Tax and Investment Tips for Aussie Expats Living and Working in the UK

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Contents

1

About the authors

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Geoff is the head of the Majenda group of companies which provide tax and related services to Australian expatriates who are based overseas or are in the process of repatriating to Australia. Having developed his practice initially in the Middle East and Asia, he is now a regular visitor to the United Kingdom.

Geoff gained his Master of International Taxation from the University of Sydney in September 2020 and has since qualified as both a Chartered Tax Advisor (CTA) and a Fellow of CPA Australia (FCPA). This enables him to provide multi-jurisdictional tax advice and address the myriad issues that expats have to deal with. He also has an Executive MBA from the Australian Graduate School of Management (AGSM).

In his spare time Geoff is a keen golfer and continues to run the world-famous City to Surf event in Sydney each year in order to keep fit.

Dan Gorton

Dan is a UK financial adviser with over 15 years' experience advising UK based clients on their finances. Dan is the Principal of Gorton Wealth Management, which is part of the St James's Place organisation.

Dan joined SJP in 2016 after working as a Private Banker and Team Leader at Barclays Wealth and UBS Wealth Management. Prior to becoming a financial adviser, Dan had previous careers in the exhibition and event industry and as an officer in the British Army. Dan is a Chartered Fellow of the CISI and a Chartered Wealth Manager and his expertise covers the full range of personal financial needs, including retirement planning, inheritance tax planning, business exits and investment management.

Joanne Lamberth

Joanne is Joint-Managing Director and Head of Tax for Fairway Tax and Accounting group, we well as managing the Sydney office of Fairway. Training at PricewaterhouseCoopers and working in Grant Thornton Cambridge's high tech tax specialist team before joining websters in 2020, Joanne has over 25 years of experience in tax. Qualified in both UK and Australian tax, Joanne can effectively advise clients moving from UK to Australia and vice versa.

As a migrant herself, Joanne finds it rewarding to be able to apply her first-hand experience of an international move to identifying and resolving potential problems for her clients, helping to make their transition trouble-free. With the constantly changing tax-frameworks to work within, no day is without a new challenge.

Having been with websters for more than 20 years, Joanne is still thrilled to be working as part of a multi-national team, full of experienced professionals across the fields of accountancy, tax, legal and financial advice, all of whom are exceptional in their devotion to offering exemplary service to their clients, through really understanding their needs and what drives them.

Joanne's UK qualifications include a BSc Hons (Nottingham University); ACA and a member of ICAEW, CTA and a member of CIOT. She also holds a Graduate Certificate of Professional Accounting (CSU), Master of International Tax (UNSW) and is a Registered Australian Tax Agent.   Outside of work Joanne enjoys scuba diving, kayaking and swimming, in the warm NSW climate.

Melanie Cunliffe

Melanie is the Founder of Indigo Finance, which offers strategic and holistic lending advice. In 2005, Melanie made the move to Australia from the UK and it was in Australia that she was introduced to the Mortgage industry. She explored many areas of the business and worked in various capacities before recognising a niche in personalising the right lending to a client's individual needs, rather than just the latest product or industry trend. Melanie created Indigo Finance to offer this hands-on, tailored and holistic approach to mortgage and finance broking.

Today she focuses on creating exceptional experiences in the mortgage world. She specialises in assisting people with their lending and banking strategies – from buying a home or seeking finance for an investment to restructuring and refinancing. Rather than focus on delivering a single outcome, she has turned her expertise into an exceptional longer-term experience for her clients.

Her mission is to make financing a simple and stress-free journey by taking her clients through a unique five-step process to ensure success.

2

Introduction

2.1 Who should read this book?

This book should be read by Australians who are intending to live and work in the UK or who are already living and working in the UK.

In moving to the UK, Australians need to consider their tax residence position – whether they will remain tax resident of Australia or become tax resident of the UK – and the tax implications of such a significant move.

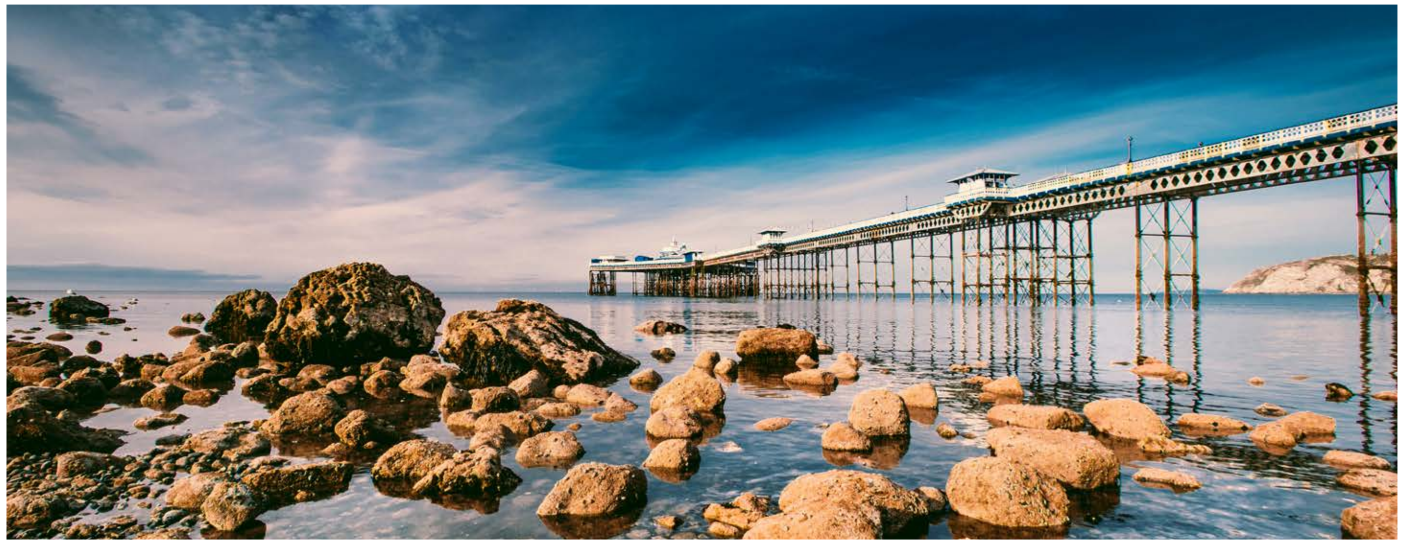
This book assumes that UK-residents will be taxed on the "arising basis" of taxation in the UK. For some UK-residents the "remittance basis" in relation to foreign income may be both available and beneficial, this book does not deal with assessing the correct basis of taxation. We would recommend that you seek advice specific to your situation, if you think that you may be eligible for the remittance basis.

In addition, the book does not consider the impact of Scottish-residence, and the resulting impact of Scottish income tax rates.

Australians need to be aware of the tax implications of breaking tax residence and what the tax implications are in Australia and / or the UK if they sell investments while they are overseas.

Australians also need to be aware of the tax implications of the myriad investment options they will have available to them when they are living and working in the UK. Some investments may be tax effective while they are in the UK tax jurisdiction but not as tax effective when they return to Australia.

When it is time to repatriate, Australians expats need to consider the tax and financial implications of such a move. There are certainly traps for the unwary or uneducated and this book will address some of those key issues.



2.2 What this book does not cover

This book is primarily focussed on the tax and financial issues that face Australian expats. We have not addressed the needs of other foreign nationals who are intending to move to the UK or are based in the UK.

The book does not provide any specific tax advice. If you would like to know how the principles outlined in this book apply to your situation, you should seek professional tax advice either in Australia or in the UK.

The book also does not recommend any financial products or provide any personal financial advice. If you need financial advice on either Australian or UK investments you should speak to an adviser who is licensed in the jurisdiction where your investments are located.

2.3 Disclaimer

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We recommend that you need to seek professional advice to determine if the information is appropriate for your personal circumstances and objectives. Also, you should also seek advice regarding any changes to laws which may affect your situation.

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3

Leaving Australia

3.1 The expat journey begins

You have accepted a position to work in the United Kingdom and you are now in the process of packing up and moving overseas. If this is the first time you have moved overseas, there is a lot to organise and think about – packing up your goods, chattels and family, exiting your home situation in Australia (selling or renting out your existing home or ending a lease on rental accommodation), getting yourself on a plane and then finding somewhere to live at the other end.

The initial focus is on 'getting there and getting settled' but after a while you have saved some money and you start to think about where you might invest.

The tax, savings and pension systems are quite different – and you don't know quite where to start. What are the best options? What are the options?!

The scope of this book is to give you a brief introduction to the tax residence rules, which you will have to grapple with early on in your move to the UK. After that, you might want to know the tax implications of choosing different types of investments.

This book is designed more as a 'handbook' rather than as an 'easy read'. Because the tax rules are complex and it is important for us to be precise, the material may seem technical and complex at times. If you are uncertain about any of the material in this book, one of the authors is likely to be able to assist.

If you continue to own property in Australia which is rented out, you will be required to continue to lodge Australian income tax returns each year. If you earn income in the UK, you will be required to lodge UK income tax returns each year (with a different year end to Australia).
If you want to invest in ISAs and portfolio bonds in the UK, then you would be wise to seek advice from a licenced UK financial adviser. If you have an Australian financial adviser who looks after your Australian superannuation money, then you should notify them that you are overseas so they are 'in the loop' in terms of how your needs and objectives might have changed since moving overseas.

Based on the above, you could need to engage with four different professionals in the areas of tax and financial advice. In some cases, you may be able to find an Australian tax professional who also understand the UK tax rules, but usually tax advisers are specialised in the tax rules of only one tax jurisdiction.

The same is true for financial advice – planners are usually licensed only in one jurisdiction which means you may need to seek assistance from multiple advisers to be able to develop a financial road map that works for you.

Often investment products will be specifically designed to meet local tax rules and may not enjoy the same concessions when you move back to Australia. You therefore need to identify the types of investments that are right for you while you are overseas and then be aware of what the impact might be if you retain those investments when you return to Australia.

In most tax jurisdictions, property assets are subject to tax in the jurisdiction irrespective of whether the owner is resident or not. Therefore, if you buy a UK property while you are in the UK, you will need to report income in your UK tax return while you are in the UK but then also in your Australian tax return when you return to Australia.

Given that the tax rules don't apply in the same way, you have to be mindful of the differences when you make the move back to Australia.

If you retain an Australian property when you move to the UK, you will be declaring income and expenses in both your Australian and UK tax returns – with domestic tax rules applying in each jurisdiction.

It all sounds complicated … and it is! This is why the authors have developed this book – to give you the reader a quick 'heads up' on the rules so you can then decide who to talk to in order to obtain additional assistance.

As you can imagine, tax and investment rules are changing all the time, so you need to talk to professionals who keep up with the changes.

It all might seem a bit daunting, but if you 'know what you don't know' then at least you can put yourself in a position to find out. If you don't know what you don't know, you could put yourself at a significant disadvantage and the lack of knowledge could ultimately cost you money.

So, we have started at the beginning – with the tax residence rules which preferably you should know about even before you leave Australia. Once you understand how these rules apply to your situation, you can then think about saving and investment options and how you might use your overseas work experience to your greatest advantage.

3.2 Where am I tax resident?

Both the United Kingdom and Australia have their own domestic tax rules regarding tax residency. If you are going to work in the UK for a short time such as a few weeks, you are unlikely to trigger tax residency in the UK and will likely remain tax resident of Australia if that is where you have been based prior to spending time in the UK.

However, the longer you remain based in the UK, the more likely you will be tax resident of the UK. For a period of time it is possible that you will be tax resident of both the UK and Australia – i.e. after the domestic tax rules are applied to your situation. If this is the case, it will be necessary for you to apply the 'tie breaker' rules which are contained in the UK / Australia Double Tax Treaty. In most cases, 'treaties trump domestic tax law', so you need to take account of these rules if you think they apply to you.

3.3 Valuations on Australian assets

If you do become non-resident of Australia for tax purposes, you will only be taxable in Australia on "Taxable Australian Property" which includes:

- a direct interest in real property situated in Australia;
- a mining, quarrying or prospecting right to minerals, petroleum or quarry materials situated in Australia;
- a capital gains tax (CGT) asset that you have used at any time in carrying on a business through a permanent establishment in Australia;
- an indirect interest in Australian real property – you and your associates hold 10% or more of an entity, including a foreign entity, and the value of your interest is principally attributable to Australian real property.

Many Australian expats choose to retain property assets held in Australia when they go overseas. Because non-residents are not entitled to the 50% Capital Gains Tax discount in respect of real property they own in Australia, it is essential to obtain a valuation of direct property assets at the time of ceasing to be tax resident of Australia, so you can determine the extent to which the 50% discount applies.

