

Over the seas change

Music and sports promoter Glenn Wheatley pleaded guilty this month to an offence involving an overseas tax fraud scheme. More recently, members of the Australian cricket team have inadvertently fallen foul of the ATO over offshore accounts. So what can you do to stay within the law?

In general, there are a few “no brainers” about what you can and can’t do to reduce tax and how you move cash from one country to another. False or inflated tax invoices, multiple bank accounts and transactions, are all fairly big indicators that a scheme is not legitimate. Also, if the scheme works counter to the intent of Australian law then there is probably something wrong with it as well. It’s unlikely you are going to come across a legitimate loop hole in the law that no one else has discovered.

However, determining how, who and where tax applies where a taxpayer earns income overseas or where the taxpayer resides overseas and earns income in Australia, is complex. There are a lot of grey areas which is why getting the structuring right is essential. Let’s look at a few scenarios:

I’m tired of paying large amounts of tax on the money I’ve earned from running a successful business in Australia. I was thinking about the Cayman Islands. The business operates well without me having to be in Australia each day. Pina Colada... no tax... Brilliant. What do I need to do?

To be a non-resident for tax purposes, you need to prove that you have actually separated from Australia, not just on paper.

There are a series of tests that apply to determine whether, on balance, you are considered a resident (and taxed in Australia) or a non-resident. These are: the resides test; the domicile test; the 183 day rule; and the superannuation test.

These rules determine whether you are serious about being a non-resident. Your intention or otherwise of returning to Australia, the location of your family, your business and employment relationships, maintenance and location of assets, your social and living arrangements (such as whether you’re renting an overseas property or have bought a home), your length of stay overseas, economic ties such as where your primary bank account is located, are all contributing factors.

Then there is the question of the income you derive from the Australian company. Basically, Australian residents pay tax in Australia on their worldwide income. Non-residents only pay tax on their Australian sourced income. So, the income you personally derive from your company (such as dividends) is taxed in Australia at the appropriate non-resident tax rate.

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continued

Then, if you sell your company down the track, depending on the circumstances, the proceeds may attract capital gains tax before they get to you.

And don’t think you can move the company offshore and manage your tax issues this way. The rules are deliberately complex and the unwary will be caught out.

I’m looking at purchasing an apartment in Auckland, New Zealand. I understand that New Zealand has no capital gains tax. I intend to rent out the apartment. The rent will not fully cover the cost of the loan and up keep on the property. What is the income and tax treatment for this property?

As a resident of Australia, you are taxed on your worldwide income in Australia. You are entitled to claim the interest costs of the loan in full on your tax return. To the extent that the other costs of the rental property are greater than the rent received (exclusive of interest), the loss is quarantined against future foreign income.

If you sell the property, any gain is subject to capital gains tax in Australia (sorry about that). The fact that New Zealand does not have capital gains tax is only relevant if you are a resident of New Zealand.

I’m working overseas for a UK company over the course of the next 12 months. I’m renting out my house during that period and keeping bank accounts etc the same.

You’re likely to remain a resident for tax purpose as you have a clear intention (the house, the bank accounts) of returning to Australia. If the income you earn in the UK is employment income and taxed in the UK, you will not be taxed in Australia



assuming that you remain continuously employed for at least 91 days. While the income you earn would be exempt from tax in Australia, it would count towards assessing your marginal tax rates for Australian tax purposes.

Call us today to make a time to talk to us about tax effective structuring of your business and personal assets.

The top 8 reasons why staff leave

Australia is facing a shortage of skilled labour. When the supply of staff dry up the focus often turns to retention. But the first step is to understand why people you want to stay, choose to move on?

Very few people will reveal the whole truth about why they leave an employer. Partly they don't want their previous employer to think badly of them, they don't want to hurt anyone's feelings, and for others, it's just not worth getting into it. However, there is almost always a catalyst for change. It might not always be the employer but it is very rare that it is "just time".

1. Change in leadership

Leadership vacuum or concern about the impact of the change.

2. Work not challenging

This is the classic reason for leaving that is behind the "its just time" comment. The employee feels as if the company has nothing left to offer.

3. Conflict with a supervisor

Your company can have the best retention policies and strategies in place but a conflict between Manager and subordinate is immediate and damaging.

4. Change in company dynamics

Each company is generally made up of smaller sub groups. These might be based on age, gender, professional status or cultural identify. The loss of a popular team member from one of these groups will be more deeply felt by their subgroup

5. Unfavourable change in responsibilities

Changes in team structures, reallocation of resources or taking on new assignments that are not within the skills set or comfort level of the employee.

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The top 8 reasons why staff leave *continued*

6. Life work balance issues

Retention is about mutual respect for priorities. The employer respecting the their employees personal responsibilities and employees recognising that they have corporate responsibilities. Both need to be fulfilled.

7. Poor recruitment

Professional or cultural misfits. Ever hired Mr Right now rather than Mr Right?

8. Lack of recognition for perceived value

Overlooked for or opportunities held out but not delivered.

Sometimes, it's not all bad

We've all had them; that employee who is the cultural and professional misfit. Decisive action when there is a poor fit can improve team morale.