

PART A

Answer-to-Question-_1_

Expat Australia Tax LLC

10th June, 2026

Dear Alice and Hugh,

You requested that we provide you advise on the following matters for the current tax year -

- Current tax residency of Alice, Hugh and AusArtists Pty Ltd and timing of change of residency
- Capital gains tax implications of the sale of the Sydney property
- Personal Services Income rules to the income of AusArtists Pty Ltd

Current tax residency status of Alice

Alice was born in Australia and was working in Australian TV series films. As she was an Australian resident at the time, Alice was assessable on her worldwide income.

She bought a house in Sydney 25 years ago with Hugh where she resided.

10 years ago, she incorporated a company in Australia (AusArtists Pty Ltd) as the 100% shareholder to manage her career and receive payments.

8 years ago, Alice moved to the US and rented a house in LA. She spent most of the tme in the US during the year, and only visited Australia for few feeks per year since then.

She closed her Australian bank accounts.

6 years ago, her movie roles increased and payments were being made to her company AusArtists Pty Ltd.

4 years ago, Alice bought a house in LA.

In Current year, she did not visit Australia at all.

Few months ago, Alice applied for US citizenship and they intend to be dual citizens of both countries.

Alice initially satisfied the definition of resident for Australian tax purposes under Sec 6 of ITAA 1936 as she was born in Australia and having continuously lived in Australia and even purchased a home in Sydney where she lived. At the time, she was assessable on her worldwide income.

Her situation changes 8 years ago, when Alice moved to the US and rented an apartment in LA and had a place of abode there. Her work commitments meant that she would spend most of the year in the US, only returning to Australia to visit family members. She also closed her Australian bank accounts. Case law supports her being considered non-resident of Australia under ordinary concepts in the current tax year after living overseas long term (FCT vs Applegate and FCT vs Jenkins). The ATO had also issued a taxation ruling stating that - the longer you stay in any one particular place, the more permanent it is likely to be, and this is because the extended periods of stay will lead to the formation of durable connections overseas and loosening of connections in Australia, although she had family members living here but we can see from the fact pattern that she did not visit Australia at all 2 years ago and in the current tax year. She would also likely have met the substantial presence test in the US, making her a US tax resident as the fact pattern shows she has a closer connection now with the US. Currently her tax residency would likely be non-resident of Australia as she not meet the resides test, the domicile test, the 183 day test or the super annuation test. Her physical presence, her accommodation arrangements, employment activities, closing of Australian bank accounts, permanent home in LA, centre of vital interests, habitual abode all lead to the US being her tax home and therefore a non resident of Australia.

Current tax residency status of Hugh

- Hugh was born in Australia was a public servant and made contributions

to a CSS pension.

- Hugh bought a house in Sydney 25 years ago with Alice where he resided.
- Hugh helped with company management as director with Alice
- 6 years ago, Hugh resigned from his public sector while remaining a contributing member of the CSS, occasionally making voluntary contributions
- he moved to the US working full time for AusArtists Pty Ltd
- 4 years ago, he bought a house in LA and closed all but one of his Australian bank accounts
- in the last year, he reached his preservation age and withdrew his superannuation as a lump sum, ceasing to be a member of the CSS
- Few months ago, Hugh applied for US citizenship and they intend to be dual citizens of both countries

Hugh initially satisfied the definition of resident for Australian tax purposes under Sec 6 of ITAA 1936 as he was born in Australia and having continuously lived in Australia and even purchased a home in Sydney where he lived. At the time, he was assessable on his worldwide income.

Although 6 years ago, Hugh resigned from his public service job, he remained a contributing member of the CSS and occasionally made voluntary contributions. Therefore he met the definition of an Australia tax resident as he met the Commonwealth Superannuation Test which applies to certain government employees working abroad.

