAS, you will be subject to capital gains tax (refer [3.3.2](#) for more details) on any further gain arising on disposal.

If you are subject to tax in the foreign country upon the acquisition of the shares or options, a foreign tax credit may be claimed in respect of the foreign tax paid on the gain (refer [3.5](#)) in order to reduce the Australian tax payable. Care must be taken in these situations to avoid double tax on the gain, particularly since there are no clearly defined Australian tax rules regarding the source of the gain.

Professional advice should be sought from Deloitte on the application of these rules if you acquire shares or options or exercise options acquired under an ESAS while on foreign assignment.

3.3.7 Attributable income of CFCs & FIFs

There are three different regimes which can operate to 'attribute' income to you as an Australian tax resident.

Attribution means that you are assessed on income you do not actually receive, where that income is received by a foreign entity in which you have an interest.

The Controlled Foreign Company ('CFC') rules apply to attribute income to you as an Australian resident shareholder in respect of profits derived by a foreign company that is controlled by five or fewer Australian residents.

The Foreign Investment Fund ('FIF') regime can apply to assess you on the annual increase in market value of your non-controlling interests in foreign companies and trusts unless:

- the total value of your investments in FIFs does not exceed A\$50,000 or
- the investments are in foreign public listed companies which do not engage in certain prohibited activities (such as funds management and financial intermediation services) or
- the interest is held in a foreign employer sponsored superannuation fund or
- the interest is held in a US corporation or certain other US entities subject to tax on worldwide income or
- the interest is held in a US mutual fund or
- you hold a temporary resident visa in Australia lasting no more than four years and have not applied for permanent residency.

The Foreign Life Assurance Policy (FLP) regime can apply to assess you on the annual increase in surrender value of any FLPs in which you have an interest.

The non-resident trust estate rules can attribute income to you as an Australian resident if you have transferred property or services to a non-resident trust or have received a distribution from a non-resident trust.

The rules under which these regimes operate are complex and professional advice should be sought on their potential application.

3.4 Allowable deductions

Generally, expenses and losses are deductible provided you incur them in gaining or producing assessable income. However, expenses of a private, domestic or capital nature are generally not deductible.

Where you receive foreign employment income that is exempt from tax in Australia, any expenses incurred in earning that income can be utilised only to reduce the amount of exempt foreign employment income.

Your own contributions as an employee to superannuation funds in Australia or the country of assignment are not allowable tax deductions in Australia. (Refer also [6.3](#) Australian superannuation and termination benefits).

3.5 Foreign tax credit system

The Foreign Tax Credit System ('FTCS') provides a mechanism for relief from double tax where you derive foreign income and foreign tax has been paid on that income.

Under the FTCS the Australian tax otherwise payable on foreign income is reduced by the amount of foreign tax paid. The credit in respect of any year is limited to the amount of Australian tax payable on the particular class of foreign income or the actual amount of foreign tax paid, whichever is less.

Where there is an overall foreign loss from a particular class of foreign income, that loss may be offset only against future income from that particular class (i.e. it is 'quarantined'). For this purpose, interest is a separate class of foreign income to other passive income.

Capital losses are separately quarantined under the general capital gains tax provisions (refer [3.3.2](#)).

Professional advice should be sought from Deloitte before a resident taxpayer makes any significant offshore investments or deposits whilst on assignment.

3.5.1 Dividend income

As a resident you are subject to Australian tax on the gross amount of foreign sourced dividends received (after grossing up for foreign tax paid thereon) with a credit allowed for the foreign tax paid.

In the case of dividends received from countries with which Australia has entered into a Double Tax Treaty, the credit is limited to the rate of tax specified in the relevant treaty (refer to Australia's Double Taxation Treaties), notwithstanding that foreign tax may have been deducted in excess of this amount. A refund claim for the tax deducted in excess of the treaty rate must be separately made to the relevant foreign tax authority.

You are not entitled to a credit for any foreign underlying tax paid by the foreign company on profits out of which the dividend is paid.

3.5.2 Interest income

As a resident you are subject to Australian tax on all interest derived regardless of its source. You may claim a credit for foreign taxes you pay on foreign sourced interest. In the case of interest received from treaty countries, the foreign tax credit is limited to the rate of tax specified in the relevant treaty (normally 10% but sometimes 15%). Foreign tax may have been deducted in excess of this amount in which case a refund claim for the tax deducted in excess of the treaty rate must be made separately to the relevant foreign tax authority (refer to Australia's Double Taxation Treaties).

