

Double tax agreements, residency and income treatment are just some of the considerations that Chinese investors have to be aware of when buying Australian Assets

Chinese investors have long seen Australia as an opportunity to acquire Australian property assets, however like any non-resident, they face many tax considerations in doing so.

Some of the key issues faced by Chinese investors include:

- Double tax agreements between Australia and China
- Residency rules for investors in Australia and China
- The way that income, profits or capital gains are treated in either country
- The decisions required around how property is owned, e.g. ownership structures and funding those investments

Lets explore these in further detail.

Double Tax Agreements

Non tax-residents are generally taxed based on where they currently reside, subject to any double tax agreements that may be in place. The Chinese Double Tax Agreement (DTA) came into force on 28 December 1990.

Applying the DTA

In Australia, the DTA covers agreements on Federal income taxes and resource rent tax for offshore petroleum projects (exploration or exploitation), however it does not apply to State or Territory taxes, Australian GST or other types of Australian taxes imposed by the Commonwealth of Australia. In China, the DTA applies to income tax imposed by the Peoples' Republic of China but not Hong Kong or Macau.

Residency rules for Individuals

For Chinese investors, residency rules are important to understand, particularly where their tax liability is likely to arise. Under the Chinese DTA, individuals are considered to be a resident of Australia if they are fully liable to tax under Australian tax law.

From the Australian perspective, an individual is considered to be a resident for tax purposes if they actually reside in



Australia. There are further statutory tests for residency including:

- Whether the individual's permanent place of abode is in Australia
- Whether they have been in Australia continuously or intermittently for more than half of the income year;

However one of the issues that arises is when the individual purchases property for private use, as a residence for a child studying in Australia or they spend less than 183 days per year in Australia. The individual is liable to tax in Australia from sources derived in Australia, but they do not live in Australia, then they are considered a non-resident.

Residency rules for companies

A company is an Australian resident for tax purposes if it:

- is incorporated in Australia,
- carries on business in Australian with central management and control in Australia
- the business is carried on in Australia with voting power allocated to shareholders who are Australian residents

What happens if a person is permanent resident in both countries?

The definition of a 'resident' can actually occur in both Australia and China at the same time, which is where tie-

breaker rules apply. If both tax systems claim an individual as a resident for tax purposes, then 'tie breaker' rules would deem the person to be a resident of one country for the purposes of the Double Tax Agreement.

In practice, the tie breaker rules look at the country in which the person has a permanent home and the closest economic and personal ties to determine the country in which they should be taxed as a resident for tax treaty purposes.

For companies, the rule is applied where its management or head office is situated. If the management is one country and the head office is in another, then the person would be a resident solely of the country where the head office is situated.

Temporary residency rules

Generally speaking, temporary residents are taxed as if they were non-residents by treating all foreign income as non-assessable, non-exempt and disregarding all capital gains from non-taxable Australian property.

Source of income

Chinese investors who derive income from their Australian property assets may be taxed in Australia if the property is located here and 'income' may come from direct use, leasing of the asset or its use in any other form of 'real property', for example, a lease of land and any other interest, such as the extraction of natural resources (e.g. minerals, oil, gas etc.).

Australian tax applies irrespective of whether the recipient of any income maintains a permanent establishment in Australia.

Financing investments

When investing into Australia, a non-resident would prefer funding by debt rather than by equity due to the deductibility of interest expense on the debt. Under the Chinese DTA, the interest withholding tax is 10% whilst the dividend withholding tax is 15%.

It then introduces another tax issue where there is debt funding, how Australia's thin capitalization rules would apply.

The purpose of the thin capitalization rules is to disallow part of finance costs, when the amount of debt exceeds the specified limits. The recent changes have somewhat relaxed these rules.

A renewed focus on FIRB compliance

The last prosecution of a foreign national for non-

compliance with FIRB's rules was as far back as 2006, which led to FIRB's reputation for being toothless.

However the Australian Government announced earlier in 2015 that it would be introducing a number of reforms focused on procedures and enforcement provisions, effective on 1 December 2015:

1. The Australian Taxation Office will take over the residential real estate functions and improve compliance and enforcement through sophisticated data-matching program and specialized staff with compliance expertise.
2. Stricter penalties will make it easier to pursue foreign investors breaching the rules.
 - the existing criminal penalties will be increased from \$90,000 to \$135,000 for individuals and up to three years in jail and up to \$637,500 for incorporated entities;
 - Third parties who knowingly assist a foreign investor to breach the rules will also be subject to civil and criminal penalties. This may include people such as real estate agents, conveyances and family members.
 - A reduced penalty period will apply until 30 November 2015 to encourage investors that have breached the rules to voluntarily come forward
3. Increased scrutiny around foreign investment in agriculture.
 - From 1 March 2015, the screening threshold for agricultural land was lowered from \$252 million to \$15 million (cumulative).
 - A \$55 million threshold (based on the value of the investment) for direct investments in agribusiness will be introduced to capture certain downstream activities with links to primary production.
4. Increased transparency on the levels of foreign ownership in Australia through a comprehensive land register.
5. An agricultural land register with information provided directly to the Australian Taxation Office by investors was established from 1 July 2015. Further information is available at: www.ato.gov.au/aglandregister.
6. The Government is in negotiations with state and territory governments to use their land titles data to expand the register to include all land (including residential real estate).