Hugh's residency likely changed to a non-resident of Australia when he withdrew his superannuation as a lump sum in the last year, ceasing to be a member of the CSS. Case law suggests him being a non resident under ordinary concepts after living overseas long term as he no longer met the residency tests - resides test, domicile test, 183 day or even the superannuation test.

Current tax residency status of AusArtists Pty Ltd

AusArtists Pty Ltd was incorporated in Australia and was a tax resident of Australia as it carried on business in Australia and had likely its CM&C in Australia until 8 years ago when Alice moved to the US.

Alice is the 100% shareholder and therefore the central management and control of the company lies in her hands. Hugh did not have any ownership in the company but is a director alongside Alice.

As a tax resident, AusArtists would be assessable on the worldwide income of the company.

However, once these conditions cease to be satisfied, a company becomes a non resident.

8 years ago, when Alice moved to the US, the business operation moved with her so there may have been a change in the CM&C. CM&C is a question of fact to be answered according to where the central management and control of the company actually abides. We have to consider the below for change of CM&C -

- where the power resides with those making high level decisions and determining company policies
- location of the superior directing authority
- location of people consider advice, instructions, operations, profit distribution decisions

Alice was the 100% shareholder who was managing this company, the CM&C of the company would have moved to US 8 years ago when she moved to the US and controlled the company from the States if the above criteria is met. Although, Hugh helped with company management as a director alongside Alice, it is vital for the superior management or director authority be moved or relocated as well. Case ref - Bywater Investment Ltd vs Commissioner. If Hugh was the superior manager and not just managing day to day operations, then the CM&C may not have changed until his change of residency 6 years ago when he moved to US.

Capital Gains Tax Implications of the sale of the Sydney Property

Bought the house 25 years ago for \$1 million and resided

Rented the house from 6 years ago when Hugh also moved to the US

Sold the house in the current year for \$3 million

The Sydney house is a CGT asset and disposal of a CGT asset is a CGT event. A capital gain generally arises where there capital proceeds exceeds the cost base. CGT event 1 occurs during disposal. Here we can see the property was sold for \$3 million while it was purchased for \$1 million. Any net capital gain from the sale of an investment property is taxable even for non resident as its TAP (taxable Australian property) and included in assessable income. Rental income from the property is assessable income, both during the residency and non residency period as the property is located in Australia.

An exception only applies if Hugh is able to claim a main residence exception (sec 118-ITAA 1997). A former main residence may continue to qualify while rented out under the six year absence rule if the taxpayer continued to treat the property as their main residence under the absence provisions. However, since the property was also used for the company's business and if capital allowances were claimed during the period it was rented out, the exceptions may be limited. A non resident also usually cannot access the 50% CGT discount on long term assets but there may be exceptions which will need to be carefully evaluated.

PSI rules for income of AusArtists Pty Ltd

the PSI rules are contained in Part 2-42 of the ITAA 1997. The PSI provisions act as a type of specific anti avoidance regime which ensures that professionals who enter into contracts of service with related entities cannot reduce, alienate or split their income through their interposed company, trust or even partnerships. This rules however do not apply to sole traders or employees. So the effect of the tax provision is that the PSI income of AusArtists Pty Ltd is attributed to Alice who generated the income and for the AusArtists the rules restrict the type of deductions that can be claimed.

For Alice, the deduction for PSI is allowable to the extent of salary and wage type claims.

It requires the application of the principal results test and failing that test is another 80% rule and there are also other tests like unrelated client test, business premises test etc. So the commissioner can choose to exercise in unusual circumstances where he considers that one or more of these tests could have been satisfied. Hence the ATO can cancel any tax benefit received and if that benefit results in a scheme that involved an income splitting arrangement. The requirement of Part IVA of ITAA 1936 are that the dominant purposes of the scheme is to obtain a tax benefit resulting from alienation or income splitting of the PSI and specially if the profits were distributed to family in Australia at lower marginal rates and there the anti avoidance provisions will likely apply.

