Thao Le

Institute for Austrian and International Tax Law, Vienna University of Economics and Business, Vienna

thao.le@wu.ac.at

Tax implications of talent mobility – cross-border movement of employees: Australia

1. Overview of the tax system

Australia has a residence-based income tax system. Residents are taxed on their worldwide income, while non-residents are taxed only on income that has an Australian source.[1] This distinction is fundamental in cross-border mobility cases, as it determines the extent of a taxpayer's exposure to Australian tax. On 1 July 2006, an additional category was created: the temporary resident.[2] Individuals who meet the definition of temporary resident set out in section 995-1(1) of the Income Tax Assessment Act 1997 (hereinafter, the 'ITAA97'), namely individuals holding certain temporary visas, are not subject to tax in Australia on their foreign-sourced income. However, exceptions to this rule may include foreign-sourced personal exertion income and some capital gains.[3] It is essential to mention that the criteria under section 6(1) of the Income Tax Assessment Act 1936 (hereinafter, the 'ITAA36'), used to determine an individual's tax residency, are not the same as those used to determine their residency status for immigration purposes, although an individual's immigration status is one factor to be taken into account when assessing a person's tax residency status.

Taxable income is calculated as assessable income minus any allowable deductions,[4] namely general deductions[5] and specific deductions.[6] There is no double deduction if an amount qualifies as both a general and specific deduction.[7] This framework applies to both domestic and cross-border employees. In cross-border situations, determining an individual's tax residency is the key issue because it drives the decision as to whether their worldwide income is taxable in Australia or whether the applicable taxation should be limited to their Australian-sourced income.

In practice, determining a person's residency can be difficult. Individuals working across jurisdictions, or working remotely, may have connections to more than one country at the same time. This can result in dual residency or uncertainty, particularly where individuals maintain family, economic or social ties in multiple jurisdictions. Employers should

---

[1] Income Tax Assessment Act 1997 (Cth); Income Tax Assessment Act 1936 (Cth). An individual or company is classified as an Australian tax resident if they satisfy the resident definition in s6(1) ITAA36 (unless they are a temporary resident). If this definition is not satisfied, then they are regarded as non-resident for tax purposes.

[2] Australian Taxation Office, 'Foreign and temporary residents' (25 November 2025) https://www.ato.gov.au/individuals-and-families/coming-to-australia-or-going-overseas/your-tax-residency/foreign-and-temporary-residents last accessed on 21 April 2026.

[3] Subdiv 768-R ITAA97.

[4] Income Tax Assessment Act 1997 (Cth) s 4–15.

[5] S 8-1 ITAA97 refers to general deductions, which covers amounts incurred as a result of assessable income-producing activities.

[6] S 8-5 ITAA97 refers to specific deductions, which covers amounts allowed as deductions by tax law provisions other than s 8-1.

[7] S 8-10 ITAA97 – specific deduction prevails over general deduction.

review their employee travel patterns, employment contracts and living arrangements to assess any residency-related risks early.

Australia also operates a self-assessment system. Taxpayers calculate their own liability and submit annual returns. Employers are required to withhold tax under the pay-as-you-go (PAYG) system. While this system works efficiently in domestic cases, it can create duplication where multiple countries require withholding based on the same income. This increases the administrative complexity in such cases for both employers and employees.

2. Taxation of employment income

Foreign employees working in Australia are generally taxed on income derived from work performed in Australia. The scope of taxation depends on the individual's residency status and the source of the income.

2.1 Scope of taxable income

Employment income includes salary, wages, bonuses and commissions.[8] These amounts are typically taxed when they are received or derived, depending on the taxpayer's circumstances.

Equity compensation, such as stock options and restricted stock units (RSUs), is also taxable. These are usually taxed at vesting. Where employees move between countries during the vesting period, the income is often apportioned between the jurisdictions. This requires careful tracking of the relevant workdays and employment periods.

Allowances, including housing, travel and cost-of-living allowances, are generally taxable unless a specific exemption applies. In practice, exemptions are limited and often involve strict substantiation requirements.