3.6 Tax offsets

Details of the rates of personal rebates available to resident taxpayers are contained in 'Tax Offsets for Residents' in the IAS Tax Summary.

3.6.1 Dependent tax offsets

As a resident taxpayer you may be entitled to claim an offset against Australian taxes payable where the following dependants are maintained during the year:

- your spouse
- your spouse and dependent children
- your dependent parent or parent-in-law
- your wholly supported dependent children (where taxpayer is a sole parent).

3.6.2 Medical expenses tax offset

As a resident taxpayer you are allowed an offset for unreimbursed medical expenses above a certain threshold incurred in obtaining medical treatment for you or your dependents (refer to 'Tax Offsets for Residents' in the IAS Tax Summary).

3.7 Tax rates

There is a progressive scale of tax rates for resident individuals.

Residents of Australia are generally liable to the Medicare Levy, which is collected through the tax system (refer [6.1](#)).

Refer to 'Personal Tax Rates' in the IAS Tax Summary for the specific tax rates that apply to resident taxpayers.

4. Taxation of non-residents

4.1 General principles

As a non-resident you are subject to Australian tax only on your Australian sourced income.

The change in status from resident to non-resident has important capital gains tax consequences (refer [4.3.2](#)).

As a non-resident you are subject to tax on gains derived from the disposal of certain assets having a necessary connection with Australia (refer [4.3.2](#)).

As a non-resident no Medicare Levy is payable (refer [6.1](#)).

No tax-free threshold is available and tax is payable at progressive rates (refer to 'Personal Tax Rates' in the IAS Tax Summary).

No concessional rebates are available to you while you are a non-resident.

You are liable to withholding tax at the rate of 10% on Australian interest, 30% (reduced by most treaties to 15%) on the unfranked part of any Australian dividend income and 30% (reduced treaty rate of 10%) on Australian royalties (refer to Australia's Double Taxation Treaties). You will not be subject to Australian tax on franked dividends you receive.

4.2 Calculation of taxable income

Your taxable income is calculated by deducting from 'assessable income' all 'allowable deductions' relating thereto for a particular year of income. However, as a non-resident you are taxable only on Australian sourced income, and may claim allowable deductions only for expenditure that relates to that income.

4.3 Assessable income

4.3.1 Employment income

Generally employment income is sourced where the services are performed. Accordingly, as a non-resident you are not subject to Australian tax on your earnings for services performed outside Australia.

Where you perform services both in and out of Australia, it is usually necessary for you to keep detailed records of all workdays to enable an appropriate apportionment between Australian and foreign source earnings, based on time spent in and out of Australia.

In certain circumstances employment income for services in Australia may be exempt from Australian tax through the operation of a double tax treaty (refer [7.1](#)).

Benefits in kind and living away from home allowances provided in respect of your foreign service will not be subject to Australian tax. Further, your employer will not be subject to FBT in relation to such benefits if the earnings from your foreign employment are not subject to tax in Australia.

4.3.2 Capital gains

The capital gains tax ('CGT') regime is described at [3.3.2](#). Upon ceasing to be an Australian resident, unless you otherwise elect, you are deemed to have disposed of all assets then held, to which the CGT provisions apply, at their market value at that date. Certain assets are excluded from these rules including:

- assets acquired before 20 September 1985
- assets having the 'necessary connection with Australia' (see below)
- assets either held at the date that your residence commenced or acquired by inheritance, provided you were not resident in Australia for more than five years in the last 10 years prior to ceasing residence.

When departing Australia you may therefore be subject to tax on unrealised gains, including gains arising only from exchange rate variances in respect of assets held overseas.

However, you may elect to treat all assets that would otherwise be deemed to be disposed of as 'assets having the necessary connection with Australia'. The effect of the election is that no gain is recognised on any assets at the time of departure from Australia but you remain subject to Australian tax on the actual capital gain on ultimate disposal of each asset. The election should be made at the time of lodgment of your tax return for the tax year in which you cease to be an Australian resident.

As a non-resident you remain subject to tax on capital gains derived from the actual disposal of 'taxable Australian assets' acquired after 19 September 1985, irrespective of whether the election referred to above is made.