The rules for buying Australian investment property

Temporary residents and foreign investors must seek approval from the Foreign Investment Review board before buying Australian property. The requirements are different for each group:

Temporary Residents

Temporary residents on spouse, 457 or student visas must:

- Obtain approval from FIRB before purchasing a property
- Buy an established dwelling and be living in it whilst in Australia.
- Buy new property or vacant land to build new dwellings and if the property is for investment rather than to live in, comply with Australian tax reporting.

Temporary residents do not need to get FIRB approval if buying the property with an Australian citizen spouse as 'joint tenants'.

Foreign Investors

Foreign investors are subject to different rules than temporary residents. Foreign investors must:

- Obtain approval from FIRB
- The investment property must be a new property or vacant land or established dwellings for redevelopment.
- Not buy established dwellings as an investment property.
- Foreign investors can buy new property in their own name and rent it out to their children, provided the child is a temporary resident e.g. a student or on an approved visa.

Application fees and registration for foreign investors

Foreign investors who buy property in Australia will now face applications fees for buying Australian property, which is:

- A \$5,000 application fee for properties valued at less than \$1 million
- A \$10,000 application fee for every extra million dollars in the purchase price.

Disposing of Australian real property

Under Australian tax law, the tax treatment that applies to disposing of assets depends on the type of asset being disposed of, for example, trading stock, revenue assets or capital assets.

Even if the asset is considered as a capital asset under the CGT provisions, there are still various issues to consider such as:

- Taxable Australian property
- Indirect Australian real property interest
- Holding/investment structure
- CGT discount

The most significant changes for China-based investors are as follows:

- Foreign investors are no longer eligible to access the 50% CGT discount, which means you pay Australian tax on the full gain.
- Foreign investors will soon be subject to a 10% withholding tax on the gross sale proceeds of the property as an integrity measure.

There are strategies available to achieve a better after-tax investment return but there is no one-size-fits-all solution.

Speak to an Australian-based cross border specialist

Cross-border taxation rules and strategies are by their nature complex and for that reason, any Chinese investor should seek a local advisor to ensure that investments are structured properly for maximum asset protection and tax efficiency on an ongoing basis, with the exit strategies in mind.

Please contact us on 02 9957 4033 to speak to Matt Zhou or one of our International Tax team for guidance.

Contact Us

Bates Cosgrave Chartered Accountants

Ground Floor, 123 Walker Street, North Sydney NSW 2060

PO Box 497 North Sydney NSW 2059

Tel: 02 9957 4033 Fax: 02 9964 0610 Email: enquiry@batescosgrave.com.au

Web: www.batescosgrave.com.au

Disclaimer

Last updated October 2014. The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained. Please contact us on 02 9957 4033 to discuss your specific circumstances.

中国投资者在购买澳洲资产时所需要考虑的不仅仅是双重税收协定、税务居民评定和收入处理办法

长久以来，中国投资者看好澳大利亚市场，将购买澳洲房地产视作投资机遇。然而，正如任何非居民一样，他们面临着许多税收方面的问题。

中国投资者面临的主要问题包括：

- 中国和澳大利亚政府关于避免双重征税的协定
- 中国和澳大利亚对于投资者税务居民的评定规则
- 中国和澳大利亚对于收入、盈利或者资本收益的不同处理办法
- 关于房地产产权的决定，比如产权结构和提供资金的方式

让我们来进一步讨论以上问题。

避免双重征税协定

通常情况下，非税务居民由现居地政府征税，同时受限于可能存在的任何避免双重税收协定。中国的避免双重税收协定（DTA）于1990年12月28日生效。

运用避免双重征税协定

在澳大利亚，DTA协定的范畴包括联邦政府所得税以及对海外石油（勘探或开发）项目征收的资源租金税，但是并不包括州或领地政府的征税，澳大利亚消费税以及其他形式的由联邦政府征收的税种。在中国，DTA协定适用于由中华人民共和国（香港及澳门除外）政府征收的所得税。

对个人的税务居民评定规则

对于中国投资者来说，理解税务居民的评定规则十分重要，特别是可能在哪个国家出现纳税义务。根据中国DTA，如果根据澳大利亚税法个人完全有责任纳税，那么该个人被认为是澳大利亚的税务居民。从澳大利亚政府的角度来看，如果个人实际居住在澳大利亚，那么该个人就被认为是税收居民。法律上还有其它的检验方法，比如：

- 个人的永久居留地是否在澳大利亚
- 个人是否在澳大利亚连续或者间歇地居住了超过半年的时间

然而，这些检验方法存在问题。当个人购买物业作私人用途将物业作为其在澳大利亚留学的孩子的住所或者个人每年在澳大利亚停留的时间不足183天的时候，该个人应该对源自澳大利亚的收入上税，但是由于他们没有居住在澳大利亚，他们被视作非税收居民。