Benefits in kind are typically taxed under the fringe benefits tax (FBT) regime. FBT is imposed on the employer rather than the employee.[9] Common examples include company cars, accommodation and school fees. For mobile employees, these benefits can significantly increase the cost of employment and should be carefully structured.

In practice, employers should review all of the components of the remuneration packages provided. Items that are not taxable as salary may still trigger FBT or other obligations, increasing the overall tax exposure. The FBT year runs from 1 April to 31 March.

---

[8] Income Tax Assessment Act 1997 (Cth) s 6–5.

[9] Fringe Benefits Tax Assessment Act 1986 (Cth) s 136(1). For the employee receiving a benefit that is subject to FBT, they are not assessable on the benefit according to s 23L ITAA36, ie, it is tax free in the hands of the employee.

2.2 Source rules

Employment income is generally sourced where the work is performed. However, in practice, determining the source may require the consideration of multiple factors, including the nature of the activities and where they are carried out.[10] Where duties are performed in more than one country, income must be apportioned. This is usually done based on the relevant workdays. For example, if an employee spends part of the year working in Australia and part overseas, their income should be divided accordingly.

Remote work adds further complexity. An employee physically located in Australia but working for a foreign employer will generally receive Australian-sourced income. This may create tax obligations even where the employer does not have a formal presence in Australia. In practice, employers should ensure that the work locations of their employees are clearly documented. Accurate travel records, timesheets and workday tracking are essential to support any apportionment and reduce the risk of disputes with the tax authorities.

2.3 Tax rates

Australia applies progressive tax rates to individuals. The top marginal rate is 45 per cent, plus a two per cent Medicare levy.[11]

Non-residents do not benefit from a tax-free threshold and are taxed from the first dollar of Australian-sourced income at higher starting rates.[12] This can increase the overall tax burden, particularly for short-term assignments where individuals do not qualify for resident concessions.

Australia does not offer a flat expatriate tax regime.[13] As a result, the cost of employing foreign workers may be higher compared to jurisdictions that provide concessional tax treatment.

2.4 Miscellaneous issues

Employers must withhold tax under the PAYG system.[14] PAYG withholding applies to salary, wages, commissions, bonuses and allowances paid to an individual as an

---

[10] Australian Taxation Office, 'Employees who work in a foreign country' https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/in-detail/income/employees-who-work-in-a-foreign-country?utm_source=chatgpt.com last accessed on 21 April 2026.

[11] Australian Taxation Office, 'Tax rates – Australian residents' https://www.ato.gov.au/tax-rates-and-codes/tax-rates-australian-residents last accessed on 22 April 2026; Australian Taxation Office, 'What is the Medicare levy?' https://www.ato.gov.au/individuals-and-families/medicare-and-private-health-insurance/medicare-levy/what-is-the-medicare-levy last accessed on 22 April 2026.

[12] Australian Taxation Office, 'Tax rates – foreign resident' https://www.ato.gov.au/tax-rates-and-codes/tax-rates-foreign-residents last accessed on 22 April 2026.

[13] Australian Taxation Office, 'Foreign and temporary residents' https://www.ato.gov.au/individuals-and-families/coming-to-australia-or-going-overseas/your-tax-residency/foreign-and-temporary-residents last accessed on 22 April 2026.

[14] Taxation Administration Act 1953 (Cth) sch 1.

employee. This obligation may apply to foreign employers depending on the specific circumstances, including whether they have a presence in Australia or employ individuals working there.[15]

Superannuation contributions are generally required for employees working in Australia. These contributions increase employment costs and must be factored into assignment planning.

Social security agreements between Australia and other countries may provide exemptions from Australian superannuation obligations. Employers should review these agreements to determine whether these contributions can be avoided.

Tax treaty exemptions may apply where an employee is present in Australia for less than 183 days, is paid by a foreign employer and the cost is not borne by an Australian permanent establishment (PE). These conditions must all be satisfied for the exemption to apply.[16]

3. PE risks

The presence of employees in Australia may create a PE for a foreign employer. This can expose the employer to Australian corporate tax on profits attributable to Australian activities. The PE concept is relevant in international tax law and is used to determine the allocation of taxing rights from the performance of business activities of an enterprise in a contracting state, which is determined by the distributive rule set in a treaty.