Taxable Australian assets include:

- Australian real estate
- Australian assets used in Australian businesses
- shares in Australian private companies
- interests in Australian partnerships and trust estates
- interests of more than 10% in Australian public companies and public unit trusts
- options to acquire any of the above.

Upon resuming Australian residency, you are deemed to have acquired, for a consideration equal to their market value at that time, every asset which you own, with the exception of assets acquired prior to 20 September 1985 and taxable Australian assets (including assets held when you ceased to be an Australian resident if you make an election to recognise the gain or loss only on actual sale). Thus tax-free capital gains can often be accumulated on assets acquired while non-resident (subject to the tax law in your country of residence).

An important exemption from capital gains tax, upon actual or deemed disposal, is your main residence. There are special rules which apply if you temporarily cease to occupy your home as your main residence (refer to [3.3.2](#)).

4.3.3 Employee share plans

The taxation of shares and options acquired under employee share plans has been discussed previously in relation to residents (refer [3.3.6](#)).

If, as a non-resident individual performing services outside Australia, you are granted options or shares under an ESAS in respect of your overseas employment, there will be no Australian tax at the time of acquisition. Similarly the exercise of options acquired while non-resident will not trigger a tax liability. However the disposal of options or shares acquired while resident in Australia may cause an Australian tax liability to arise depending on the CGT status of these assets (refer [4.3.2](#)).

You should seek professional advice from Deloitte on the application of these rules if you are granted shares or options under an ESAS scheme prior to departure from Australia as there may be opportunities to minimise exposure to Australian tax.

4.3.4 Interest income

Australian source interest you derive as a non-resident is subject to withholding tax at source (i.e. withheld and remitted by the payer) at the rate of 10% of the gross amount of the interest. This represents a final tax liability on such income and the income need not be included in your Australian tax return. It is your responsibility to advise the payer of your non-resident status.

4.3.5 Dividend income

Australian source unfranked dividends that you receive while non-resident are subject to withholding tax at source at the rate of 30% of the gross dividend, unless Australia has concluded a double tax treaty with your country of residence (refer to Australia's Double Taxation Treaties), in which case a 15% (in most cases) withholding tax rate will apply.

The withholding tax is a final tax liability on such income.

Australian source franked dividends that you receive while non-resident are not subject to withholding tax or to any further Australian tax in your hands.

4.3.6 Rental income

Australian source rental income is taxed on an assessment basis and is not generally subject to tax withholding at source.

Rental income is discussed at paragraph [3.3.4](#). However you should note that in contrast to the position for residents, if you make an overall net rental loss as a non-resident, this loss can be carried forward indefinitely to offset other Australian source income in future years.

4.3.7 Royalty income

Australian source royalty income is subject to withholding tax at source at the rate of 30% of the gross royalty, unless Australia has concluded a treaty with your country of residence (refer to Australia's Double Taxation Treaties), in which case a 10% (in most cases) withholding tax rate will apply. The withholding tax is a final tax liability on such income.

4.3.8 Trust income

If you are the beneficiary of an Australian trust, the trustee will be liable to pay tax on your behalf on your share of net income that relates to Australian sources while you are a non-resident. When you report this income in your income tax return you may claim a credit for the tax paid on that income by the trustee.

4.4 Allowable deductions

Generally, expenses and losses are deductible only to the extent to which they are incurred in gaining or producing Australian source assessable income.

Expenses of a private, domestic or capital nature are generally not deductible, nor are expenses incurred in producing exempt income. Accordingly, if you borrow funds to purchase shares, you cannot claim a tax deduction for the interest expense, because the dividend income from the shares is not included in your assessable income.

4.5 Tax rates

There is a progressive scale of tax rates for non-resident individuals, similar to that applying to residents except that no tax-free threshold is available.

In the tax years during which the overseas assignment begins and ends it is likely that you will be a resident of Australia for part of the year and therefore subject to the resident tax rates for that year. The tax free threshold is available on a pro-rata basis, and the Medicare Levy is payable, on a proportionate basis in those years.

Refer to 'Personal Tax Rates' in the IAS Tax Summary for the tax rates that apply to non-resident taxpayers.