You actually need valuations when exiting and returning to Australia so that the period where the 50% discount does not apply can be identified.

3.4 Main Residence exemption

Australians are entitled to regard one of their properties as their 'Main Residence' and this property will not be subject to Australian capital gains tax during the period in which the taxpayer lives in the property.

There is a further 6 year 'absence rule' which says that the Main Residence Exemption will be extended for a further 6 years from the date the taxpayer moves out of the property providing they do not establish another Main Residence elsewhere in the world.

However, due to a change in the tax law on 12 December 2019, if you are a foreign resident for tax purposes at the time you dispose of a residential property that previously was your Main Residence, you will not qualify for the exemption from CGT unless you satisfy the 'life events' test.

You satisfy the life events test if, at the time of the disposal of your residential property in Australia, you were a foreign resident for tax purposes for a continuous period of six years or less and, during that time, one of the following must have also occurred:

- you, your spouse, or your child under 18, had a terminal medical condition;
- your spouse, or your child under 18, died;
- the CGT event involved the distribution of assets between you and your spouse as a result of your divorce, separation or similar maintenance agreements.

The change in the law applies to foreign residents for tax purposes as follows:

For property held prior to 7:30pm (AEST) on 9 May 2017

- you can only claim the CGT main residence exemption for disposals that happen up until 30 June 2020 and only if you meet the other requirements for the exemption;
- disposals that happen from 1 July 2020 are no longer entitled to the CGT main residence exemption unless you satisfy the life events test.

For property acquired at or after 7:30pm (AEST) 9 May 2017

- the CGT main residence exemption no longer applies to disposals from that date unless you satisfy the life events test.

The potential for 'cliff effects' as a result of this new measure are vast. The change means that you could have a pre-existing Main Residence exemption entitlement that stretched back all the way into the 1980s that would be completely wiped out if you decide to dispose of your residential property while you are non-resident for tax purposes.

It should be noted that the relevant transaction date for tax purposes is the contract date, not the settlement date.

The new tax measure was designed to free up housing within the Australian housing market. Australians are now being forced to decide whether they sell their previous Main Residence before ceasing to be tax resident of Australia or preserving the entitlement by waiting until they return from overseas to sell their property – or simply not sell at all.

If you are thinking about selling a property to which the Main Residence exemption used to apply, you should seek tax advice as to the likely CGT liability you will face should you decide to sell.

3.5 Issues regarding Australian resident family trusts

Family trusts are a very common tax planning vehicle for Australians. Whilst these structures work well while you remain tax resident of Australia, traditional Australian family trusts, can be viewed as settlor-interested discretionary trusts under UK tax law. This can have significant impacts on the way that trust income and assets are taxed, often undermining the benefits of this structural planning for Australian tax purposes.

At the very least we would recommend reviewing your trust structures before moving to the UK. In some cases, it may be tax effective to wind up the trust before you leave Australia.

3.6 Issues regarding Self-Managed Superannuation Funds (SMSFs)

For a Self-Managed Superannuation Fund (SMSF) to be a 'complying superannuation fund', and thus entitled to concessional tax treatment under Australian law, the fund must be an 'Australian superannuation fund' as defined in Section 295-94 (2) of the Income Tax Assessment Act (1997).

There are three tests which need to be met in order for a fund to be considered an Australian superannuation fund. They are:

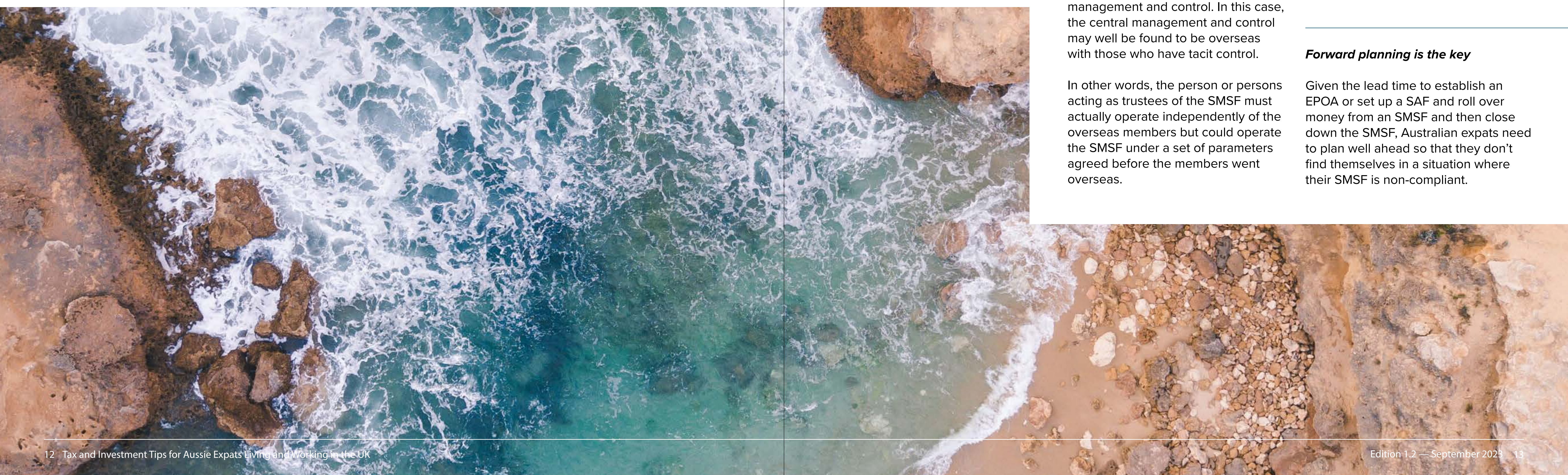
1. the fund was established in Australia, or any asset of the fund is situated in Australia at that time; and
2. the central management and control of the fund is ordinarily in Australia.
3. the fund meets the 'active member' test.

Whilst the trustees / members of an SMSF are resident of Australia for tax purposes, it is relatively straight forward for the above three tests to be satisfied. However, if one or a number of trustees / members are intending to go overseas, it is essential to revisit whether the SMSF will continue to satisfy all three of the above tests.

The consequences of an SMSF failing one or a number of residency tests can be an automatic non-complying status. If this sounds bad, it should. In broad terms, it would mean the entire amount of the SMSF's assets, less non-concessional contributions, are taxed at 45% in the year of non-compliance (47% during the past financial years when the temporary budget repair levy applied).

The result of this rather draconian measure is that the SMSF would be effectively stripped of the tax concessions it would have had in previous years when it was tax resident. For every later year of non-compliance, the income tax rate of the fund is 45%.

It is pretty easy to see that you could end up with $0 in your SMSF over a very short timeframe if your fund is allowed to become non-compliant. In the 2021 Federal Budget, the government announced that it intended to relax the residency rules for SMSFs and SAFs by extending the 'safe harbour' rules for the central management and control test from 2 to 5 years for SMSFs removing the 'active member' test for both fund types. The changes were intended to take effect from 1 July 2022, but so far, no legislation has been tabled in Parliament. It is likely these measures will not take effect until 1 July 2023 at the earliest.



What are the potential solutions to residency issues for an SMSF?

Option 1 – Close down the fund

Depending on how liquid the investments within the SMSF are and how long you are intending to be overseas, you may simply choose to sell all the investments with the SMSF, roll over the after-tax proceeds to a public offer or industry fund and then close down the SMSF.

This might not be a practical solution if the SMSF holds property assets with or without mortgages or there are other illiquid investments held within the fund, but it could be a feasible solution where the investments can be sold quickly.

Option 2 – Enduring Power of Attorney (EPOA)

Another solution would be to appoint for the trustees / members to grant an Enduring Power of Attorney (EPOA) in respect of a person who will act as their Legal Personal Representative while they are overseas. The resident LPR would effectively undertake the central management and control of the fund on behalf of the overseas members.

The ATO ruling SMSFR 2010 / 2, which was issued on 21 April 2010, covers this issue in detail.

Unfortunately, the matter doesn't end there. The decision of Bywater Investments Limited & Ors v. Commissioner of Taxation; Hua Wang Bank Berhad v. Commissioner of Taxation [2016] HCA 45; 2016 ATC 20-589 ('Bywater') and ATO comments in TR 2017/D2 indicate that mere figurehead directors will not be sufficient to establish central management and control. In this case, the central management and control may well be found to be overseas with those who have tacit control.

In other words, the person or persons acting as trustees of the SMSF must actually operate independently of the overseas members but could operate the SMSF under a set of parameters agreed before the members went overseas.

Option 3 – Small APRA Fund (SAF)

A Small APRA Fund (SAF) is a superannuation fund with less than five members that does not meet the criteria for an SMSF. The trustee of an SAF must be a corporate trustee approved by APRA. The trustee may receive remuneration for acting as trustee.

Whereas an SMSF is directed by the trustees who are also members of the fund, a SAF is directed by a corporate trustee appointed to fulfil that role. The corporate trustee will at all times be resident of Australia for tax purposes.

It is possible to convert an SMSF to a SAF, but there are costs involved. However, if neither of the above two options are feasible or desirable, then the SAF option might be attractive.

Forward planning is the key

Given the lead time to establish an EPOA or set up a SAF and roll over money from an SMSF and then close down the SMSF, Australian expats need to plan well ahead so that they don't find themselves in a situation where their SMSF is non-compliant.

3.7 Repayment of HELP debt

If you move overseas and your worldwide income is above the minimum repayment threshold, you still need to make repayments on your HELP debt.

Details of the minimum repayment threshold are shown here.

You must calculate your worldwide income for the income year and report it to the Australian Taxation Office (ATO) by 31 October each year. If you plan to move overseas for 183 days or more in any 12-month period, you must notify the ATO by completing an overseas travel notification through ATO online services.

If you want to find out how to link your myGov account to the ATO, visit this link.

4

Becoming tax resident of the UK

Where a residence-based tax system is in operation, residents of a country are taxed on their worldwide income (local and foreign), while non-residents are taxed only on their local income.

Both the UK and Australia operate residence-based tax systems and the amount of tax you pay in each country will depend on where you are tax resident and for how long you are tax resident. In applying the tax rules of Australia and the UK, it is quite possible that you could be tax resident of both countries for a period of time. If this occurs, then it is necessary to refer to the tie breaker rules that are included in the UK / Australia Double Tax Agreement (DTA).

The tie-breaker tests do not change your residence position in either country but determine how the articles of the DTA alter the domestic tax rules of each country to prevent double taxation.

Because you are dealing with tax rules for two different countries, which are not integrated in any way except through the application of the DTA, it may seem confusing. Many people struggle with interpreting the terminology of the DTA correctly, resulting in wrong conclusions being reached as to their tax position. This can be really costly in the long run. We would recommend seeking professional tax advice from someone who is experienced in international tax matters and understands the tax rules of both the UK and Australia.

In the sections below we have outlined the tax rules of the UK and of Australia and have also described how the tie breaker rules may be applied. Our base assumption here is that you are an Australian intending to move to the UK or have moved to the UK recently – so you are in transition and trying to figure out how the tax rules of each country apply to you.

The rules will work differently when you are returning to Australia – so don't assume that what works inbound into the UK will work in exactly the opposite way when you are leaving the UK and returning to Australia.

The Australian Treasury Department currently has a consultation in the field on the modernisation of individual tax residence rules, closing on 22 September 2023. It is anticipated that following the closure of the consultation and evaluation of responses new draft legislation may be introduced to Parliament to update the Australian tax residency rules.

4.1 UK's tax residence rules

The Statutory Residence Test (SRT) was introduced by the Her Majesty's Revenue and Customs (HMRC) on 6 April 2013 to determine the tax residence status of individuals with connections to the UK. In essence, the SRT codifies the rules around tax residence in a much more significant way than we see in Australia at the present time. However, in mapping out a set of rules that cover almost every conceivable situation, the SRT is actually more complex to navigate and understand.

4.1.1 First automatic UK test

The first automatic UK test is passed if you spend 183 days or more in the UK in the tax year. If you haven't dealt with UK tax matters before, you may not be aware that the UK tax year is actually from 6 April of one year to 5 April of the next year.

In order to apply the 183-day rule, you simply need to add up the number of days you spent physically in the UK during the UK tax year and, if the number is more than 183 days, then you will be tax resident of the UK for that tax year.

The HMRC has set out criteria for determining whether you spent "a day" in the UK. Normally you are considered to have spent a day in the UK if you were in the UK at midnight on any given day.

However, this is subject to three other factors: the deeming rule, transit days and time spent in the UK due to exceptional circumstances.

Firstly, the deeming rule which takes into consideration if you have:

- been UK resident in one or more previous tax years
- three UK ties for the tax year or
- been present in the UK for 30+ days without being present at the end of each day.