3.1 Dependent agent PE

A PE may arise if a person in Australia acts on behalf of a foreign enterprise and habitually concludes contracts or plays the principal role in their conclusion.[17] This is a necessary condition.[18] This rule reflects a substance-based approach, focusing on the activities performed in Australia, rather than the formal location where contracts are executed, and recognises that an agent may effectively act as a substitute for the enterprise in the source jurisdiction.[19]

---

[15] Australian Taxation Office, 'Foreign resident employers – your tax and super obligations' https://www.ato.gov.au/law/view/pdf/afs/afs-foreign-resident-employers.pdf last accessed on 22 April 2026.

[16] Australian Government, The Treasury, 'Income tax treaties' https://treasury.gov.au/tax-treaties/income-tax-treaties last accessed on 22 April 2026. In Australia, double taxation treaties (DTAs) are integrated into Australian domestic law through their incorporation as schedules to the International Tax Agreements Act 1953 (Cth).

[17] OECD Model Tax Convention on Income and on Capital (2017) Article 5(5). For considerations on the implications and interpretation of the wording 'exercises an authority to conclude contracts in the name of the enterprise' used in the OECD Model Tax Convention, see Corte Suprema Di Cassazione, 25 May 2002, *No. 7682 Philip Morris Gmbh Soc v Ministero Delle Finanze*.

[18] *Ibid*.

[19] Arthur Pleijsier, *The Agency Permanent Establishment* (Datawyse 2000).

This risk is particularly relevant for employees involved in sales, business development or senior management functions. Even where contracts are formally signed offshore, a PE may still arise if the key elements of the negotiation and decision-making process occur in Australia. The emphasis is on whether the individual's activities effectively bind the enterprise in a commercial sense.

A further requirement is that the person is not acting as an independent agent in the ordinary course of their business. Where an individual operates under the direction or control of the foreign enterprise and does not bear entrepreneurial risk, they are more likely to be regarded as a dependent agent.

In practice, employers should clearly define the scope of employee authority and limit involvement in contract negotiations where appropriate. Internal controls, approval processes and contemporaneous documentation are important in regard to managing this risk and demonstrating that employees do not have the capacity to bind the enterprise.

3.2 Fixed-place PEs

A PE may arise where a foreign enterprise carries on business through a fixed place of business in Australia. This requires a place of business with a sufficient degree of permanence that is at the disposal of the enterprise and through which its business activities are conducted.[20] A fixed place of business may include offices, branches or other premises that are used on an ongoing basis. In certain circumstances, a home office may also give rise to a PE where it is used regularly for business activities and is effectively at the employer's disposal.[21] In addition, it is established that legal title to use the premises is not relevant and, therefore, effective use is sufficient.[22]

However, not all types of physical presence will result in the establishment of a PE. The temporary use of premises or activities that are preparatory or auxiliary in nature will generally fall outside the scope of a fixed-place PE.[23]

In practice, employers should assess whether any physical presence in Australia is required for business operations to be carried out and they should clearly define how such premises are to be used. Written policies and internal controls can help manage the risk and demonstrate that a fixed place of business does not exist.

---

[20] OECD Model Tax Convention on Income and on Capital (2017) Article 5(1).
[21] OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017* Article 5 Commentary.
[22] Jürgen Lüdicke, 'Recent Commentary Changes concerning the Definition of a Permanent Establishment' (2004) *Bulletin for International Fiscal Documentation* 190.
[23] OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017* Article 5 Commentary; Cahiers de Droit Fiscal International, Volume 94a, p 24.

3.3 Service PEs

Some tax treaties provide that a PE may arise where services are provided in a country for more than a specified period. This type of provision is commonly found in treaties between Australia with countries such as India and China.[24] Under these treaties, a PE may be created where an enterprise furnishes services through employees or other personnel in a jurisdiction for a specified duration, even in the absence of a fixed place of business or contract-signing authority. The relevant threshold is typically measured over a 12-month period and may include the aggregation of related activities.