5. Lodgment and payment procedures

5.1 Will I have to lodge a return?

If you are a resident of Australia you must lodge a return if your taxable income exceeds the tax free threshold for the year (refer to 'Personal Tax Rates' in the [IAS Tax Summary](#)). You may also need to lodge a return if your income is below the threshold but you wish to recoup tax deducted from income at source (e.g. tax instalment deductions from salary).

If you are a non-resident and you derive any Australian source assessable income you must lodge a return. Assessable income does not include dividend, interest or royalty income that is subject to the withholding tax provisions.

Where you and your partner receive income jointly, you must each include your share of the income in your own return (for example net rental income from a jointly owned property).

5.2 When will I have to lodge a return?

The Australian tax year ends on 30 June and income tax returns must normally be lodged by the following 31 October, although this can be varied each year by the Commissioner of Taxation ('Commissioner').

If your return is prepared by a registered tax agent, such as Deloitte, lodgment may be deferred provided you are registered on the tax agent's program by the date set for that purpose by the Commissioner.

Tax agents are required to progressively lodge returns on their program and ensure that all returns are lodged by the due dates determined annually by the Commissioner. The due date is determined by the amount of tax that you paid in the previous year, and can vary from the end of February to mid-May of the following year.

5.3 PAYG instalments

If you have reported business or investment income of \$2,000 or more in your latest tax return and your last income tax assessment notice showed a tax liability of more than \$500, you are generally liable to make Pay As You Go (PAYG) tax instalments.

If you are liable to pay PAYG instalments, you will be notified by the ATO. You will receive an Instalment Activity Statement which will contain an instalment rate calculated by the ATO based on your latest assessed income tax return.

Most PAYG instalment payers will calculate their instalments by multiplying the instalment rate by their instalment income. Instalment income includes:

- fees received for services
- interest
- rent
- dividends.

Salary and wages are excluded.

Instalment income does not include capital gains.

PAYG instalments will usually be made quarterly. You have the option of making an annual payment where the following criteria are satisfied:

- your most recent notional tax (as advised by the ATO, usually corresponding to business and non CGT investment income from the previous year) was less than \$8,000
- you (or a partnership in which you are a partner) are not registered or required to be registered for GST.

Quarterly payments will be due 21 days after the end of each quarter. Instalments for most taxpayers will therefore be due on 28 October, 28 January, 28 April and 28 July. The date for annual payments from 2003 onward will be due on 21 October following the tax year-end.

You are able to vary the amount of each instalment in line with variations in your income. This can be done by applying to the ATO to vary the instalment rate.

If your notional tax is in excess of \$8,000 or if you are registered for GST purposes or are in a partnership registered for GST purposes you can choose to pay an amount notified by the Commissioner or you can calculate actual income subject to PAYG.

6. Social security and retirement benefits

6.1 Health system

If you are a tax resident of Australia you are subject to the Medicare Levy, collected as part of the tax system. No levy is payable if your taxable income is below a certain level and phasing-in provisions apply to low income earners. You must pay an additional levy if you are a high income earner and you do not have private hospital insurance (refer to 'Medicare Levy' in the IAS Tax Summary).

If you are a non-resident of Australia, you are not subject to the Medicare Levy.

Part year residents are entitled to a proportionate reduction in the levy for the period of non-residence.

As an incentive to take out private health insurance with a health fund registered in Australia, you may be able to receive a reduction in the cost of private health insurance in the form of a rebate. The rebate can be claimed either as a direct reduction in the insurance premium, a cash or cheque rebate from Medicare or as an income tax rebate.

Under 'Lifetime Health Cover', health funds are required to increase premiums over a base rate depending on the age when a member first takes out hospital cover with a registered health fund. If you join after the age of 30, you will pay a 2% premium loading for each year you delay joining. The loading is capped at a maximum of 70% above the premium payable by a person who joins at the age of 30.

If you are going overseas, you may avoid paying a loading on your private hospital insurance when you return to Australia by doing either of the following:

- you can apply to your fund for a suspension of your private hospital insurance. The period of suspension may be granted at the discretion of your fund and the fund may decide how long the suspension will be. The period of suspension will count as a period with private hospital insurance for Lifetime Health Cover purposes. You will not pay a loading for any period you were granted a suspension
- you can cancel your private hospital insurance if you will be overseas for at least 12 months. When you return to Australia, you will not pay a loading to cover your period overseas. You can return to Australia for visits up to 90 days at a time and still be considered to be overseas. When you return to Australia permanently, you have up to two years to re-purchase private hospital insurance without incurring a loading. This two year period is referred to as the period of absence under Lifetime Health Cover and can only be used once within your lifetime on a cumulative basis.

