International Tax Issues

Question 1
I have a NZ partner who owns 30% of my Australian based business.

Each quarter he receives a 30% dividend, in line with his ownership.

Is there some way he can receive the dividend without incurring tax charges both here (Franking credits) and in NZ (personal tax)?

Answer
Double tax treaties exist between Australia and New Zealand. This aims to prevent a shareholder being taxed twice.

The distinction here is that the individual will not pay tax in Australia on fully franked dividends. It acknowledges that the company has paid tax at 30%.

There may be opportunities under the Trans-Tasman imputation credit account (ICA). An Australian company who distributes profits to New Zealand shareholders may elect to maintain a New Zealand ICA. If it does this it must observe the same imputation rules as a New Zealand company and it must file an annual imputation return to the NZ Inland Revenue Department.

Question 2
I have a query that I would appreciate some help on. A band from New Zealand has approached us. They’re about to go on tour here in Australia and they have asked if they need to register for an ABN? I guess they would be a partnership of sorts, but would they need to register for an ABN while touring and charging venues for their performances? If so, I suppose they would register as a foreign entity? Furthermore, would they need to do a tax return in Australia and subsequently apply for tax file numbers? I suppose that any tax they pay in Australia would be credited to them when submitting their tax return back home in New Zealand? This has come up because venues are asking for tax invoices from them.

Answer
The Foreign Resident Withholding arrangement which applies to both individuals and non-individual entities was introduced on 1 July 2004 and is part of the Pay As You Go withholding system.

Australian payers are required to withhold an amount to cover expected income tax liabilities on payments made to foreign residents being paid for providing entertainment.
Generally, under Australia’s international tax treaties, income derived by foreign resident entertainers is taxed in Australia. Therefore, the entertainer will need to apply online for a TFN and ABN and is required to lodge an income tax return. For a foreign entertainer to apply online for a TFN and ABN, a passport number is required to prove their identity.

The Australian payer is required to supply a foreign resident with a Payment Summary. The foreign resident entertainer will then need to report these amounts by lodging an Australian Income Tax Return with the amounts withheld claimed as a credit against the tax assessed. A Notice of Tax Assessment will be issued after the lodgement of the tax return. The Notice of Assessment will be proof of tax paid in Australia and a credit for the tax can be claimed in the foreign resident’s home jurisdiction.

If the foreign resident expects to incur tax deductible expenses which will reduce their taxable income a Foreign Resident Withholding (FRW) application may be lodged, prior to lodging an income tax return. The reason for this type of variation is ‘tax deductible expenses’. A Tax File Number and Australian Business Number is required when applying for this type of variation. A foreign resident’s actual tax liability is determined following the lodgement of their tax return and not only by the lodgement of a FRW application.

Foreign entertainers from the United States are exempt from paying Australian tax where gross receipts do not exceed US$10,000.00 for the tax able year. A US resident entertainer under these circumstances may apply for a FRW variation based on ‘tax treaty applies’. A TFN and ABN is not required when applying for this type of variation. Proof of identity of the foreign resident is however required. Also, lodgement of an income tax return will not be required.

A fact sheet on ‘Foreign resident PAYG withholding’ can be downloaded from www.ato.gov.au

**Question 3**

**As a resident tax payer (company or individual) can I get a tax refund on foreign imputation credits (not withholding tax) on dividends? The foreign country is Mexico.**

**Answer**

**Company**

The Company will get a tax credit but is unable to pass on the credit through its franking account. This may eventually result in a portion of a future dividend paid by the Australian resident to shareholders being unfranked.

**Individual**

The individual can get a foreign tax credit in the calculation of their tax liability but **NOT a tax refund**.

**Question 4**

**We have a client who is a non-resident of Australia, however is a resident of Monaco and has been for many years.**

She earns interest in Australia from a Term Deposit, lodges a Tax Return here as a non-resident and is assessed at 10% of her interest income. She has not lodged a return in Monaco.
She will soon receive Income in Monaco, paid as a fee for secretarial services, no tax is deducted.

**Does she need to include the Monaco income in her Australian tax return and does she need to declare Australian income in Monaco?**

**Answer**
A non-resident of Australia is only assessable on Australian source income. The interest income subject to 10% withholding tax should not be included in her Australian tax return.

As a general observation, Monaco levies no income tax on individuals.

**Question 5**
**Can you please provide details of how a tax equalisation scheme is set-up and managed by a Company on behalf of an individual who is on secondment from Malaysia and who shall only pay a notional personal income tax amount whilst working in our Australian Company as part of his agreed contract? I appreciate your comments and help on this matter.**

**Answer**
Under tax protection, an expatriate employee is protected from higher tax costs but in the event the actual taxes imposed are lower, he retains the benefit. Therefore, an employee who is assigned from Australia to Malaysia is likely to have a lower tax liability than he would have had if he remained in Australia. He would therefore pay his own Malaysian and Australian tax liability (if any) and retain the tax savings.