The deeming rule will automatically change the number of days you spent in the UK, even if you were not present at the end of the day. To get a correct calculation of the number of days you have spent in the UK, and whether the deeming rule applies to you, you should seek expert advice.

Secondly, transit days typically are not considered full days under the SRT. A transit day is a day where you entered the UK from another country en-route to another country, which is not uncommon for expats working in different parts of Europe and having to transit through a London airport en-route to another country.

To be considered a transit day you must not have conducted any other business during your time in the UK and you should leave the day after you arrive. Any other business could include conducting a meeting or meeting up with friends. However simply having breakfast or dinner would be considered as part of your transit.

You should seek clarification about your activities during your time in the UK as they could have an impact on your total days spent in the UK – i.e. bereavement days may be excluded.

Finally, if you are in the UK due to exceptional circumstances, such as a bereavement, you may be granted special conditions with regards to the total number of days you have spent in the UK.

The number of days spent in the UK may also be affected by the amount of time and type of work you have conducted in the UK during your stay. This includes factors such as your location, type of work and whether the work is voluntary.

As with all other elements you should always seek advice if you are unsure about how you work may affect the number of days spent in the UK.

4.1.2 Automatic overseas residence tests

You would normally be considered a non-UK resident if you meet any one of the following elements of the Automatic Overseas Test:

1. You were considered as a UK resident in one or more of the previous three tax years, but you spend fewer than 16 days in the UK in the current tax year.
2. You spend fewer than 46 days in the UK in the tax year AND you were non-UK resident in the preceding three tax years.
3. You work full time outside the UK and spend fewer than 91 days in the UK and you work fewer than 31 days in the UK for three hours or less in any given day.

In terms of calculating the amount of time working in/out of the UK, you should always seek advice. There are a number of intricate calculations and considerations which will be taken into consideration which will affect the amount of time you have officially spent in the UK.

Clearly the Automatic Overseas Residence Tests are not going to be relevant if you are inbound to the UK.

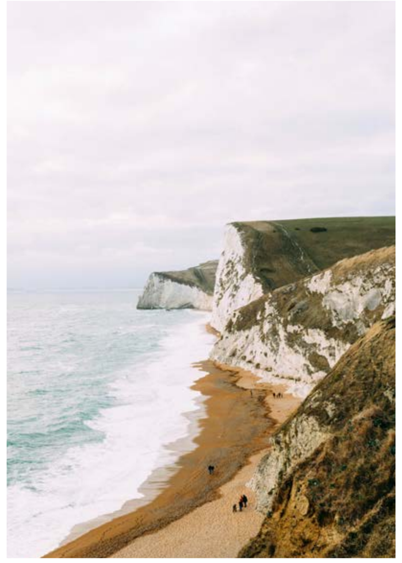
4.1.3 Other Automatic UK residence tests

If the Automatic Overseas Residence tests are inconclusive, the next step is to consider the remaining Automatic UK Residence tests.

If you meet any of these requirements you will be considered a UK Resident. Once again, there are intricate calculations involved, so you should always seek advice before making any decisions about your residence status.

The second residence test is if you have a home in the UK and you spend a period of 91 consecutive days there, including 30 inside the tax year. You will also be considered a UK resident if you have no home overseas or you spend no more than the permitted amount of time there.

Thirdly, if you work in the UK for 365 days with no significant break. However, there are a number of calculations and requirements to fulfil, so please seek advice if you are concerned.



4.1.4 Sufficient ties test

If, after reviewing the previous tests, you are still unsure about your residence status, you need to consider the sufficient ties test.

The Sufficient Ties Test essentially looks at whether you have ties which would deem you to be a resident in the UK. Ties would include:

- Family members in the UK (for example a spouse or children).
- Accommodation, that is a place to stay which is available to you for a continuous period of 91 days (thus excluding hotels). However, when staying with friends and family as little as 16 days can give you an Accommodation Tie.
- 40 working days of 3+ hours per day or more in the UK.
- More than 90 days spent in the UK in at least one of the previous two tax years.
- You have spent more days in the UK than in any other country during the tax year.

Understanding how many ties which are required to determine your residence status will depend on the number of days you spent in the UK during the tax year.

The following table simplifies this as follows:

Days spend in the UK in the tax year under consideration	UK ties needed to be considered UK resident
16-45 days	At least four
46-90 days	At least three
91-120 days	At least two
Over 120 days	At least one

4.1.5 SRT and split year treatment

If you have left the UK or have arrived in the UK during the tax year, providing you meet specific criteria relating to your particular situation, you may be able to apply split year treatment to minimise your tax liability. For more information about split year treatment, including examples, please read our guide to split year treatment.

4.2 Australia's tax residence rules

In order to determine where you are tax resident, as well as considering the UK tax rules, you need to review Australia's tax residence rules, which are outlined at this link.

A Government consultation is underway on plans to modernise Australia's residence tests, due to close on 22 September 2023.

Following closure of the consultation and evaluation of the responses we expect to see draft legislation introduced for debate in Parliament for new residence tests for Australia.

We will be providing updates on the Aussie Expat Guide web site when draft legislation is tabled in Parliament.

4.3 Treaty 'tie breaker' rules

As mentioned above, if you are tax resident of both the UK and Australia under the domestic tax law of each country, it is necessary to break the deadlock. This is achieved through the operation of Article 4 of the UK / Australia Double Tax Convention (dated 21 August 2003) which reads as follows:

Residence

1. For the purposes of this Convention, a person is a resident of a Contracting State:

   (a) in the case of the United Kingdom, if the person is a resident of the United Kingdom for the purposes of United Kingdom tax; and

   (b) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax.

   A Contracting State or a political subdivision or local authority of that State is also a resident of that State for the purposes of this Convention.

2. A person is not a resident of a Contracting State for the purposes of this Convention if that person is liable to tax in that State in respect only of income or gains from sources in that State.

3. The status of an individual who, by reason of the preceding provisions of this Article is a resident of both Contracting States, shall be determined as follows:

   (a) that individual shall be deemed to be a resident only of the Contracting State in which a permanent home is available to that individual; but if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

   (b) if the Contracting State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State of which that individual is a national;

   (c) if the individual is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

If we take paragraph 3 (a), if you have a permanent home in the UK and you don't have a permanent home in Australia, then you will be deemed to be tax resident of the UK.

What if you have permanent homes available to you in both the UK and Australia? You then have to continue to the 'personal and economic relations' rule and so on down the list into paragraph 3 (b) and then, finally, potentially paragraph 3 (c) where you apply to either the HMRC or the Australian Taxation Office (ATO) to make a determination.

It is possible that a dual citizen entertainer with permanent homes and personal / economic ties in both the UK and Australia could find it difficult to apply the tie breaker rules to their situation, and thus end up at needing to go off to either the HMRC or the ATO for adjudication – but for most expats this will not be necessary.

Is there a benefit to being tax resident of one country over another? The answer to this question is that it really depends on your personal situation and it is impossible to generalise. You can see from reading this book that the tax rules are complex and you really need to consider how the rules apply to you before making major personal and financial decisions that have tax implications.

4.4 UK resident tax rates

As is the case in Australia, UK tax is levied based on a series of tax bands and whereby a "Personal Allowance" operates in a similar way to our "Tax-free Threshold".

The UK rates for the year 6 April 2023 to 5 April 2024 are as follows:

Band	Taxable income	Tax rate
Personal Allowance	Up to £12,570 (lost if earnings over £100,000 at a rate of £1 for every £2 over)	0%
Basic rate	£12,571 to £50,270	20%
Higher rate	£50,271 to £125,140	40%
Additional rate	Over £125,140	45%

The tax bands if you live in Scotland are as follows:

Band	Taxable income	Tax rate
Personal Allowance	Up to £12,570	0%
Starter rate	Over £12,571 to £14,732	19%
Scottish basic rate	Over £14,733 to £25,688	20%
Intermediate rate	Over £25,689 to £43,662	21%
Higher rate	Over £43,663 to £125,140	42%
Top rate	Over £125,140	47%

It should be noted that there are tax-free allowances for:

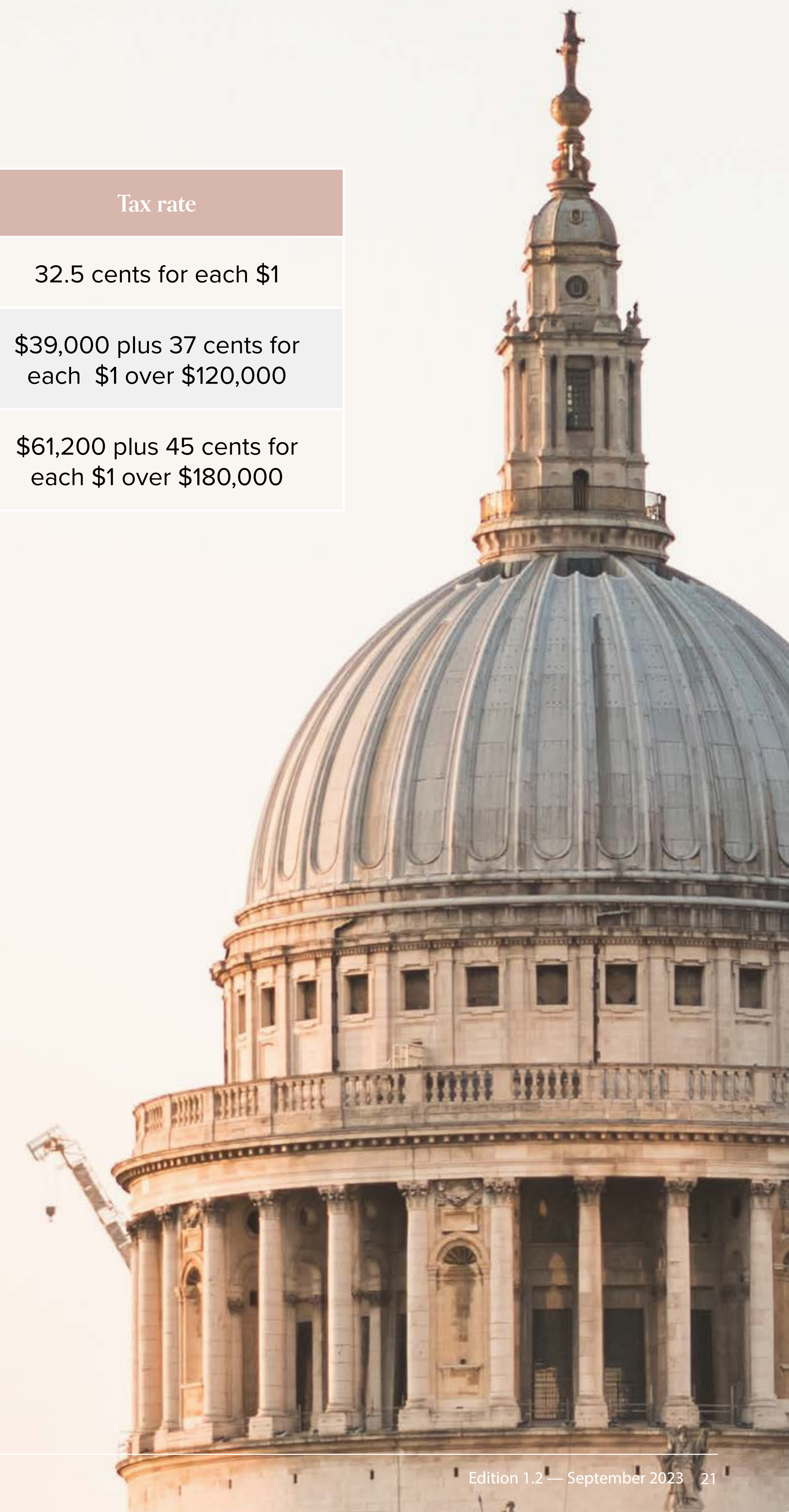
- Savings interest
- Dividends if you own shares in a company.

4.5 Australian non-resident tax rates

The Australian tax rates for non-resident taxpayers for the financial year 1 July 2023 to 30 June 2024 are as follows:

Taxable income	Tax rate
$0 - $120,000	32.5 cents for each $1
$120,001 - $180,000	$39,000 plus 37 cents for each $1 over $120,000
$180,001 and over	$61,200 plus 45 cents for each $1 over $180,000

It should be noted that non-residents are not required to pay the Medicare Levy.



5

Overview of UK pension rules

Pension rules in the UK are very complicated however effectively there are two key types of pension. Final Salary or Defined Benefit schemes are offered by employers and give a guaranteed income on retirement based on length of service and salary.

Defined Contribution schemes involve a fund being built up from contributions from either employers or individuals which is then used to either buy an annuity on retirement or to be ‘drawn down’ as an income from the fund. Pension funds can only be accessed at age 55 until 2028 and then from age 57 after that.

