



## **Private and confidential**

21 November 2018

The Board of Taxation  
C/- The Treasury  
Langton Crescent  
Parkes, ACT 2600  
Australia

Email to: [taxboard@treasury.gov.au](mailto:taxboard@treasury.gov.au)

Dear Sir / Madam

### **AustCham Hong Kong's response to the Review of the Income Tax Residency Rules for Individuals Consultation Guide**

AustCham Hong Kong welcomes the opportunity to comment on the Board of Taxation's (the Board) *Review of the Income Tax Residency Rules for Individuals Consultation Guide* ("the Consultation Guide").

#### **Introduction**

The Treasury released a Consultation Guide in September 2018 proposing potential changes to the income tax residency rules for individuals in Australia. The Consultation Guide outlined proposed changes to the way in which residency is determined for Australian income tax purposes. The Board recommends that there should be a reform of the individual tax residency rules to increase the level of certainty when applied to an individual's circumstance. This is to determine an individual's (resident or non-resident) liability to pay tax in Australia.

AustCham Hong Kong therefore supports the Board's proposals in simplifying the individual income tax residency rules. A definitive approach is needed in order to foster consistency and equality when determining tax residency. We understand that the Board is proposing a two-step approach in an effort to clarify the threshold for determining tax residency.

We recommend that the residency tests being considered by the Board should operate as a straight forward bright-line test, supplemented by a 'streamlined' secondary test based on the individual's economic ties to Australia.

#### **Primary test**

The first step proposed is a bright-line test which sets the threshold at 183 days. An individual who spends less than 183 days in Australia would not be considered to be an Australian tax resident. However, if the individual spends more than 183 days in Australia, the individual would only be a resident if s/he also satisfies the four limbs in the secondary test which looks at the individual's economic ties to Australia.

AustCham Hong Kong supports the bright-line test as it presents a level of certainty in its application in determining an individual's residency provided that it is supplemented by the secondary test. We recommend that the Board's bright-line test applies the 183 day test on a 12-month calendar year rather than on a rolling 12-month period which would add a level of complexity for taxpayers to assess whether the 183 day threshold has been met.

### **Secondary test**

The Board's secondary test determines residency based on a factors test which is based on the individual's facts and circumstances. The factors considered include an assessment of an individual's immigration status, time spent in Australia, family ties and Australian accommodation and economic ties. We support the application of a facts and circumstances test if the individual spends more than 183 days in Australia but may not be a resident for Australian individual tax purposes.

We recommend that the key factor in assessing a taxpayer's economic ties should include factors such as the taxpayer's principal place of employment or fixed place of business. Other factors such as maintaining bank accounts or an ABN in Australia including maintaining a directorship of an Australian company should be disregarded when assessing an individual's economic ties.

The residence outcome of an individual should therefore be determined as a result of the bright-line days test and the secondary test based on economic ties to Australia. We also recommend that the secondary test should require an analysis of the individual's ties to Australia on an absolute basis and should not compare to the individual's ties with any other country.

### **Nowhere phenomenon**

We do not believe there is a need for an anti-avoidance rule to address residency manipulation and integrity concerns of individuals being a 'resident of nowhere'. In particular, where an individual has satisfied the requirements to cease Australian tax residency under both the primary and secondary tests, it should meet the Australian concept of residence.

We believe it is vital to create certainty for Australian citizens who leave Australia. We hope this reform will create certainty for those Australians who depart Australia to live or work overseas. A bright-line 183 day count is a clear test to separate Australian tax residents and Australians working and residing outside Australia. We believe that if the 183-day test is not satisfied then the secondary test should be applied to determine an individual's tax residency.



We view the Board's proposed changes as being a step forward in modernising the Australian tax system. These proposed changes support Australians which are employed overseas and provides certainty regarding their tax residency status. Therefore, a definitive and clear approach to determining Australian residency through the addition of a specific bright line test and a secondary test is a welcomed reform by AustCham.

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We are grateful for the opportunity to comment on this Consultation Guide and would be pleased to discuss our comments in further detail.

Yours sincerely,

Jacinta Reddan  
Chief Executive  
The Australian Chamber of Commerce Hong Kong