If you are an Australian citizen or permanent resident residing overseas on your 31st birthday, you will receive a grace period of twelve months without incurring a Lifetime Health Cover loading. You will not pay the loading if you purchase hospital cover by the later of 23 April 2005 or the first anniversary of the day you return to Australia.

If you are an Australian citizen or permanent resident who was living overseas on 1 July 2000 when Lifetime Health Cover was introduced, you will be taken to have a certified age at entry of 30 and to have held cover for the period of your absence. On your return, you will be subject to the normal Lifetime Health Cover period of absence rules of two years. The period of absence does not include short term visits up to 90 days but will start from the first day you return to Australia.

If you are an Australian citizen or a holder of a permanent visa and you were absent from Australia for the whole period starting 1 January 2000 and ending 1 July 2000, you have a 12 month grace period, following your return to Australia, in which to take out private hospital cover at the base rate.

6.2 Other social security benefits

Generally speaking, you are only entitled to claim family allowances and other social security benefits such as the maternity payment if you are an Australian resident.

Prior to departure from Australia, you should contact your Family Assistance Office if you wish to ascertain continuing eligibility for such benefits.

Australia has entered into a number of totalisation agreements with other countries for the provision of social security benefits. These agreements provide a definition of residency for social security purposes and determine your entitlement to welfare payments such as unemployment, age and widow pensions.

6.3 Australian superannuation and termination benefits

6.3.1 Superannuation contributions

Your employer is required to make a minimum annual contribution to superannuation on your behalf, calculated as a percentage of salary up to a maximum income threshold. Failure to contribute the required amount will result in a non-deductible superannuation guarantee charge being imposed on your employer. Your employer is not required to make such contribution in respect of:

- salary or wages paid to an employee who is not a resident of Australia for work performed outside Australia
- salary or wages paid by an employer who is not a resident of Australia to an employee who is a resident of Australia for work performed outside Australia.

Any superannuation contributions made by an Australian employer will not be deductible to the employer unless they are within the deductible limits and:

- the employee is a resident of Australia and is engaged in the business of the employer or
- the employee is engaged in producing assessable income of the employer.

Employees cannot generally claim a tax deduction for their own contributions to superannuation, although this may be effective in certain limited circumstances. Ongoing employer contributions to Australian superannuation are unlikely to be tax effective if you reside in another country. In many cases the foreign country will tax the contributions as income in your hands. You should seek professional advice regarding your retirement funding while on overseas assignment.

6.3.2 Withdrawal of benefits

You can generally only withdraw benefits from an Australian superannuation fund on:

- death
- permanent disability or
- permanent retirement from the work force.

Benefits cannot be withdrawn by Australian citizens or permanent residents leaving Australia permanently.

Certain components of lump sum termination benefits that you receive (including payments of pensions and annuities which do not comply with certain standards) which do not in total exceed a 'reasonable benefit limit' (RBL) are taxed at concessional maximum rates. For the current rates and RBL, refer to 'Superannuation and termination payments' in the IAS Tax Summary.

Lump sum benefits from an Australian fund cannot be rolled over to a foreign superannuation fund without incurring a tax liability, although tax deferral may be available upon rollover to another complying Australian fund.

Any excess benefit taken as a lump sum is taxed at your personal marginal tax rate.

6.3.3 Self-managed superannuation funds

If you have a self-managed superannuation fund apart from any employer fund, and you become a non-resident whilst on assignment, you may need to take action to ensure the fund does not become a non-resident fund and subject to penalty tax treatment while you remain overseas.

If you have a self-managed fund you should seek advice from Deloitte prior to departure on assignment so preventative measures may be taken.

6.4 Foreign superannuation and termination benefits

6.4.1 Payments to non-residents coming to or returning to Australia

(i) Foreign superannuation payments

Generally, if the foreign fund benefit was accumulated while you were a non-resident of Australia and is paid out within six months of you becoming an Australian resident, it will be exempt from Australian tax.