In an effort to encourage pension saving, UK companies are now required to offer a pension to most employees through what is known as ‘auto-enrolment’ whereby an individual has to actively opt out of the company pension scheme if they do not want to be part of it. An individual may accrue a number of different pensions through their working life from different employers and may also set up their own personal pension plans to make further savings as they see fit. These structures can be quite flexible but there are some limitations as to how you can invest through a pension - as an example investing in residential property is not permitted. Pension rules also allow individuals to manage their own investments in a pension (through a specific structure known as a Self-Invested Personal Pension) or hand this over to an investment company through a managed pension.

State Pension is accrued by UK residents by paying National Insurance which is part of the UK Income Tax regime. 35 years of NI contributions entitles an individual to a full UK State Pension. State pension is payable at state pension age which is currently 66 for those aged 64 and over, 67 for those aged 47 to 63 and 68 for those under 47.

5.1 Contribution rules

An individual may only contribute £60,000 per year gross to all pension plans each year (including both employer and personal contributions). This is known as ‘annual allowance’ and is tapered for those individuals who earn more than £260,000 per year. The minimum annual allowance is £10,000 for individuals earning £360,000 or more. For a Defined Contribution scheme calculation of annual allowance is straightforward as the cash going into the scheme can be measured precisely whereas for a Defined Benefit scheme there is a complicated calculation based on the deemed value of the increased entitlement from one year to the next. All contributions receive tax relief at the individual’s highest marginal rate of income tax.

5.2 Tax rules during the accumulation phase

Funds invested in a pension are tax free on income and growth while they remain in the pension structure (similar to an ISA outlined in section 6.1).

5.3 Tax rules during the pension phase

The tax rules during the pension phase depend on how the pension plan is used to generate a retirement income. A Defined Benefit pension will pay a guaranteed income for the rest of the individual’s life which is subject to income tax and may also offer a one-off tax-free cash lump sum at outset. Defined Contribution schemes were typically used in a similar way through the process of buying an annuity at point of retirement, but now funds from these schemes can be accessed more flexibly using a drawdown approach, where funds are taken as and when needed with the fund remaining invested throughout.
When funds are withdrawn through drawdown from a pension typically 25% of the funds can be received tax free whilst the remaining 75% is subject to income tax. The entire tax-free cash element can be taken in one go or it can be staggered though a number of withdrawals, either on its own or in conjunction with taxable withdrawals.

There used to be a ‘Lifetime Allowance (LTA) for pensions which capped the amount that could be accrued in a pension fund with no additional tax. This is in the process of being abolished but there remains a limit on the amount of tax free cash that can be taken from a pension fund. This is currently limited to £268,275. All funds taken from the pension fund above this amount are taxed as income.

UK pensions can be paid to an individual in another jurisdiction in which case they will be subject to the income tax rules of wherever the individual is resident for income.

5.4 Qualified Recognised Overseas Pension Scheme (QROPS) rules

Whether you are a UK Expatriate or you are back living in Australia having spent time working in the UK, you may be wondering how you can transfer your UK Pension Plan to a similar arrangement in Australia.

5.4.1 Can I transfer my UK Pension funds to Australia?

Yes, but there are some points you need to consider in order to satisfy the criteria of a UK Pension transfer to Australia. These are:

- You must be aged between 55 and 75 years.
- You can only transfer your UK Pension into a scheme that is registered with HMRC as a Qualifying Recognised Overseas Pension (QROPS).
- If you are not an Australian resident, then your UK Pension transfer will be subject to the Overseas Transfer Charge of 25%.

5.4.2 What is QROPS?

QROPS stands for *'Qualifying Recognised Overseas Pension Scheme'*. A QROPS is an HMRC registered pension scheme which can accept a transfer of UK pension funds. QROPS were introduced in 2006 specifically for the benefit of UK residents living overseas, who intend to remain outside the UK permanently. The QROPS provides them with a means to continue saving for their retirement and also transfer any accrued pension funds in the UK to it.

In order for an overseas scheme to qualify for 'QROPS status', it must meet certain strict criteria set by HMRC. If you transfer your pension to a plan that is not a registered QROPS, you will face a significant penalty so be sure to check that the pension scheme you are intending on transferring to is listed on the HMRC QROPS list.

A full list of registered QROPS schemes can be found here.

5.4.3 What is the difference between an SMSF and a Retail Superannuation Fund?

As mentioned previously, an SMSF stands for *'Self-Managed Super Fund'*. An SMSF must be managed and directed by the members / trustees who are permitted to hire tax and financial advisers to assist with compliance elements and management of the fund.

An SMSF carries a much heavier level of management responsibility than a Retail Superannuation fund and, due to its complexity, it is essential that you have a thorough understanding of how they work and the legislative requirements of managing them.

Many individuals prefer to have this level of control and responsibility and are competent enough to do so through their firm understanding of what is required to run an SMSF correctly. However, many individuals would also rather not have this responsibility or liability and therefore outsource the day to day running of the fund. In many cases, this can be very expensive and not cost-effective if the size of their fund is relatively small.

5.4.4 What are the benefits of transferring my UK Pension Funds to Australia?

The first and most obvious benefit of moving your UK Pension funds to Australia would be to ensure that your retirement savings were housed in your country of residence. With different time zones in the UK, it can be somewhat of an inconvenience contacting your UK scheme to discuss your pension.

If you began withdrawing funds from your UK pension whilst living in Australia, you would also need to apply to HMRC for a double taxation agreement to ensure that you did not get hit with a tax bill in both countries.

There are other benefits which you should also consider:

- If the transfer occurs within 6 months of you becoming an Australian resident then the transfer of funds could be tax-free.
- From the age of 60 where the foreign super transfer has been taxed at 15%, the income benefits are generally tax-free.
- You may flexibly draw your pension benefits during retirement.
- Your UK pension funds will not be subject to UK Income Tax charges upon death.

You can consolidate all of your UK pensions into one manageable pension plan, in your country of residence.

5.4.5 What type of UK Pension can I transfer to Australia?

You may transfer the following types of UK pension arrangements to an Australian QROPS:

- An Occupational Pension Scheme.
- A Defined Benefit Scheme.
- A Defined Contribution Scheme.
- A Small Self-Administered Scheme (SSAS).

The following types of UK Pensions are not permitted to transfer:

- UK State Pension.
- Unfunded Civil Service Pensions which include NHS, Teachers, Fire Fighters, Police and Armed Forces.

5.4.6 Do I need a financial adviser to transfer my UK Pension to Australia?

Generally, it is advisable to seek financial advice if you are unsure of the implications involved with transferring a pension. However, in some cases, you may be able to transfer your UK pension without the involvement of a financial adviser. This would depend on a few scenarios.

Firstly, it would be compulsory to involve a financial adviser where you are transferring a UK Defined Benefit Pension (i.e. Final Salary).

Due to the nature of these plans and the guarantees they hold, it is a regulatory requirement from the UK Financial Conduct Authority (FCA) to obtain a Transfer Value Analysis (TVAS) report from a UK Qualified Financial Adviser. Your UK scheme would not allow funds to be transferred out of your plan without this report.

If you are transferring a standard UK Personal Pension, you may do this yourself but you need to be comfortable with the transfer process and ensure you had a solid knowledge of investment markets.

For many people, their pension is their largest asset for providing income when they retire so it's important to ensure it is managed efficiently and cost effectively and the decisions are made are tailored to your needs and objectives.

6

Onshore investing while in the UK

Whilst resident in the UK, you are able to take advantage of tax efficient ways to save such as pension contributions, Individual Savings Accounts (ISAs – see below), direct investing using Dividend and Capital Gains Tax Allowances and tax relieved investments such as Enterprise Investment Schemes (EIS) and Venture Capital Trusts (VCTs). However, the effectiveness of these vehicles may depend on your future intentions with regard to staying or not in the UK. Due to the treatment of some of these structures by the Australian tax authorities it may be preferable to use specific structures which are more tax efficient when returning to Australia in the future (or moving to another tax jurisdiction). It is important to obtain financial advice on these options from an adviser who understands your likely tax position once you leave the UK.

6.1 Individual Savings Accounts (ISAs)

The primary vehicle for investing for UK residents is the Individual Savings Account (ISA), which is a 'wrapper' for both cash and stocks and shares investments. There is no tax relief on contributions but funds are tax free once in the structure so allowing tax free growth and tax-free withdrawals throughout the life of the investment and you do not have to declare an ISA on an annual tax return. They are however part of an individual's taxable estate for Inheritance Tax.

Each UK resident may invest up to £20,000 per tax year into ISA structures and these can be invested into cash accounts, investment accounts or a combination of both. There are also specialist ISAs which offer government support to young people trying to get on the housing ladder. Cash ISAs may be opened from age 16 and stocks and shares ISAs from age 18.

6.1.1 Junior Individual Savings Accounts (JISAs)

Junior ISAs work in the same way as adult ISAs but allow a parent or any other individual to make a subscription of up to £9,000 per year into an ISA structure for a child under 18. At age 18 a JISA will automatically become an adult ISA and the child becomes the owner of the funds.

6.1.2 How are ISAs taxed in the UK?

ISAs are an investment-wrapper. For UK-residents, income earned on ISAs, which takes the form of dividends or interest (depending on the type of ISA), is free from UK income tax. In addition, capital gains on ISA investments are exempt from UK Capital Gains Tax (CGT).

This makes ISAs more tax-efficient than the same investments held outside of the ISA-wrapper.

6.1.3 How are ISAs and JISAs taxed in Australia after an expat repatriates to Australia?

When you cease to be UK-resident and repatriate to Australia, you can make no further investments in your ISA accounts, but the existing accounts retain their tax-free status for UK tax purposes.

Unfortunately, the UK tax-advantaged status does not apply under Australian tax law. ISA income and gains are taxable in Australia once you are Australian-resident again. However, that doesn't mean they are any worse than other savings or stocks and shares investments, just the same.

It is also worth noting that, once Australian-resident again, Junior ISAs will be subject to the Australian anti-avoidance rules governing the taxation of the income of minor children. As a result, the income on your children's Junior ISAs may either be taxed at the top-rate of tax or be taxed as your income, as their parents.

6.1.4 Strategies to minimise tax on ISAs

Before you leave the UK and return to Australia it is worth considering:

- How your children's Junior ISAs will be taxed in Australia and considering whether divestment is worthwhile;
- Whether to retain your own ISAs, and accept that the income and gains will be taxed, once you are Australian-resident again or whether to divest;
- Obtaining written valuations of any ISA balances being retained at the date of departure, to facilitate completion of Australian returns, once you are Australian-resident again.

It is also important to understand that any funds denominated in currencies other than Australian dollars are potentially CGT assets, once you are Australian-resident again, and subject to tax on foreign exchange gains and losses. It is unlikely that a cash-ISA would be a qualifying account for the purposes of the limited balance exemption under section 775-D of *Income Tax Assessment Act* (1997). This too should be taken into consideration when planning to return home to Australia.

6.2 UK Shares

6.2.1 How can I invest in UK shares?

UK residents can make direct investments into equities from markets around the world. Typically, individuals wishing to buy equities will do so via a trading platform by opening a General Investment Account which allows online or telephone trading. This will usually involve any shares purchased being held in nominee accounts rather than the purchaser being directly registered on the share register of the company though direct purchases are possible should you prefer.

6.2.2 How are UK shares taxed whilst resident of the UK?

For UK tax purposes, dividends are treated as the top slice of your income; after earned income, other income and savings income (interest).

In addition to the UK Personal Allowance (the UK's equivalent to the Tax-Free Threshold in Australia), each UK taxpayer is entitled to a Dividend Allowance, currently £1,000 per person per annum.

The first £1,000 of dividends received per annum are tax-free, with the balance being taxed at dividend tax rates: : 8.75%, 33.75% or 39.35% (depending on your total taxable income for the UK tax year of receipt).

Example

Sally's UK gross salary for the 2023-24 tax year was £65,000 and she received £5,000 dividends from her investments.

Sally is a higher-rate taxpayer. The first £1,000 of dividends are within the dividend allowance and therefore tax-free. The remaining £4,000 fall into the higher-rate tax band and are taxed at 33.75%. The UK tax liability on Sally's dividends is therefore £1,350.

6.2.3 What are the capital gains tax implications of selling UK shares *before* repatriating to Australia?

Sales of shares, while you are UK-resident, are subject to UK Capital Gains Tax (CGT). CGT is a separate tax in the UK (unlike in Australia), with its own rates, reliefs and exemptions.

Each taxpayer is entitled to a CGT Annual Exemption each tax year, currently £6,000. The first £6,000 of capital gains is therefore tax-free.