Conversely, a Malaysian employee assigned to Australia is likely to suffer a higher tax liability due to the assignment. Under tax protection, he is liable to fund these taxes only to the extent of his hypothetical Malaysian tax and the Company will be responsible for the excess.

As illustrated from the above two examples, an arbitrage opportunity exists for the expatriate employee to seek opportunities in lower-tax jurisdictions and avoid those opportunities where he does not personally benefit from tax savings. This can reduce the mobility of employees as they wait for the ‘right’ opportunity.

The principle behind a tax equalization programme is that the employee should be ‘no better or no worse off’ as a result of taxes while on a foreign assignment. In other words, the employer guarantees that the employee’s tax burden will be neither greater nor lesser if the employee had remained in the home country. If the tax burden is higher in the host country, the Company reimburses the excess. However, if total tax costs are lower the tax are lower, the tax savings will pass to the Company, not to the employee.

**Question 6**
**We have an outlet in Canada and the majority of our business is located in Australia. We sent employees to Canada on a temporary assignment a few years ago with the intention of them coming home after 6 months. However, due to circumstances the employees remain in Canada to this day.**
I have read the Canadian Double Tax Agreement and I believe the individual employees are considered residents of Canada for tax purposes (being there for the entire year and carrying out employment duties there). There is plenty of literature about residency; however it is not our responsibility to determine individual tax residency status for employees.

**What are our duties as an employer with regard to withholding tax from employee wages? If the employee starts overseas do we withhold in Canada immediately, after 6 months etc?**

**Do we withhold at all? Please note that we pay a contractor in Canada to pay our Canadian nationals employed there.**

**Answer**

Whether or not each individual is a resident of Australia will be determined by their unique circumstances.

If they are still being paid by an Australian based Company and they maintain a home and family in Australia making regular visits then arguably they are still Australian Tax Residents.

I can easily accept the employees may qualify as Canadian Tax Residents. In the event that a taxpayer could be a tax resident of Canada and Australia, the Double Tax Agreement stipulates that the taxpayer will be a resident of the country where their “dominant economic interests’ are”.

Circumstances may vary for example:

1) married man makes regular visits to family in Australia where his dominant economic interests lie.

2) Single man likes life in Canada, has met a Canadian lady and bought a property there. Does not own assets in Australia and has not been home during his stay.

You should seek specialist advice on this one.

**Question 7**

If I move to Singapore with my family including notifying the ATO that I am now a non-resident in Australia, commence my private limited company in Singapore but then continue to work as a subcontractor here in Queensland (invoicing the oil field services co. for my work), am I liable to pay tax here in Australia? I know it would be tax free for my business in Singapore because it is offshore income but I am not sure about Australian tax liability.

**Answer**

Refer to the non-resident tax scales on page 5 of our annual publication:

<table>
<thead>
<tr>
<th>Income Range</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – $80,000</td>
<td>32.5%</td>
</tr>
<tr>
<td>$80,000 – $180,000</td>
<td>26,000 plus 37% of excess over $80,000</td>
</tr>
<tr>
<td>$180,000</td>
<td>63,000 plus 45% of excess over $180,000</td>
</tr>
</tbody>
</table>

As these rates of tax are relatively high, as a non-resident you will be severely taxed.
Question 8
Please advise tax implications for an Australian employee who is sent to Singapore to work for an extended period of time, say 1-2 years.

Answer
If employed by an Australian company and the employee maintains a permanent residence in Australia making regular visits to that home, then they will be in an Australian resident.

Question 9
If you have a non-resident director of an Australian Company being paid overseas for his duties, for example “promoting the Australian subsidiary operations”, do you still need to withhold PAYGW tax from the Directors Fees Paid to the non-resident Director?

Answer
Where an Australian company engages a foreign resident as an employee PAYG must be withheld from payments made. The marginal rates to be applied will be at non-resident rates.

Question 10
Australian Company has a branch in New Zealand. New Zealand has not produced income, so the Australian Company paid all expenses. Are these expenses deductible in the Australian Company?

Answer
As this is a branch only and the Australian Company incurred the expenses in its own capacity, the expenses are deductible in the Australian Company.

These expenses might be deductible subject to the transfer pricing provision. Division 13 of ITAA36 requires that the supply or acquisition of goods or services between related parties under an international agreement must be for an arm’s length consideration. The commissioner is able to adjust the pricing on a cross-border related party transaction by reference to the conditions which would have existed between independent parties under comparable circumstances.

Question 11
We have sold goods via a third party to Philippines. We have now raised a commission invoice to that third party. They have advised that they will be withholding 30% tax as we are a non-resident foreign corporation. As we have a DTR with Philippines is this correct?