Best regards,

Ankurita

Answer-to-Question-___

PART B

QUESTION 4

The trust's net income would include the following -

Trading Income of \$8 million

Gross up dividends = \$1.3 million (\$300,000 of franking credit can be claimed as an offset)

Net capital gain (after 50% LT CT discount) = \$1 million

Therefore the trust's net income would be = \$10.3 million for the most recent year

A trust is not a separately taxable entity and the net income of a trust can be attributed to either the trustee or the of the Gibson Family Trust i.e. G Pty Ltd or the presently entitled beneficiaries in accordance with Div 6 of the ITAA 1936.

On 25 June, The trustee has resolved to distribute \$2 million to each of the adult beneficiaries and \$500,000 to each of the minor beneficiaries.

The adult beneficiaries will be taxable on the \$2 million of income that is distributed to them on their personal tax returns at their marginal tax rates. They will also get a franking credit offset for the franked dividends and they can claim them on their personal tax returns which may result in a refund if the franking credit was in excess of the tax owed on the dividends.

Adult beneficiary C is a non resident of Australia and if he receives franked dividends, he does not have to pay tax separately as the corporate tax was already paid on that income and no additional withholding will apply.

The trustee G Pty Ltd will be assessable on the distributions made to the minor beneficiaries as they are minors. Hence the \$500,000 payments made to each of the minor beneficiaries will be taxable in the hands of the trustee, G Pty Ltd.

On 26 June, The trustee has resolved to distribute the dividends to Ben A and the capital gain to Ben B in their distributions.

A trustee is able to stream capital gains to particular beneficiaries provided it has the power, expressed or implied under the trust deed. There should be a provision in the Gibson Family trust that specifically defines income as ordinary income not including capital gains as this would provide the trustee with the authority and the power to stream CG

and income to different classes of beneficiaries. If they are not explicit, it would need to be supported by trust accounts and records with the trustee having the ability to amend the trust deed as required. Another trust provision to preserve the CGT distributable discount is a clause which says that the trust income should equal net income of the trust.

Beneficiary B made a capital loss in his own right of \$1 million and the capital gain from the trust is distributed to Ben B in their divisions. Anti trust stripping laws operate where distributions are made to beneficiaries who can remove their CGT liability using their other capital losses. Any CG that is not effectively streamed will be taxed to the beneficiaries under Div 6 of ITAA on a proportionate basis where they are beneficially entitled. This results in A, B and C being entitled to their proportion of dividend income plus their proportion of the capital gains.

Answer-to-Question-___

PART C

QUESTION 5

CFC rules prevent Australian residents from accumulating passive income in low tax foreign countries. The conditions to be met under the CFC rule is that there must be a controlled foreign company with an attributable taxpayer and attributable income against which a calculation is applied to determine the assessable income. All of these preconditions are satisfied as the foreign companies are 100% owned.

The operation is that certain income of a FC may be attributable to an Australia resident controlled and tax may be imposed even if profits are not distributed. They prevent deferral of Australian tax through offshore entities. Control has been assumed in the fact pattern. The CFCs are also in unlisted companies as specified in Part 8 of ITAA 1997.

However, when a CFC satisfies the active income test and derives income from active business, the attribution generally does not arise. Attribution is generally directed at tainted or passive income such as interest, royalties, rents and certain related party income.

InvestCo earned business income which is not considered tainted income based on the case law and has likely met the active income test. Hence, the income from InvestCo would not be attributable to AustSmart Pty Ltd.

HavenCo primary has tainted income that must be attributed to AusSmart Pty Ltd due to CFC rules. The rent from InvestCo of \$100,000 would be attributable to AustSmart as it is tainted income. The service income of \$100,000 from InvestCo would also be attributable as it is related party income. The dividend income of \$300,000 would be attributable as well as it is tainted income.

Answer-to-Question-___

QUESTION 6

Mechanix Pty Ltd has been registered for GST for many years. The standard GST rate is 10%. GST applies where there is a supply for consideration, the supply is made in the course of an enterprise, the supply is connected with Australia, the supplier is registered.