Gains in excess of the Annual Exemption are taxed at CGT rates, which are 10% or 20% for shares, depending on total taxable income for the tax year.

Example

Dave has a UK gross salary of £85,000. During the 2023-24 tax year he sells some Telstra shares making a taxable gain of £25,000.

The first £6,000 of gain is within the CGT annual exemption, so is tax-free. The remaining £19,000 of gain is taxed at 20% because Dave is a higher-rate taxpayer and the gain relates to shares. Therefore, the total UK CGT charged on the share sale = £3,800.

6.2.4 What are the capital gains tax implications of selling UK shares *after* repatriating to Australia?

The UK doesn't tax non-UK residents on the sale of shares. However, once you become Australian-resident again, Australia will tax any gains on the sale of your UK shares, though only on the uplift in value from the date you become Australian-resident again. We would therefore recommend obtaining and retaining a written valuation of all shares held, at the date you become Australian-resident again, to serve as the base-cost for the calculation of gains on your future share disposals. The Australian gain will also encompass any movement in the exchange rate from that date to sale.

6.3 UK Managed Funds

6.3.1 How can I invest in UK managed funds?

UK investors can invest in 'Collective Investment Vehicles' which have a range of structures. These include Investment Trusts, Unit Trusts and OEICs. Investment Trusts are companies which are listed on the stock exchange but whose purpose is to invest on behalf of their investors – for tax purposes these are treated like individual shares as above. Unit Trusts and OEICs are 'open ended' funds which act as a wrapper to enable fund managers to manage the underlying capital without incurring tax events to the individual investors. Funds can be bought on platforms (as with shares), direct from the fund managers or are offered by investment managers as part of their advised services. They are often used within other structures such as ISAs or Pensions.

6.3.2 How are UK managed funds investments taxed whilst resident of the UK?

Managed funds can generate interest income and/or dividend income. The UK applies income tax-rates in an order of priority: earned income and other income (e.g. rental income) first, then savings income and finally dividend income.

In addition to the UK Personal Allowance (the UK's equivalent to the Tax-Free Threshold), you are entitled to a Savings Allowance and Dividend Allowance. The Savings Allowance is currently £1,000 for basic-rate taxpayers, £500 for higher-rate taxpayers and £0 for additional rate taxpayers. Dividend Allowance is currently £1,000 per person per annum. Income falling within any of the allowances is tax-free.

Savings income in excess of the savings rate received from a managed fund in the UK tax year is taxed at Savings rates: 10%, 20% or 40% - depending on your total taxable income in the UK tax year.

Dividend income in excess of the dividend allowance is taxed at dividend tax rates: 8.75%, 33.75% and 39.35% - depending on your total taxable income for the UK tax year of receipt.

Example

Sanjay's annual UK salary is £75,000. He receives £625 interest and £3,500 dividends from his managed fund during 2023-24.

As a higher-rate taxpayer, Sanjay's savings allowance is £500, so the first £500 interest is tax-free. The remaining £125 is taxed at 40%, so the total UK tax on interest is £50.

The first £1,000 of dividends are within the dividend allowance, so tax-free. The remaining £2,500 are taxed at 33.75%. So total UK tax on dividends is £843.75.

6.4 UK Property

6.4.1 How do I invest in UK property?

UK Property may be directly owned by purchasers either for residence or for investment or purchased through Managed Funds through a specialist structure called a REIT (Real Estate Investment Trust) or through Unit Trusts and OEICs. Directly owned property is subject to its own tax regime while property in Collective Investment Vehicles is taxed as per the rules for Managed Funds above.

UK property can be purchased directly by residents or non-residents. Stamp Duty is payable on all purchases on an escalating rate according to purchase price. There is a tier of rates for a first property and higher rates for additional properties which is 3% greater at each tier than the standard rate.

Each resident (or married/civil partnership couple) may have a single property they live in which is designated as their Principal Private Residence (PPR). PPR Relief allows these properties to be bought and sold without any liability for capital gains tax.

6.4.2 How are UK property investments taxed whilst resident of the UK?

Income from investment properties is taxed as income and these properties also attract a higher rate of Capital Gains Tax on disposal of either 18% or 28% depending on the individual's tax bracket. A 20% tax credit is available against mortgage interest for investment properties.

There are some key differences in the way the UK taxes rental income, compared to Australia:

- The UK does not allow Capital Works deductions and Capital Allowances, instead having a limited deduction for replacement domestic items for the property; and
- Since April 2017, the UK has phased in a restriction on the deduction of mortgage interest. The relief is now a 20% tax credit on the mortgage interest payment only.

The result of these two factors is that generally the taxable rental profit on a particular rental property will be higher in the UK than in Australia.

Rental profit is taxed as ordinary income at 20%, 40% or 45%, depending on your total taxable income.

The UK does not allow a deduction for mortgage interest, instead a maximum 20% tax offset for the un-deductible mortgage interest may be claimed to reduce the UK tax liability on rental income.

6.4.3 What are the capital gains tax implications of selling UK property *before* repatriating to Australia?

The UK gain will be calculated on the difference between purchase price and sale price, with additional deductions for:

- Incidental costs of acquisition;
- Expenses of disposal; and
- Cost of capital improvements.

Principal Private Residence (PPR) relief, along with other reliefs, may be available to reduce your taxable gain, but it is important to understand that you can only have **one main-residence throughout the world** for a particular point in time, so claiming PPR against your UK property impacts on the tax position on a future sale of your Australian home (or any other properties held), and the decision should be considered carefully.

PPR does not work in the same way as Australian Main Residence Capital Gains Tax Exemption. The circumstances in which it can be claimed in respect of periods when you are not actually living in the property are much more limited. Capital Gains Tax (CGT) is a separate tax in the UK. Gains falling within the CGT Annual Exemption (currently £6,000 per annum) are exempt from tax. Gains in excess of the Annual Exemption are taxed at CGT rates, the applicable rate being determined by:

- The level of taxable income in the year of the capital gain; and
- The value of the taxable gain; and
- The asset being sold.

For property gains, the CGT rates are 18% or 28%, depending on your total taxable income.

6.4.4 What are the capital gains tax implications of selling UK property *after* repatriating to Australia?

Once you have returned home to Australia, and are no longer UK-resident, UK CGT will only apply to UK property and land gains. So, the sale of a UK property is one of the few assets that the UK still taxes for non-residents.

Non-resident capital gains are calculated on the uplift in value from the later of the purchase date and the value at 6 April 2015 (the date the capital gains tax rules commenced in the UK). Aside from that, gains are calculated and taxed in the same way for sales while UK-resident. The CGT Annual Exemption will apply to the first slice of gains.

While you can still claim PPR relief for the part of the gain relating to the period you lived in the property (provided you are not treating any other property, wherever in the world it is located, as your main-residence for the same time period), the ability to claim PPR relief against the part of the gain relating to the period you no longer live there will be severely limited.

Also note that non-resident gains must be notified to the UK tax authorities within 60 days of the disposal to avoid a penalty.

7

Offshore investing while in the UK

Whilst there may be similarities in the investment environment in the UK as compared to Australia, there are also many differences and there are certainly opportunities to save and invest on a tax effective basis.

However, what might be tax effective while you are living and working in the UK, might not be tax effective when you return to Australia. In order to get the best outcome for you, it is important that you (a) understand the investments that are offshore from the UK (b) how those investments are taxed while you are in the UK and then, finally (c) how those investments will be taxed when you repatriate to Australia or move to another tax jurisdiction in the world.

It is essential to understand the tax treatment in each jurisdiction where you are likely to be tax resident and how to plan – ahead of time – for any future move from one country to another.

7.1 Offshore Personal Portfolio Bonds (PPB)

7.1.1 What is a PPB?

A Personal Portfolio Bond (PPB) is a type of financial product that is designed with reference to the UK tax rules and which is sold in many overseas jurisdictions around the world. An offshore PPB is a single or regular premium investment vehicle which provides expatriate investors with the flexibility of creating and managing a portfolio of assets in a single tax efficient and flexible structure.

Section 516 of the *UK Income Tax (Trading and Other Income) Act 2005* (ITTOIA 2005) defines a PPB as 'a policy of life insurance, contract for a life annuity or capital redemption policy that meets conditions A and B'.

Condition A defines the types of investments that can be held within a PPB and Condition B relates to the ability of the investor or a person acting on the investor's behalf to select the investments held within the PPB. If the investor or their agent cannot select the investment, the policy is not a PPB.

It is outside the scope of this book to go into the detail of why this type of product was created and how it can be used to minimise UK tax. The focus in this book is simply how a PPB is taxed in Australia after an expat returns to Australia or an immigrant moves to Australia.

7.1.2 How are PPBs taxed in the UK?

PPBs are subject to Income Tax in the UK when "chargeable events" take place. Chargeable events occur:

- When you die.
- On certain assignments of all or part of your Bond (e.g. as part of a divorce settlement).
- On maturity of some Bonds.
- On full and final encashment (redemption) of your Bond.
- If you withdraw more than 5% of your investment per policy year.

So, provided you don't draw more than 5% of your investment per annum (cumulative) and none of these other chargeable events occur, there is no UK tax on a PPB. If the PPB was encashed once you had returned to Australia and are no longer UK-resident the UK would not tax the encashment for a non-UK-resident.

7.1.3 How would a PPB investment be taxed after I repatriate to Australia?

That depends on the particular PPB. Many PPBs qualify as life insurance policies for the purposes of Australian tax legislation, though the Australian Taxation Office is getting more rigorous in applying the definitions in the tax legislation, so care is needed to ensure that you understand if your particular PPB meets the definition.

If the particular PPB meets the definition of a life insurance policy for section 26AH of Income Tax Assessment Act (1936) and you fully encash the bond, so that the gain you receive on your original investment is treated as a "reversionary bonus", then the proportion of that bonus that is taxable as income is determined according to the length of time the policy has been held before encashment:

- Less than 8 years from investment – the full gain is taxable as income
- During the 9th year of investment – two thirds of the gain is taxable as income
- During the 10th year of investment – one third of the gain is taxable as income
- More than 10 years from investment – the gain is fully exempt from taxation as income

The encashment of a life insurance policy would normally not trigger a CGT event in Australia (CGT event C2), because the qualifying life insurance policies section 118-300 ITAA 97 (Australian income tax legislation) allows the gain arising on encashment to be ignored.

So, provided you are prepared to hold the investment for 10 years, you can encash the PPB with neither UK nor Australian income tax charges arising on the gain.

Note though that additional investments into the bond, after the first investment, can "restart the clock" on the investment period and not all policies that qualify as life insurance policies under s26AH ITAA36 will also meet the definition of life insurance policies for s118-300 ITAA97. If the particular bond does not meet the definition of a life insurance policy for s118-300 then a capital gain will arise on the encashment of the policy. If that is the case you will need to consider the calculation of the capital gain, which will depend on the particular circumstances.

The rules are complex, so if considering PPB investments, we would recommend seeking advice in advance of investing to ensure you fully understand the tax consequences.

7.2 Australian Shares

7.2.1 How do I invest in Australian shares while I'm in the UK?

There is nothing to prevent you from investing in Australian shares while you are in the UK. If you already have a brokerage account in Australia or offshore, you can simply continue to invest as you have in the past. However, clearly, you will have to take account of the tax implications of holding these investments while you are overseas.

If you don't already have a broker account, you may struggle to find an Australian financial services organisation who is prepared to set up a broker account for a foreign resident. The alternative would be to simply seek advice from a qualified financial adviser in the UK who has experience in advising on Australian shares.

7.2.2 How are Australian shares taxed whilst resident of the UK?

Australia has the right to tax certain types of income derived by a foreign investor which are *sourced* in Australia. These include:

Tax rate for	UK resident	Non-treaty countries
Unfranked dividends	15% (Article 10 of DTA)	30%
Interest	10% (Article 11 of DTA)	10%
Royalties	5% (Article 12 of DTA)	30%

It should be noted that Australia does not tax fully-franked dividends for non-resident taxpayers as the income is treated as what is known as "Non-Assessable-Non-Exempt" (NANE) income. Unfranked dividends are also NANE but subject to non-resident withholding tax shown above.

It is the responsibility of the *payer* organisation to deduct the appropriate amount of tax due and payable to the ATO. If you have recorded your foreign address on your Australian brokerage account or bank account, this should alert the payer to the fact you are a foreign resident and the fact that withholding tax may need to be deducted.

As well as source-based taxation that may apply in Australia, dividends on Australian shares are subject to UK tax while you are UK-resident. As for UK dividends, a tax-free dividend allowance is available for the first £1,000 dividends received each year (from all sources). Dividends in excess of the dividend allowance are subject to income tax at the dividend rates: 8.75%, 33.75% or 39.35%, depending on total taxable income for the year.