Answer
Foreign corporations are taxed only on their Philippine source income. Corporate income is taxed when earned by the corporation and again when profits are received by shareholders. Inter-
corporate dividends between domestic corporations or received from a domestic corporation by a resident foreign corporation are not subject to tax depending on the business activity involved, the starting point for Philippine taxation is whether a foreign business has Philippine source income.

The Philippines also has several double taxation treaties with different countries, which relinquish taxing rights over business profits to the state of residence. If no permanent establishment (“PE”) exists or should reduce the applicable rates of tax imposed on Philippine source income.

Generally, active business income earned by individuals is subject to graduated rates of tax between 5-32% in the Philippines. The active business income of corporations on the other hand is subject to a flat 30% tax rate. Passive income such as interest, royalties, and dividends are subject to final withholding taxes which are withheld at source. The applicable rates of withholding tax vary depending on the type of income involved and the taxpayer in the Philippines.

A foreign owned company considered “doing business” in the Philippines must be licensed by the Securities and Exchange Commission (SEC) or will be considered a non-resident foreign corporation and subject to tax a final tax of 32% of its gross (rather than net) income.

And so, we refer you to Article 7(1) of our Double Tax Treaty with the Philippines. Inform the other party of this treaty and also that you are not “doing business” in the Philippines and that this is a “one off” transaction.

If this does not satisfy them you may have to register with the SEC there (see above).

**Question 12**

**Please advise what the tax implications are for a pension payment received from another country?**

**Answer**

The gross pension is generally assessable but there are some exceptions. Generally a credit is allowed for any tax paid on the pension in the other country.

**Question 13**

I had a new client today with the following situation:

Her husband and her left Australia in 2004 for him to work overseas on a permanent basis, they set up a household and were away from Australia until 2012/13. Given their circumstances they were considered to be Non-Residents and under the belief that this status would continue she lodged a final tax return in the 2004-2005 year. He left Australia earlier and the last tax return that he has lodged was in 1999-2000. With only minimal interest income they were under the impression that they were not required to lodge tax returns for each year from 2000 for him and 2005 for her.

On the ATO portal her lodgement status shows a return was not necessary for each year but he has showing returns not lodged for each year as he did not notify the ATO of a final return or that he was not required to lodge. They returned to Australia in July 2012 and remained here the entire year so their status reverted back to a resident. He has just...
taken up a six month contract in China which he may extend once it is completed in August 2014.

At this stage she has remained in Australia and their plans are undetermined. In 2007 they met with a Financial Planner here in Australia from ABN Morgans who set them up in a Managed Portfolio with an associated bank account from Macquarie. They have proceeded to purchase shares and within the portfolio have received interest income, unfranked dividends, franked dividends, franking credits, other trust income and Capital Gains and losses in each of the 2006/07 through to 2012/13 year. Although they notified the planner that they were non-residents in those years no tax appears to have been withheld from their Interest and unfranked dividend income. In addition she received Interest from an ANZ account with again no tax amount being withheld despite them notifying the bank. They are able to withdraw funds from the Macquarie Bank Account as required and withdrew a sum of $20,000 at one stage for personal use.

My question is are they required to lodge tax returns for each of the 2006/07 through to 2011/2012 years given they were classed as non-residents and received interest income, franked and unfranked dividends where no tax was withheld and had capital gains and losses on shares that they purchased and sold over this time?

As residents in 2012/13 we will be lodging tax returns for them both. From my quick calculation given the non-resident status they are likely to have between $500 and $1,200 tax to pay each year on their income earned.

Answer
As your clients as non-residents earned assessable income throughout 2006/07 to 2011/12 and have a tax liability they are required to lodge taxation returns in the relevant years. The fact that the financial planner did not arrange the appropriate withholding taxes means they have a tax liability and must lodge tax returns.

The withholding taxes are non-franked dividends (15%) and interest (10%). No withholding tax is necessary on the dividends.

Question 14
What options does an Australian resident company have to pay a special dividend to a non-resident company to minimise withholding taxes?

Answer
The best way would be to pay a fully franked dividend – then there would be no withholding tax. Note that a dividend must be paid at the same rate to all shareholders in the same class e.g. “ordinary” shareholders.

Question 15
A New Zealand citizen has income from bank interest in Australia. The bank deducts tax at a higher rate. Can we get a TFN for New Zealand citizen to avoid tax deduction at source?

Answer
You need to establish that the NZ citizen is definitely a non-resident of Australia for income tax. In this instance withholding tax of 10% would be paid on the interest and the gross income would be taxable in NZ with a credit allowed for the Australian tax paid.

In the event the NZ citizen is a tax resident of Australia, he needs to supply his tax file number to avoid withholding tax of 49%.