Working Overseas Tax Trap

If you are considering a secondment overseas please make sure you get the right advice first. This blog is motivated by reading some poor advice from an Australian company sending an employee to work in the UK for 2 years. Basically, the employer told the employee that they could not tax their UK wages because they would be a resident of the UK for tax purposes.

Even worse, the employee was not informed of the downside of becoming a non resident of Australia. The trouble is it would be the poor worker who would be left to face the ATO and the associated fines. So, if you are thinking of working overseas make sure you get reliable Australian advice before you sign anything. Some key points.

It is all about the "centre of vital interests" question. This comes from our double tax agreements, which are pretty similar in this regard. Here is an extract from the UK one:

http://www.austlii.edu.au/au/other/dfat/treaties/2003/22.html

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.

IT 2650 is the ATO ruling on the issue, worth a read, lots of examples https://www.ato.gov.au/law/view/document?docid=ITR/IT2650/NAT/ATO/00001 In the following example the taxpayer was still found to be a resident of Australia, even when renting out their home in Australia and purchasing a home overseas.

38. An airline company employee took a 2 to 3 year posting to an overseas country expecting to return to Australia at the end of that period. She was accompanied by her spouse and children and purchased a home in the overseas country while renting out the family home in Australia. She was considered to have remained a resident of Australia. However, if she decided to stay in the overseas country for a further period of, say, 2 years, she was to be treated as a non-resident during the additional 2 year period.

Result: resident during her posting.

The key points are the following:

- Secondment period under 2 years, forget it, you are still a resident
- Whether you have a home in Australia, even if you are renting it out.
- Financial connections to both countries, eg rental property in Australia, or that you are still associated with your Australian employer with ongoing accrual of leave or superannuation contributions.
- Still close personal and economic ties with Australia. This is just a temporary absence with everything still set in place to return to.
- Lack of permanency overseas because of rental home and company car.
- Resident of Australia if your spouse or minor children remain in Australia
- Even if the tie breaker in the double tax agreement regarding your “Centre of Vital Interests” is not clear, then Australia wins because you are a National.

Don’t let the lure of not being taxed in Australia distract you from the downsides of becoming a non resident. Here are a few good reasons to continue to be a resident of Australia for tax purposes.

1) If you purchased your Australian family home after 19th September, 1985, and you decide to sell it while living overseas, the CGT main residence exemption will not apply to any of the gain, not even for the time you were actually here in Australia living in it.
2) During the period you are a non resident of Australia, the 50% CGT discount will not apply to any of the properties you own in Australia, including your main residence. This will apply even if you sell the properties that are not your main residence after you return to Australia.
3) As a resident, Australia will allow a credit for the tax paid in overseas countries where we have a double tax agreement, but unfortunately any unused credit is not refundable.
4) This leads to a down side of remaining an Australian resident. If you have an Australian rental property making losses, those losses can't be carried forward to future years, they are offset against the foreign income. While this might technically reduce your Australian tax, it is likely that you will not use up all of your overseas tax credits anyway. So the losses on the rental property will not increase your tax refund.

Disclaimer – All very general in nature. Seek professional advice if you are in this position.