Note that franking credits are not claimable in the UK, but only the dividend received is taxed (not the dividend plus franking credit, as in Australia).

7.2.3 What are the capital gains tax implications of selling Australian shares *before* repatriating to Australia?

If Australian shares are sold while UK-resident, the gain will be subject to UK CGT. Note that the UK will tax the whole gain, from original purchase, not just the uplift from the value at the date the owner became UK-resident.

The gain will also encompass any exchange rate gain or loss from purchase to sale.

The first £6,000 of gains each year are exempt from tax under the CGT Annual Exemption. Gains in excess of the exemption are taxed at 10% or 20%, depending on total taxable income for the year of sale.

7.3 Australian Managed Funds

If you already have investments in Australian Managed Investments Trusts MITS before you move to the UK, there is no reason why you can't continue to make further investments while you are tax resident in the UK.

When you move to the UK, you need to advise the fund managers who look after your investments of your overseas address and they will then deduct withholding tax at source.

Withholding tax on MIT fund payments and dividend, interest or royalty payments (including deemed payments) received from Australian MITs is a final tax imposed on foreign residents. Payments (including deemed payments) received by a foreign resident that are subject to withholding tax are what is known as 'non-assessable non-exempt income' for income tax purposes.

Why is there a 'final tax'? The reason is quite simple – so foreign investors in AMITs do not need to lodge a tax return in order to settled their tax liability in respect of that type of investment. There is also an obvious benefit for Australia in that foreign resident investors do not need to be chased to persuade them to lodge an Australian income tax return if the tax is deducted by the payee at source.

Paying tax on a withholding basis to the Australia government will not be the end of your tax liability on that AMIT income. You will also have to pay tax on the income in the UK if you are tax resident. The UK / Australia DTA will ensue you do not pay double tax on that income. The way that works in practice is that the UK HRMC will give you a credit for any tax paid in Australia when assessing the tax payable on the AMIT income in the UK.

7.3.1 How do I invest in Australian managed funds?

If you already have managed fund investments set up in Australia before you leave, then topping up should be a straight forward process. If you want to set up a new AMIT investment while you are in the UK, you will have to either go direct to the fund manager and make an application or invest via an Australian platform.

7.3.2 How are Australian managed funds investments taxed whilst resident of the UK?

Income received by UK residents from Australian managed funds is taxable in the UK, whether it takes the form of interest, dividends or trust distributions. Any Australian tax already charged will be claimable as a foreign tax credit against the UK tax liability, which in the case of dividends and interest will only be non-resident withholding tax (restricted to the rates in the Double Tax Convention).

7.3.3 What are the capital gains tax implications of selling Australian managed funds *before* repatriating to Australia?

The sale of managed funds while UK resident will give rise to a capital gain. The UK will tax the whole gain from the original investment, incorporating any exchange rate movement. Where there are no other gains in the year, the CGT Annual Exemption will be available to reduce the taxable gain.

Any gains in excess of the annual exemption will be taxed at 10% or 20% depending on your total taxable income for the year.

7.4 Australian Property

7.4.1 Introduction

A great many Australian expatriates choose to add to their Australian residential rental property portfolios while overseas. It seems that Aussies find comfort in investing in a country or area 'they know' rather than attempting to negotiate the challenges of investing in a foreign jurisdiction. However, the comfort factor needs to be weighed up against the potential returns available from residential property investments in Australia versus the overseas equivalent.

An investment in Australian property is guaranteed to attract tax in Australia. Most countries around the world reserve the right to tax 'real property' or what is known in France as 'immovable property'. If your property is attached to Mother Earth in some sort of permanent way, in most countries where income tax is imposed, you are going to find that income tax on the net income generated from the property is taxable and also there may be capital gains tax as well.

Because there is no tax-free threshold for foreign resident investors in Australian property, foreign investors are going to be taxed from *dollar one* at a rate of at least 32.5% and because the 50% capital gains tax discount does not apply to foreign investors, net capital gains will be subject to a rate of at least 32.5% as well.

Immediately you can see that there is a major tax differential in the way Australian property is taxed compared to other types of assets. Part of your tax planning activities needs to take account of this fact.

7.4.2 Negative gearing may have tax benefits

It has often been said over last 30 years that, apart from sport and gambling, 'negative gearing' is one of Australia's favourite activities. This is because of the way the tax rules work to enable ongoing losses on property assets (i.e. where expenses including deprecation are greater than income in any given year) can be offset against other sources of income whilst capital gains on the increase in the value of property assets are given the benefit of a 50% CGT discount (but only to resident taxpayers since 8 May 2012!) when the investor sells.

Whilst negative gearing is no longer allowed in the UK, Australian expats can still gain benefits from negatively gearing their Australian property portfolio while they are overseas.

Part of the negative gearing can relate to the generated depreciation allowances provided for in Division 40 and Division 43 of the *Income Tax Assessment Act* (1997). You can simply order a compliant deprecation report from a quantity surveyor company which specialise in this area and they can provide you with schedules showing deductions for periods of up to 40 years.

7.4.3 Tax deferral is the key

From a foreign investors point of view, the main *benefit* of negative gearing is that losses can be carried forward indefinitely by a taxpayer and losses on income account can be offset against future capital gains.

Whereas losses on capital account can *only* be offset against gains on capital account, losses on income account can be offset against both losses on capital and income account.

The benefit to investors of the above rules cannot be overstated. The rules underpin the investment ambitions of many Aussie expats.

The trick to the whole negative gearing strategy is to sell Australian property assets at a time when your income is relatively low – given that the tax rates that apply to capital gains are the *marginal tax rates* that apply to your income in the year in which you sell the asset.

For example, you could elect to sell any surplus Australian property assets when you are retired when your income is much lower than while you are working. It may also be tax effective to sell while you are tax resident rather than when you are a foreign resident.

It is impossible to generalise as to which strategy will produce the best outcome for *you*. This is why it is so important to obtain tax advice before you buy or sell an Australian property asset.

7.4.4 How do I invest in Australian property?

There are three key approaches to investing in Australian property. They are:

1. Buy directly based on your own investigations.
2. Engage a *Buyers Advocate* to source a property for you.
3. Buy off the plan.

Buying direct residential property

Many Australian expats feel more comfortable buying property in an area where they have lived in the past or simply doing their own research and looking for high growth investment opportunities.
The internet certainly makes it easier for expats to find a suitable property to invest in – much easier than in the pre-internet days. However, given the tyranny of distance, it may not be possible for you to return from the UK to Australia to view a property before purchasing. If this is the case, you might decide to enlist the assistance of family and friends to view a property on your behalf.
You should also invest in a building report, to make sure the property is sound – particularly if the property is an apartment constructed in the last 20 years.

Using a Buyers Advocate

The big advantage of using a Buyers Advocate is that they are able to 'shop the market' for you based on a set of parameters you provide. Professional Buyers Advocates can charge up to $15,000 to source and organise the acquisition of a property, but the benefit to the investor is that the property is tailored to the needs of the investor.

Buying off the Plan

Buying 'off the plan' involves buying a property that will be developed in the future or is being developed. The obvious problem with this approach is 'what if the building isn't actually built?' and 'what if the property doesn't meet the original specification?

Whilst there are risks associated with buying off the plan, there are also advantages for time poor expats. Buying from a reputable developer which has researched property markets well and offers a quality product can be preferable to having to do all that work yourself.

7.4.5 How are Australian property investments taxed whilst resident of the UK?

While UK-resident, your Australian property investment income:

- Will remain taxable in Australia, but at non-resident tax-rates - starting at 32.5% with no tax-free threshold; and
- Will also be taxable in the UK, according to UK tax rules, with a foreign tax credit in respect of the Australian tax, against the UK tax liability, to prevent double taxation.

However, it is worth noting that there are distinct differences between the way the UK calculates taxable rental profit and the way Australia determines taxable rental profits:

- The UK does not allow a deduction for mortgage interest, instead a maximum 20% tax offset for the un-deductible mortgage interest may be claimed to reduce the UK tax liability on rental income

- The UK does not allow Capital Works Deductions and Capital Allowances, instead having a limited deduction for replacement domestic items for the property;

The result of these two factors is that generally the taxable rental profit on a particular rental property will be *higher* in the UK than in Australia.

Rental profit is taxed as ordinary income at: 20%, 40% or 45%, depending on total taxable income.

The other key difference from Australia, is that the UK does not allow negative-gearing. Instead property losses are ring-fenced and can only be offset against property profits.

Example

Mandy is currently living in the UK and is a higher-rate taxpayer. She has leased her Australian home to tenants. The gross annual rental income is $35,000, mortgage interest is $25,000 and other expenses are $7,500. Mandy has also had a depreciation report prepared and her Capital Works deduction for the year is $5,800. She also has Capital Allowances for the year of $2,450.

The HMRC average exchange rate for the year is £=$1.795

In Australia, Mandy prepares a non-resident tax return – showing a rental loss of:
$35,000-($25,000+$7,500+$5,800+$2,450) = ($5,750)

In her 2023-24 UK return Mandy's rental profit will be:

	£
$35,000/1.85	18,919
Less $7,500/1.85	(4,054)
Taxable Rental Profit	14,865
UK Tax Liability at 40%	5,946
Less 20% tax offset for $25,000/1.85	(2,703)
Net UK Tax Liability on Rental Income	3,243

Mandy will pay £2,646 tax on her rental profit in the UK, despite the fact that the property generates a loss under Australian tax rules.

7.4.6 What are the capital gains tax implications of selling an Australian property *before* repatriating to Australia?

The gain on the sale of an Australian property while UK-resident will be subject to both Australian taxation and UK taxation, with a foreign tax credit for any Australian tax against the UK tax liability.

The Australian gain will be calculated on the uplift from the base cost. It should be noted that any CGT discount will be reduced, in relation to the period of non-residence – because the 50% CGT discount does not apply to non-res. Often this means that the taxable Australian gain is higher for non-resident taxpayers than for resident taxpayers.

Also, don't forget the new Main Residence CGT rules that eliminate the CGT exemption on properties that were the taxpayers previous Main Residence and are sold while a foreign resident (refer to section 3.3 of this book).

The UK gain will be calculated on the entire uplift in value from the original acquisition to sale, including the exchange rate movement over that period. As for UK properties, incidental costs of acquisition and disposal and the cost of any capital improvements may be deducted. If the property was the taxpayer's home for any time during its ownership, and they were actually living in it, UK PPR relief will be available against the proportion of the gain relating to the period of occupation. There may be other reliefs that are available for the period of absence, but for disposals from 6 April 2020, these will be significantly reduced.

Any unused CGT annual exemption will be available to deduct from the taxable gain. The remaining gain will then be taxed at property CGT rates, 18% or 28%, depending on total taxable income for the year.

7.4.7 What are the capital gains tax implications of selling an Australian property *after* repatriating to Australia?

The gain on the sale of an Australian property while UK-resident will be subject to both Australian taxation and UK taxation, with a foreign tax credit for any Australian tax against the UK tax liability.

The Australian gain will be calculated on the uplift from base cost. Note though that any CGT discount will be reduced, in relation to the period of non-residence. Often this means that the taxable Australian gain is higher for non-resident taxpayers than for resident taxpayers.

The UK gain will be calculated on the entire uplift in value from the original acquisition to sale, including the exchange rate movement over that period. As for UK properties, incidental costs of acquisition and disposal and the cost of any capital improvements may be deducted. If the property was the taxpayer's home for any time during its ownership, and they were actually living in it, UK PPR relief will be available against the proportion of the gain relating to the period of occupation. There may be other reliefs that are available for the period of absence, but for disposals from 6 April 2020, these will be significantly reduced.

Any unused CGT annual exemption will be available to deduct from the taxable gain. The remaining gain will then be taxed at property CGT rates, 18% or 28%, depending on total taxable income for the year.

7.5 Obtaining Australian mortgage finance

Where the chosen investment strategy is in Australian residential property, financing the asset may need to be considered. There have been a number of changes in the last 24 months focused around foreign non-residents purchasing property and borrowing money in Australia. These were originally targeted to curb foreign investment in Australia which was driving up prices in strongly rising property markets.

The publicity around 'overseas investors' generally related to foreign nationals looking to buy in Australia i.e. non-residents who are citizens of another country. However, the lender policy changes have meant Australian expatriates also got swept up along the way and affected by some of these changes.

It does not by any means you cannot borrow; just that there are some key things to be aware of and navigate when obtaining mortgage finance in Australia. It is these particular points that may guide what options and lenders are most suitable for you.

7.5.1 Do I have access to the same mortgage products?

Yes, with most lenders the full suite of products will be available. However, what you need to find out is the lenders policy and attitudes towards lending to non-residents.