However, if the benefit is received outside the six month period, a part thereof will be assessable. The amount subject to tax will (with certain exclusions) be the excess received

over your accumulated entitlement in the foreign fund on the day you became a resident plus additional contributions thereafter. You may claim a foreign tax credit for foreign tax paid on the amount that is assessable in Australia.

(ii) Foreign termination payments

In most cases, any other lump sum payment made solely in consequence of termination of a period of foreign employment is exempt from Australian tax, even if received after you again become an Australian tax resident.

6.4.2 Payments to residents returning to Australia

(i) Foreign superannuation payments

Generally, if the foreign fund benefit is paid out within six months after the termination of your foreign employment/qualifying service, it will be exempt from Australian tax, provided that:

- you were a resident of Australia throughout the relevant period of employment
- your foreign employment earnings during the relevant employment period were exempt from Australian tax under s23AG (refer [3.3.1](#))
- the payment related solely to the period of foreign employment
- the payment is not exempt from tax under the law of the foreign country.

If the benefit is received outside the six month period, or it otherwise fails to meet the above requirements, your full benefit paid from the foreign fund, less the gross amount of the member and employer contributions, will be assessable income, with a foreign tax credit for foreign tax paid on the amount that is assessable in Australia.

(ii) Foreign termination payments

Any other lump sum payment that you receive solely in consequence of termination of a period of foreign employment is exempt from Australian tax, provided all of the conditions noted in (i) above are satisfied.

6.4.3 Transfer of benefit from an overseas fund to another fund

If you transfer a benefit from an overseas fund to an Australian fund after 1 July 2004, you may make an election for all or part of the contribution, which would otherwise be assessable income in your hands, to be treated as a taxable contribution, subject to tax within the superannuation fund. To maximise the tax benefits, the amount to be treated as a taxable contribution should equal the assessable amount calculated as described in 6.4.1 and 6.4.2.

The amount which is not taxed in the fund at the time of transfer will be treated as an 'undeducted contribution' to the superannuation fund and can therefore be subsequently withdrawn free of Australian tax. These rules affect most Australian nationals working overseas. Forward planning is therefore recommended to gain the maximum benefit from these rules in both Australia and the country of assignment.

7. Double tax treaties and tax havens

7.1 Basic principles of double tax treaties

Australia has entered into a number of double tax treaties (refer to 'Australia's Double Taxation Treaties'). Australia's tax treaties generally follow the OECD model and are designed to minimise the likelihood that you are subject to double tax on the same income in two different countries.

Common provisions found in most of the treaties include:

- exemption from tax in a foreign country on income derived from employment or personal services performed in that foreign country provided that:
 - (a) you are a resident of Australia and are present in the foreign country for less than 183 days
 - (b) your remuneration is paid by or on behalf of an Australian employer
 - (c) your remuneration is not deductible in determining taxable profits of a permanent establishment or fixed base which your Australian employer has in the foreign country.
- exemption from Australian tax on income derived from employment in the foreign country provided that you are solely a resident of the foreign country for treaty purposes (in which case the exempt foreign income is not taken into account when calculating Australian tax payable on taxable income)
- dividends received when you are a resident of one country from a company resident in the other country subject to tax at no more than 15% in the country of source
- interest received when you are a resident of one country from a source in the other country subject to tax at no more than 10% in the country of source
- pensions and annuities derived when you are a resident of one country normally subject to tax only in that country.

7.2 Tax havens

Effective controlled foreign company ('CFC') and foreign investment fund ('FIF') legislation exists which precludes a resident of Australia from sheltering income offshore in a tax haven (refer [3.3.7](#)).

8. Tax planning

Various planning techniques are available to Australian nationals working outside Australia. Their practical application will vary depending upon your personal situation and the tax system that operates in your host country. The following techniques are a guide only as to what may be suitable and professional advice should always be obtained regarding the practical application of a particular technique.

8.1 Structure of remuneration package

You should agree on the structure of your remuneration package prior to departure from Australia to maximise the tax advantage arising from the inclusion of benefits which are either exempt from, or subject to concessional, tax in the country of assignment.

Consider a split payroll and/or dual contract arrangement if earnings for services performed outside your country of assignment are taxed only if remitted to the country of assignment.

