DLK ADVISORY

WITHHOLDING FOR FOREIGN RESIDENTS: AN ATO FOCUS AREA

Does your business or investment structure make payments such as interest, dividends or royalties to any foreign residents? You may be required to withhold tax from these payments. The ATO has recently reported that it's currently focusing on ensuring that taxpayers are aware of these obligations.

If these withholding requirements apply to you, you'll need to lodge a PAYG annual report or an annual investment income report, and withhold and pay the correct amount of tax.

When does withholding tax apply?

Figuring out whether an obligation to pay withholding tax arises from a particular payment can be complex. Assuming your structure is resident in Australia, the starting point is that the withholding tax regime generally applies to interest, dividends and royalties derived by foreign residents, unless an exemption applies. This means the withholding tax obligation arises whether you make the payment to the foreign resident, credit it to their account, or deal with the payment on their behalf or at their direction. (Certain payments can also be captured if your structure is not resident but has a permanent establishment in Australia.)

However, a number of exemptions apply. These include:

- the franked amount of any dividends;
- "deemed" dividends that arise under Division 7A;
- certain payments to non-residents who are carrying on business through a permanent establishment in Australia;
- certain interest and royalties that you incurred as an outgoing in carrying on business through a permanent establishment outside of Australia;
- payments to certain exempt entities involved in fields like charity, community service, health, tourism, culture and sports;
- payments related to certain publicly offered company or unit trust debentures or debt interests; and
- other exemptions.

As this list demonstrates, the exemptions are numerous and can be technical in operation. This is why it's important to seek advice specific to your circumstances if you make any payments to non-residents. Further, if the payment is made to a resident of a country which has a tax treaty with Australia, this may affect the withholding tax rate or provide an exemption.

What is the ATO looking for?

The ATO is alert to payers who have not withheld and paid amounts (or have withheld and paid incorrect amounts), incorrectly relied on an exemption or treaty relief, or misclassified deductions for interest or royalty payments to an offshore entity.

The ATO has also issued several alerts in recent years regarding specific arrangements such as "treaty shopping", use of interposed offshore entities, and deferral of interest with deductions claimed on an accrual basis as means to avoid, defer or reduce withholding tax obligations.

Are you on top of your withholding obligations?

Talk to us if you need assistance understanding when to withhold tax from interest, dividend or royalty payments.

CONTACT
If you have any queries, please feel free to contact us.

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