Some lenders will have reduced appetite where non-residents are concerned and policy restrictions or even not lend at all. In this instance it would of course mean their mortgage products would not be available.

For those lenders who do have appetite, you will find where there can be differences is:

- Some do not allow Interest Only loans.
- An interest rate loading may apply to a loan.

At the time of writing as a non-resident you could have access to investment loan rates under 3% per annum. Whilst ever the Cash Rate remains at 0.25%, it is likely that mortgage remains will remain relatively low.

7.5.2 How does the fact I earn foreign currency affect my borrowing?

When earning foreign currency, the lender will generally take a conservative assessment to this income to provide comfort around the volatility of foreign exchange rates. Therefore a few things to consider are:

Exchange rates

Banks generally use their own exchange rate or to get a guide, you can go to the XE Live Exchange web site.

Currency

The approach to assessing income can depend upon what currency you are earning in. GBP is often classified as 'gold currency' therefore posing least limitations.

Base salary

A lender will sensitise base salary of 'gold currency' income and often use 70-80% of this toward your borrowing assessment.

Bonus / non base income

Lenders can be reluctant to use non base income such as bonus, commissions, overtime. Therefore, if this is a sizeable component of your income it can dramatically affect how much you can borrow.

Self-employed

If you are self-employed overseas you will face very limited options and can generally expect a higher interest rate and fees in this instance. Given the difference in tax and entity structures lenders are reluctant to offer lending in this space and those specialist options are generally made available through mortgage brokers.

Negative gearing

While the tax system may allow you to offset interest on investment properties against income earned, most lenders will not take this into consideration the same way as if you were in Australia. Therefore, unless prior evidenced in an Australian tax return, this would not be able to be factored in your borrowing assessment.

Rental income

Rental income in Australia can be treated as standard income and the lender will often take 70–80% of this income into account.

Rental income in foreign currency can be heavily shaved (often by a further 20%) or sometimes not used at all.

All of these factors combined can determine how your borrowing ability is calculated. For some where receiving a base salary and Australian rental income, the fact you are a non-resident may not affect your lending too much.

However, for others the fact earning in foreign currency can lead to a borrowing ability that may seem far beneath your means. Therefore, identifying the factors that may affect you is important when making a lender selection. Your borrowing capacity can vary hugely between lenders depending upon how they apply your policies to your personal position.

7.5.3 Australian tax rates

Australia's tax rates are relatively high and even though you may be subject to lower tax rates overseas, lenders will often use the Australian tax rates when assessing your after-tax income.

Given the similarity between UK and Australian tax rates this is usually not as significant as it would be if you were living in a country with no income tax regime (such as many countries in the Middle East) or relatively low tax rates (such as Singapore and Hong Kong).

Luckily, there are some lenders that will use the tax rate of the country you reside or work to determine your net income for lending purposes. Therefore, working with a lender that adopts this method can be very beneficial in enabling you to maximise your borrowing capacity.

7.5.4 What if I am borrowing with a foreign partner?

Some Australian lenders may apply additional restrictions on lending if one of the borrowers is a foreign national. You need to take this account when you are choosing your preferred lender.

7.5.5 Do I need a bigger deposit?

As an Australian expatriate borrower there are borrowing options to 90% of the property value for investment. Some lenders do have restrictions on the Loan to Value Ratio (LVR) they will accept, and this can be as low as 60% of the property value. The LVR allowed is sometimes affected by currency in which you are paid.

It should be noted that if borrowing higher than 70% to 80% of the property value, then Lenders Mortgage Insurance will be typically be sought by the bank (as with standard lending). This adds a layer of complexity as the mortgage insurer may have certain policy restrictions around non-resident lending. It also means the one-off cost of the insurance premium is passed on to the borrower.

Many Australian expatriates own residential real estate already in Australia and may be renting this out. If this property has available equity then this can be used to borrow against and put towards the new purchase and depending upon the equity available could mean no cash contribution at all.

To demonstrate this, we consider a common scenario:

- Borrowers seeking to purchase a property for $1,000,000.
- Estimated costs of stamp duty, government and legal fees of $45,000.
- In order to avoid any Lenders Mortgage Insurance, seek to borrow 80% of the property value being $800,000.
- Own existing property valued at $1,500,000 and have 'existing lending' of $500,000.
- Seek to borrow the 'funds to complete' purchase of $200,000 (20% deposit) plus costs ($45,000) total $245,000 against existing property.

The lending could be structured as follows:

Existing Property (value $1,500,000)

$245,000 new lending (funds to complete)

$500,000 existing lending

Purchasing property (value $1,000,000)

$800,000 new lending 80% LVR

7.5.6 Can I refinance existing debt?

You can refinance existing debt and it is recommended to regularly review your loans to make sure you are not paying too much. Refinancing can allow you to benefit from lower interest rates and more favourable terms. In the current market, lender offerings are extremely competitive and if you haven't reviewed your loans in the last twelve months, it may be worth doing so.

If you have had a loan for a number of years, refinancing can allow you to extend the term of the loan back to 30 years and thus reduce repayments to improve cashflow too.

7.5.7 Not all lenders are equal

As you will have seen there are a number of variables when it comes to how your application for mortgage finance may be treated. Due to this, it is always going to be preferable to work with a lender that will view your particular personal circumstances in the most favourable light.

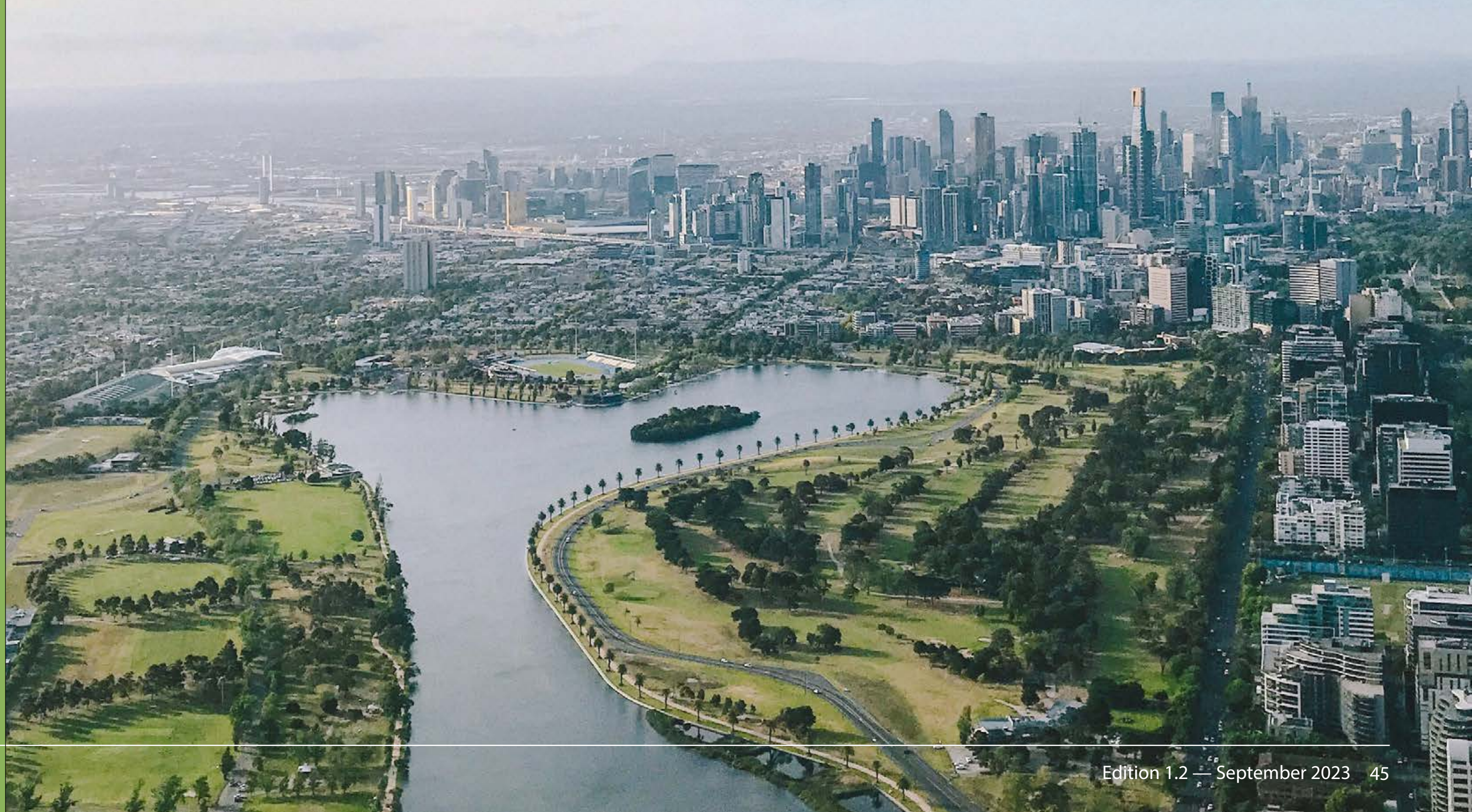
Borrowing ability between lenders can vary dramatically and Australian expatriates can find themselves baffled when they go back to their original bank in Australia as to how restrictive it may seem. It really doesn't have to be but working with the right lender who has an appetite in this space is key.

7.5.8 What is the best way to source a loan?

Using a lending adviser or broker that specialises in expatriate lending and has experience can make the world of difference. They will often have access to vast number of lenders and will have knowledge of and access to the lenders direct policy to evaluate against. They can tailor options to suit your individual needs with your overall strategy in mind.

Working with a lending expert will mean you do not have to deal directly with the bank which is also beneficial when working within different time zones.

This is in addition to ensuring you do not get penalised on higher interest rates or fees just for being an expatriate.



7.6 Australian Superannuation

Under the current Australian superannuation rules, anyone who has worked in Australia and earned $450 or more before tax in a calendar month should have had Superannuation Guarantee Contributions (SGC) paid on their behalf.

The current SGC rate is 10,5% and is calculated with reference to the employee's 'ordinary time earnings.

For Australian expatriates who have accumulated money in the super system, the question is (a) can / should I add to my super while overseas and (b) when can I get access to that money?

7.6.1 Can I continue to contribute to my Australian superannuation while in the UK?

The two main types of contributions to superannuation are as follows:

- Concessional Contributions and
- Non-Concessional Contributions.

Concessional Contributions

Concessional Contributions include the following:

- Employer contributions, such as:
  - compulsory employer contributions (i.e. the SGC)
  - any additional concessional contributions made by an employer
  - salary sacrifice payments made by the superannuant to their super account
  - other amounts paid by an employer from an employee's before-tax income to their super fund, such as administration fees and insurance premiums.
- Contributions you are allowed as an income tax deduction.
- Notional taxed contributions if you are a member of a defined benefit fund (including constitutionally protected funds for 2017–18 onwards), which reflects the increase to your benefits for the year.
- Unfunded defined benefit contributions.
- Some amounts allocated from a fund reserve.

Concessional contributions to super are taxed within the super fund at a rate of 15% and the maximum contribution is currently $27,500. This means that if you make a $27,500 contribution, the super fund to which you are a member will then deduct $4,125 and pay that direct to the ATO.

If you are not earning any Australia sourced salary income while you are in the UK, then there will be no SGC contributions made on your behalf.

The main type of contribution an expat may choose to make is a personal contribution which would be deducted against their Australia source income. For example, an expat who owns an Australian property which is positively geared, may choose to make a personal contribution to super and claim a tax deduction in their Australian Income Tax Return. However, this may not be tax effective from a UK tax perspective because the super deduction will not be tax deductible under UK tax law.

Non-Concessional Contributions to superannuation are sometimes referred to as 'post tax' contribution in the sense that these contributions are usually made using money that has been previously taxed.

This is not an accurate description as it is possible that Non-Concessional Contributions could be made by a superannuant using funds from a wide range of sources including inheritances, gifts and the sale of assets that are not subject to tax.

The limit of Non-Concessional Contributions is currently $110,000 per annum which is 4 times the Concessional Contribution limit.

As well as being able to make contributions of $110,000 per annum, if you are under 75 years of age, you can use what is colloquially known as the '3 year bring forward rule' to make 3 years of contributions all in one go.

The 3-year bring forward rule can be quite beneficial for expats who have not been contributing to their Australian superannuation accounts for a long period of time and want to 'catch up' for lost time.

7.6.2 Is there a limit on how much I can contribute to my super while I'm overseas?

As well as the annual contribution caps of $27,500 for Concessional Contributions and $110,000 for Non-Concessional Contributions, a transfer balance cap applies from 1 July 2017, which limits the total amount of superannuation that can be transferred into the retirement phase.