8.2 Timing issues

As a general rule it is advisable to:

- time departure and arrival dates to achieve favourable tax results. The benefits of this may depend on the tax rates and year end of the country of assignment
- receive bonus payments related to the overseas employment while a non-resident of Australia
- receive allowances related to the foreign assignment after ceasing to be an Australian resident
- receive superannuation and employer termination payments related to overseas employment whilst a non-resident or within six months of returning to Australia (whether a non-resident or not) (refer [6.4](#))
- consider deferring the exercise of any options and the disposal of certain assets to which the CGT or ordinary income tax provisions apply, until after departure from Australia
- exercise employee share options before resuming Australian residence.

8.3 Other planning

Split passive income (e.g. rental, interest and dividend) between adult family members or across several tax years to take advantage of lower marginal rates in Australia.

Avoid negative gearing of investments which generate dividend and interest income while non-resident, since the interest cost is not tax deductible.

Aim to become a non-resident of Australia where a negatively geared rental property is held (including the main residence while on assignment) to avoid rental losses being offset against exempt income (and thus forgone).

If becoming a non-resident of Australia, carefully consider whether to make the election to treat all assets as having the necessary connection to Australia to defer liability to capital gains tax until such assets are sold (refer [4.3.2](#)). In some cases it may be beneficial to recognise the notional gain on departure and then shelter all further capital gains while non-resident from Australian tax.

Consider acquiring capital growth assets while a non-resident if capital gains are either not taxable in the country of assignment or subject to tax in a low tax jurisdiction.

Given the Australian rules on foreign superannuation (refer [6.4](#)) consider the merits of such savings carefully. In certain countries, superannuation is tax favoured and access to a lump sum payment is available within six months of departure, which provides a tax-effective savings opportunity.

Consider 'treaty shopping' for investment income to minimise effective worldwide tax rate.

9. Other considerations

9.1 Tax equalisation/protection policies

Tax rates vary greatly throughout the world and for this reason, many multi-national companies have adopted tax equalisation or tax protection policies for employees on foreign assignments. A tax protection policy ensures that you do not bear an extra tax burden as a result of the foreign assignment, while tax equalisation ensures that you pay the same amount of tax as if you were still a resident of Australia.

Tax equalisation policies can also vary amongst different companies and it is therefore important to understand how your company policy works. Some companies tax equalise their employees on employment income only, with the employee paying the actual home and host country tax, on private income and/or capital gains. Other companies tax protect private income, providing assistance if such income is subject to a higher tax rate in the host country. Occasionally, the spouse's income is also tax equalised or protected.

Deloitte specialists have a wide range of experience in designing and implementing such policies and should be contacted for professional advice in relation thereto.

9.2 Exchange control

Exchange control was abolished some years ago.

Cash transfers into or out of Australia that exceed \$10,000 must, however, be reported to the Australian Transaction Reports and Analysis Centre. It is the responsibility of the cash dealer to report the cash transfer. Cash dealers are primarily financial institutions but include other persons and institutions that have the capacity to collect significant sums of cash.

Various tax reporting requirements may be imposed on transfers of currency from Australia to designated tax havens.

10. Procedures and tax consequences on departing and returning to Australia

There are a number of matters that you will need to address shortly before departing and returning to Australia. These matters generally apply only if you cease to be a resident of Australia on commencement of your assignment.

10.1 Departing Australia

No tax clearance certificate or notification to ATO is required prior to departure from Australia.

If you are intending to break residency status you should ensure that your personal facts and circumstances support this position.

Notify banks and share registries of your change in residency status, if applicable, and arrange for withholding tax to be deducted at source from dividend and interest income.

Obtain market value of all assets subject to deemed disposal rules (refer [4.3.2](#)) to calculate deemed capital gains.

If you are intending to break residency status and you are a trustee of an Australian trust, you should seek professional advice to ensure the trust's affairs are structured to minimise exposure to adverse taxation consequences.

10.2 Returning to Australia

If you have been a non-resident of Australia during your overseas assignment you should do the following:

- on again becoming a resident of Australia, determine the market value of all assets, other than taxable Australian assets, held at the date of return to Australia in order to establish the cost base of these assets for capital gains tax purposes
- when you sell your home consider whether it is beneficial to elect to maintain the main residence status of the family home while absent from Australia (depending upon whether a gain or loss arises on sale of the property)
- consider whether CFC and/or FIF interests should be disposed of prior to the end of the tax year in which Australian tax residency is resumed to avoid complexities determining attributable income from such investments.

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