The determination ultimately depends on whether the enterprise is carrying on substantive business activities in the jurisdiction, rather than merely performing preparatory or auxiliary functions.[25] These rules are particularly relevant for consulting services, project teams and intra-group service arrangements. Employers should monitor the number of days employees spend providing services in each jurisdiction, as exceeding the relevant threshold may create a PE.

4. Exit tax/departure rules

When employees leave Australia, they may face tax consequences. Australia does not impose a broad exit tax. However, ceasing residency can trigger other rules.

4.1 Exit taxation

Ceasing residency changes the scope of taxation. Individuals are taxed only on Australian-sourced income going forward.[26] The timing of departure is, therefore, important and should be clearly documented.

In practice, disputes can arise where an individual's residency status is unclear, particularly if they retain ties to Australia, such as property, family or employment arrangements.[27] Employers and employees should ensure that departure dates and any changes in circumstances are properly evidenced.

4.2 Capital gains tax

Capital gains tax (CGT) may apply through a deemed disposal of assets when an individual ceases Australian residency. This occurs under CGT event I1, which treats

---

[24] Agreement between the Government of Australia and the Government of the Republic of India for the Avoidance of Double Taxation (1991) Article 5(3)(c); Agreement between the Government of Australia and the Government of the People's Republic of China for the Avoidance of Double Taxation (1990) Article 5(3)(b).

[25] M Bowler-Smith and T Le, 'Data Localization as Tax Nexus: Server PEs for AI Providers in Asia' (2026) 32 *Asia-Pacific Tax Bulletin*.

[26] Income Tax Assessment Act 1997 (Cth) s 6–5.

[27] Australian Taxation Office, 'Residency tests for individuals' https://www.ato.gov.au/individuals-and-families/coming-to-australia-or-going-overseas/residency-tests last accessed on 22 April 2026.

assets as disposed of at market value at the time their residency ends, ensuring that gains accrued during the individual's Australian residency are subject to taxation.[28]

In practice, this can result in tax liabilities without a corresponding cash receipt. Employees should review their asset positions before departure to manage potential liabilities and consider whether any deferral options are available.

It is also important to identify which assets remain taxable in Australia after departure, as certain assets (such as Australian real property) may continue to be subject to Australian capital gains tax even after residency ceases, while gains on other assets are typically disregarded.[29]

4.3 Deferred equity taxation

Equity compensation may be taxed on departure, particularly where benefits have accrued during Australian service under the employee share scheme provisions. Employee share scheme interests include shares and rights to acquire shares provided in connection with employment, and taxation generally arises in respect of the discount received.[30]

Apportionment is often required where services are performed across multiple jurisdictions, with the taxing outcome reflecting the period of employment exercised in Australia. This is particularly relevant where rights are granted at one time but only crystallise into shares at a later date, creating timing mismatches in terms of taxation.[31]

Differences in tax treatment between jurisdictions may result in double taxation, particularly where the relevant taxing points and valuation rules do not align. Early planning and professional advice are important to manage this risk. Employers should also consider how equity plans are structured for mobile employees, as inconsistent treatment across jurisdictions can create administrative and reporting challenges.

4.4 Reporting requirements

Employees must lodge a final tax return and report their income up to the date of their departure.[32] Individuals leaving Australia will generally be required to lodge a tax return after the end of the income year, although early lodgement may be available where

---

[28] Income Tax Assessment Act 1997 (Cth) s 104–160 (CGT event I1).
[29] *Ibid* s 855–10.
[30] Income Tax Assessment Act 1997 (Cth) Div 83A; Australian Taxation Office, 'Employee share schemes' https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/employee-share-schemes/ess-basics last accessed on 22 April 2026.
[31] Australian Taxation Office, 'ESS - Indeterminate rights' https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/employee-share-schemes/in-detail/indeterminate-rights last accessed on 22 April 2026.
[32] Income Tax Assessment Act 1936 (Cth) s 161.

departure is permanent.[33] Additional disclosures may be required depending on the circumstances, including the treatment of foreign income and capital gains.