The transfer balance cap is currently $1.7 million. It is intended that the transfer balance cap will be indexed periodically in $100,000 increments in line with CPI. The amount of indexation you will be entitled to will be calculated proportionally based on the amount of your available cap space. If, at any time, you meet or exceed your cap, you will not be entitled to indexation.

In essence, the transfer balance cap is an additional limit on how much you can contribute to superannuation. For example, you cannot make Non-Concessional Contributions in any given year which will cause you to have a total super balance of more than $1.7 million.

7.6.3 How is my superannuation taxed in Australia while I'm in the UK?

The way your superannuation is taxed in Australia will be the same irrespective of whether you are overseas or not. During the Accumulation phase, investments earnings are taxed at 15% and capital gains are taxed at 10%. If you are making contributions to superannuation, you need to determine whether changes to the 'work test' apply to you. For more details go to the following link.

In addition to the base 15% tax collected by your super fund in respect of concessional contributions, if your 'income' plus concessional contributions are more than $250,000 in 2021/22 or later years, under the terms of Division 293 of the Income Tax Assessment Act (1997), you may have to pay an additional 15% contribution tax. The components of this 'income' calculation are shown at the following link.

If you make or receive concessional contributions (CCs) of less than the annual concessional contributions cap of $27,500 pa (for the 2022/23 financial year), you may be able to accrue these unused amounts and carry forward for use in subsequent financial years. This is known as catch-up concessional contributions. Catch-up concessional contribution can accrue from 2018/19. Unused cap amounts can be carried forward for up to five years before they expire. To be eligible to make catch-up CCs, one criterion is your total super balance must be below $500,000 at the prior 30 June.

Whether it will be tax effective for you to make concessional contributions to your super account while overseas will depend on your personal circumstances.

7.6.4 How would an Australian pension be taxed in the UK?

Under the terms of the UK-Australia DTA, pension income is taxable in the country of residence, so if you receive pension income from your Australian superannuation fund while UK resident, it is the UK not Australia that will tax this income.

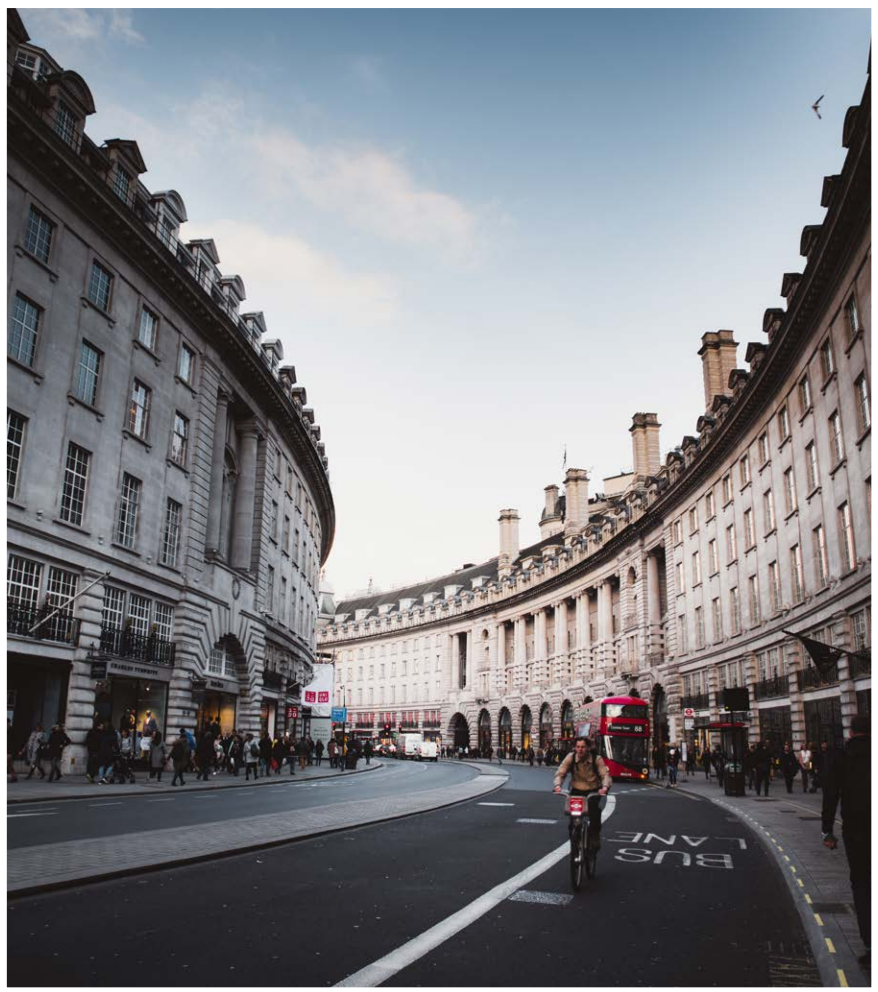
In the UK, pension income is subject to income tax rates: 20%, 40% or 45%, depending on your total taxable income for the year.

Note that lump sum withdrawals from Australian superannuation funds are also taxable in the UK, but often on a more favourable basis. The degree of tax saving to be achieved by making a lump sum withdrawal instead of receiving pension income will vary depending on the history and composition of the particular superannuation fund. It may also be necessary to restructure the Australian superannuation fund in order that a withdrawal is treated as a lump sum rather than a pension income.

If making withdrawals from an Australian superannuation fund are likely while you are UK-resident, we would recommend seeking advice before you leave Australia to structure withdrawals as tax-efficiently as possible.

7.6.5 What elections are available regarding paying tax on my Australian pension?

There are no elections available to prevent UK taxation of your Australian pension. The only way to avoid UK taxation on your Australian superannuation withdrawals is to make no withdrawals whilst UK-resident. This may necessitate restructuring your superannuation fund.



8

Case studies

The case studies have been developed to address potential tax traps for Australian expats living and working in the UK. If any of these situations applies to you, it may be worth obtaining professional tax advice.

8.1 Australian seconded to the UK for two years

If an Australian is sent to the UK by their Australian-employer for a short-term period, it may be possible to structure this as a secondment, within the UK tax legislation. Doing so, can be beneficial from a tax perspective for both the employee and employer.

Case Study

James is an Australian national who works for a large global pharmaceutical company's Australian subsidiary. As part of a project to develop new targets for the treatment of Alzheimer's disease, the company wishes to send James to work in the UK office for 2 years.

The company arranges a secondment for James in the UK office. He remains employed by the Australian subsidiary on the same contract and with the same terms and conditions. The Australian company subcontracts the operation of UK payroll to the UK company.

James' wife and two young children will accompany him to the UK. The UK office is based in London and James and his family rent a house in Cambridge to live in.

James' company pays for flights for the family to the UK at the start of the secondment and back from UK to Australia at the end of the secondment. James and his wife lease their home in Australia to tenants for the period of their secondment.

James' annual gross salary is £85,000.

If the UK arrangement is correctly structured:

- Neither James nor the company will be subject to Class 1 UK National Insurance for the first 52 weeks of the secondment – saving James £5,219;
- The payment of flights for the family will not be a taxable benefit;
- James will be able to claim a tax-deduction for his travel costs from Cambridge to London;
- James will be able to claim a tax-deduction for a broad-range of travel and subsistence expenses incurred as a result of the secondment.

To achieve this tax status, careful navigation of the UK-Australia DTA is needed and it is important that the secondment documentation is correctly structured. There is no substitute for professional advice.

8.2 Australian making their own employment arrangements in the UK

Australians travelling to the UK, with a view to seeking employment once they arrive need to be aware of their UK tax obligations and how their earned income will be taxed.

In the UK, not everyone has to lodge an annual tax return. However, if, as is often the case for Australians arriving in the UK, you receive foreign income (even if you don't intend to bring this to the UK), you may be required to lodge a tax return and if so you will have an obligation to register for self-assessment with HM Revenue and Customs. Failure to register on time can result in significant penalties.

Case Study

Jane is an Australian whose maternal grandmother was British. She decides to apply for a UK ancestry visa and move to the UK for 3-5 years. She resigns from her job as a computer-generated film special effects specialist in Australia and arrives in the UK in April 2023.

She is offered employment with a VFX studio in London, with annual salary of £42,000.

Jane's father left her a portfolio of ASX shares, which generate approx. $9,000 annual dividends.

For the 2023-24 tax year the HMRC average exchange rate was £1:$1.83.

Although Jane's salary is taxed through PAYE, she has £4,918 of foreign dividends for 2023-24.

She is therefore required to register with HMRC for self-assessment by 5 October 2024 and to lodge a 2023-24 UK self-assessment tax return

8.3 Self-employed contractor working in the UK

Self-employed contractor arrangements are extremely common, especially for foreign nationals visiting the UK for a short-period and looking for fixed-term contract work. Potential employers may either recommend that the individual works through an umbrella company or set-up their own UK limited company through which to contract.

It is important to note that the residence of a single shareholder/single director company will be impacted by the residence of that shareholder/director, so if you register a UK company while UK-resident, we would recommend seeking advice on whether to wind the company up before you return home to Australia.

Like Australia's Personal Services Income (PSI) rules, the UK has some anti-avoidance rules that can look through a company and assess the company's income on the individual in cases where the work carried-out by the contractor through the company has all the hallmarks of employment. Care needs to be taken, particularly if much of the income generated by the company comes from a single customer.

HMRC sets the criteria for Self-Assessment tax return lodgement each year, and provide a checklist on their website. As a self-employed person though you will almost certainly need to register and submit annual Self-Assessment tax returns in the UK.

UK has some sophisticated rules to prevent companies being used to change the nature of employment income.

Provided these can be navigated and consultancy income is treated as the company's income, the profits will be subject to Corporation Tax. Rates of Corporation Tax have been climbing in recent years, to the current rate of 25%. Extraction of the company's profits through liquidation can result in Business Asset Disposal Relief (BADR) being available such that the extraction of retained company profits is only taxed at 10%, but care is needed with timing if you are returning to Australia.

Case Study

Susan is an Australian business process consultant. She travels to the UK, intending to stay for 6 years before returning home to Australia.

She decides to register a limited company through which to work in the UK.

With a good network of contacts, she manages to generate a good customer-base in the UK, and her contracts are structured so that they meet the definition of contracts for service (sub-contractor). Her annual company profit before tax but after deduction of a small salary to meet her annual living costs is £100,000.

The company pays 25% Corporation Tax, leaving £75,000 retained profits each year.

After 5 years of working in this way, Susan decides to cease trading and wind-up the company, spending her last 6 months before returning to the UK relaxing and visiting friends and exploring the UK. She appoints a liquidator, who charges £5,000 to wind-up the company. At this point the retained profits in the company total £375,000.

The liquidator completes the wind-up and pays the profits, net of his fee, to Susan as the shareholder as a capital distribution, while she is still UK-resident. Susan is eligible for Business Asset Disposal Relief and has made no other capital disposals in the year of receipt.

Susan's taxable gain after the Capital Gains Tax Annual Exemption and liquidator fees is £364,000 and she pays tax at 10% on that. Susan's net receipt from the liquidation distribution is:

£364,000 -£36,400 = £327,600

Note that if Susan did not allow enough time for the liquidation to be completed and the distribution paid before she left the UK and became Australian-resident again, Australia would tax the distribution as a deemed-dividend under Division 7A ITAA 36 (with no franking credits) and much of Susan's distribution would be taxed at 47% (top rate of tax plus Medicare Levy) in Australia.

9

Overview of UK Inheritance Tax (IHT) rules

UK Inheritance Tax, as the name suggests, is a tax that can apply to your assets on death. However, it can also apply during your life if you give an asset to another person (e.g. your son or daughter) or transfer an asset to another person for less than open market value.

If you are either UK-domiciled or deemed-domiciled your worldwide assets are subject to UK IHT, whereas if you are neither UK-domiciled nor deemed-domiciled, only UK assets are subject to IHT.

Determining domicile status is therefore critical to understand your level of exposure to UK IHT.

Importantly, changes to the UK tax legislation introduced from April 2017 mean that:

- If you were born in the UK but have lived outside the UK your whole life, you will be deemed to be UK domiciled for IHT purposes if you are UK-resident for any tax year from 2017-18 onwards and
- If you were born outside the UK, you will become deemed-domiciled in the UK for IHT purposes once you have been resident in the UK for 15 of the previous 20 years.

Once you become either UK-domiciled or deemed-domiciled, this status can (and often does) continue for up to five full UK tax-years from the date you leave the UK and return to Australia.

While there are certain reliefs and exemptions available to reduce the taxable value, depending on the circumstances, IHT is charged at 40% of the taxable estate on death, and 20% on life-time transfers, so it can be a significant tax.

Determining the taxpayer's domicile status prior to arrival in the UK and undertaking some IHT planning, can significantly reduce your exposure to this significant UK tax.

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