Mechanix has previously only made domestic sales but has recently begun marketing its products internationally and has received orders from individuals in the Asia Pacific region with 50% buyers intending to use them as private leisure boats and remaining 50% for fishing or tourism operations.

GST is payable when sales exceed \$75,000 turnover as measured during the

previous 12 months acc to S188-15 GST Act. A supply of goods is GST free where the consideration of the supply is provided under a contract that requires goods to be exported. The supplier can export the goods from Australia before or within 60 days of the first of the below 2 events -

- supplier received final payment for the goods or
- if supplier issues an invoice in an earlier date for the final installment of the goods.

Mechanix has fulfilled the orders on the basis of full payment from the customer upon receipt of the invoice and hence the export would qualify as GST free.

GST would likely apply to the exports made to the wholly owned subsidiaries in Thailand and Fiji as the entities are closely related and subs of Mechanix Pty Ltd. Hence, anti avoidance rules may apply where GST is applied on the exports made to the wholly owned subs. This would have been GST free if the exports were made directly to non related consumers instead of related entities.

Answer-to-Question-___

QUESTION 2

Expat Australia Tax LLC

10th June, 2026

Dear Samantha and Bill,

You requested that we provide you tax advice on the following issues -

Treatment of capital gains and losses, and dividends from overseas in the Australian Income tax context

How the income tax and FBT rules apply to the loan made by the company to Bill and the provisions of the leased motor vehicles

Sammy investments Pty was incorporated in Australia with Cm&C in Australia and is therefore an Australian resident for tax purposes and assessable on its worldwide income.

A company is a separate taxable entity and is assessed on its own taxable income. Company profits are taxed at the corporate tax rate and maybe subsequently distributed to shareholders as dividends. To mitigate double taxation, Australia operates an imputation system under which shareholders receive franking credits for tax paid by the company on franked dividends. Company losses generally remain within the company and cannot be distributed to shareholders.

The company would be taxable on the income it received at the 25% rate. It would not get access to the 50% capital gains tax discount for long term assets which is available only to individuals, partnerships and trusts. The passive income of \$20 million would therefore be taxed at the 25% company tax rate.

As these are franked dividends, there will be a franking credit attached to these dividends when distributed. The shareholders would then have to include both the cash dividend and the franking credit in assessable income and can claim a franking tax offset for the franking credits. This gross up and credit mechanism recognizes the tax already paid by the company and ensures that profits are ultimately taxed at the shareholder's effective tax rate. This mitigates the double taxation of company profits.

Fringe Benefit tax is a separate tax imposed on employers who provided non cash benefits to employees or their associates in respect of employment. The tax is levied on the taxable value of the benefit and applies irrespective of whether the benefit is provided directly or indirectly. FBT is separate from income tax as it is assessed on the employer for the FBT year ending 31 March. the tax is imposed at 47% rate.

As Bill is only a director and unless he receives salary from the corporation, the FBT would likely not apply as the company is not the employer.

If he is truly employed and working for the company, the loan may qualify for FBT purposes.

The loan to Bill was provided 2 years ago and that loan extends to the current year. The loan to Bill would likely constitute a fringe benefit and the forgiveness of the loan potentially creates another fringe benefit in the current year. The taxable value of the loan fringe benefit is the amount by which the yearly notional amount of the loan, exceeds the interest that has accrued on the loan in the year. A low rate of interest that is below the statutory rate can be considered as another fringe benefit. Unless there is a genuine bad debt and the write off is made for genuine reasons related to the employment activity, a debt waiver fringe benefit would not apply.

Same applies for Samantha if she was employed by the company. In that case, the car would likely be considered as a property fringe benefit. Sec 40 of the FBTAA 1986 covers provision of property to another person, and the taxable value is determined separately depending of the type of property fringe benefit, whether that is in house or external.

Best regards,

Ankurita