From a practical perspective, employees should review their tax position before leaving Australia. This includes identifying all of their equity interests, investments and any ongoing Australian income streams. Proper documentation of departure and income allocation is critical to avoid future disputes with the Australian Taxation Office.[34]

5. Recent developments and case law

The Australian Taxation Office has increased its focus on offshore and cross-border tax compliance. This reflects the growing number of employees working remotely or across multiple jurisdictions, as well as the expanded use of data matching and international information sharing between tax authorities.[35]

5.1 Increased scrutiny of cross-border work arrangements

There is increased scrutiny on residency status, remote work arrangements and employer compliance. Tax authorities are now more likely to review whether employees have been correctly classified as residents or non-residents and whether income has been properly allocated between jurisdictions. The rise of cross-border work has also increased the compliance burden on employers. Where Australian residents work overseas, employers may still be required to meet Australian PAYG withholding and reporting obligations, even where the relevant duties are performed outside Australia.[36]

In practice, this means that both employers and employees should expect greater requests for supporting documentation. This may include travel records, employment contracts and evidence of work performed in each location. A failure to maintain adequate records can increase the risk of reassessments and penalties.[37]

---

[33] Australian Taxation Office, 'Returning to your home country' https://www.ato.gov.au/individuals-and-families/coming-to-australia-or-going-overseas/coming-to-australia/returning-to-your-home-country last accessed on 22 April 2026.

[34] *Ibid*.

[35] Australian Taxation Office, 'Data matching' https://www.ato.gov.au/about-ato/commitments-and-reporting/information-and-privacy/data-and-analytics/data-matching last accessed on 23 April 2026; OECD, *Consolidated Text of the Common Reporting Standard (2025): Standard for Automatic Exchange of Financial Account Information in Tax Matters* (OECD Publishing 2025) https://doi.org/10.1787/055664b1-en last accessed on 28 April 2026.

[36] Australian Taxation Office, 'Employing Australian residents who work overseas' https://www.ato.gov.au/businesses-and-organisations/hiring-and-paying-your-workers/engaging-a-worker/employing-australian-residents-who-work-overseas last accessed on 22 April 2026.

[37] Australian Taxation Office, 'Data matching' https://www.ato.gov.au/about-ato/commitments-and-reporting/information-and-privacy/data-and-analytics/data-matching last accessed on 23 April 2026.

5.2 Proposed residency reforms

Proposed residency reforms aim to introduce clearer and more objective criteria, including the use of bright-line day tests. Proposals include a primary 183-day test, supported by secondary factor-based rules where necessary.[38]

Under the current law, residency is determined by several alternative tests and requires a holistic assessment of an individual's connections to Australia. No single factor is decisive, and the outcome depends on the particular facts and circumstances of each case.[39]

While the proposed changes may improve certainty, they also raise potential issues. A purely quantitative test may not fully capture the complexity of individual circumstances, particularly for employees with ongoing ties to multiple countries. In addition, the interaction between new residency rules and existing tax treaties will need to be carefully considered. Even if domestic rules become clearer, treaty provisions may still apply different criteria, creating potential inconsistencies.

6. Key takeaways

Employers should closely monitor employee activities in Australia to manage the risk of creating a PE, particularly where employees are involved in negotiations or perform core business functions. They must also ensure compliance with the PAYG withholding obligations and consider the potential impact of fringe benefits tax when structuring remuneration for mobile employees.

Employees should carefully determine their tax residency status, as this directly affects the scope of their Australian tax obligations. They should also track their workdays across jurisdictions to support the allocation of employment income and reduce the risk of disputes with tax authorities.

Both employers and employees should pay particular attention to the taxation of equity compensation. Cross-border vesting and differences in tax treatment between jurisdictions can create complexity and potential double taxation, making early planning and the maintenance of clear documentation essential.

---

[38] Grant Thornton, *The ATO's individual tax residency changes open for consultation* (3 August 2023) https://www.grantthornton.com.au/insights/client-alerts/the-atos-individual-tax-residency-changes-open-for-consultation/ last accessed on 22 April 2026.

[39] Australian Taxation Office, *Income tax: residency tests for individuals* (TR 2023/1, 7 June 2023).