对公司的税务居民评定规则

如果一个公司满足以下条件，那么该公司是澳大利亚的税收居民：

- 在澳大利亚注册成立
- 在澳大利亚开展业务，且中心管理层以及控制权在澳大利亚
- 在澳大利亚开展业务，且将投票权分配给澳大利亚居民身份的股东

如果在两个国家都是永久居民，会发生什么？

一个人可能在澳大利亚和中国同时满足“税务居民”的定义。当这种情况发生时，采用决胜规则来进行判定。

根据避免双重征税协定，决胜规则将会把此人判定为其中一国的税务居民。规则对个人的永久性住所以及紧密经济利益联系和个人联系进行考虑来决定个人应该在哪个国家缴税。

对于公司而言，决胜规则考虑了公司管理层或是总部的地理位置。如果两者分别位于两个国家，那么总部所在国即为公司的税务居地。

临时税收居民规则

一般来说，临时税收居民和非税收居民享有一样的征税待遇。所有外国收入不计税，非豁免，而且所有来自非应税澳大利亚房地产的资本收益都不考虑。

收入来源

如果中国投资者从他们投资的澳大利亚物业资产中获得了收入，那么他们可能需要上税给澳大利亚政府。前提是物业地处澳大利亚境内，“收入”可能来自直接使用，租赁或其任何其他形式的‘不动产’的使用，例如土地和包括开采天然资源（比如矿物、石油、天然气等）在内的任何其他权益的租赁。

不论收入所得人是否在澳大利亚拥有固定居住/营业场所都需要上税。

投资融资

在澳大利亚投资时，非居民通常倾向于采用债务融资而不是股票融资。这是由于债务产生的利息开销可以抵税。根据中国DTA，利息预提税为10%，而股息预提税为15%。

接下来的一个税务问题是，进行债务融资时如何应用澳大利亚的资本弱化规则。这一规则对数额超过规定限额的债务进行限制，不允许使用相应产生的部分融资成本进行抵税。最近的变化使得这些规则有所放宽。

重新审视海外投资审查委员会合规

最近一起针对外国投资者不遵守海外投资审查委员会（FIRB）规则的诉讼追溯到了2006年。这起案件的结果使得FIRB被认为缺乏实权。然而，澳大利亚政府在2015年初宣布将推出一系列的改革，重点放在与程序和强制执行相关的规定，从2015年12月1日起生效：

1. 澳大利亚税务局将接管住宅房地产的职能，同时通过使用复杂的数据匹配程序和发挥合规领域专业工作人员的专长来改善规则遵守和执行的情况
2. 更加严格的处罚将降低起诉违反规则的外国投资者的难度
 - 针对个人的刑事处罚将从目前的9万澳元提升至13万5千澳元和最多3年的有期徒刑。针对公司最高罚款可达63万7千5百。
 - 故意协助外国投资者违反规则的第三方也将面临民事和刑事处罚。这可能包括房地产经纪人、运输人和其他家庭成员。
 - 减小处罚期将于2015年11月30日结束。这是为了鼓励那些违反规则的投资者主动承认错误
3. 对外国农业投资进行更为严格的审查
 - 自2015年3月，农业用地的筛选门槛将从1500万澳元（累计）降低至2亿5200万澳元
 - 将对农业综合的直接投资出台5千5百万澳元的限制（基于投资价值），以便于捕捉与农业生产相关的

一些下游产业活动

4. 通过全面的土地登记簿增加澳大利亚土地外国所有权信息的透明度

- 农业土地登记簿已于2015年7月1日建立，投资者将通过此登记簿向澳大利亚税务局直接提供相关信息。了解更多信息请访问：www.ato.gov.au/aglandregister
- 联邦政府正在与州和领地政府商谈有关使用后者掌握的土地所有权数据事宜，以将土地登记簿的范畴扩展至所有类型的土地（包括住宅地产）

澳大利亚房地产投资须知

临时居民和外国投资者购买澳大利亚房地产必须获得外国投资审查委员会的批准。对于两者的要求有所不同：

临时居民

持有配偶签证、457签证以及学生签证的临时居民必须：

- 购买物业之前获得FIRB的批准
- 购买已建成物业并且将其作为在澳大利亚期间的居所
- 购买新物业或者空闲土地兴建新住宅。如果该住宅用于投资而不是自住，需要遵守澳大利亚税务申报规定

如果临时居民与身份为澳大利亚公民的配偶联名购买物业，临时居民不需要获得FIRB的批准。

外国投资者

针对外国投资者的规定与临时居民不同。外国投资者必须：

- 获得FIRB的批准
- 投资的物业必须是新物业、空闲土地或者对已建成物业进行重建
- 不可以购买已建成住宅作为投资物业
- 外国投资者可以以自己的名义购买新物业，并将其租给孩子，前提是孩子是临时居民，比如学生或者持有批准签证

外国投资者的登记和申请费缴纳

在澳大利亚购买房产的外国投资者将面临申请费，即：

- 如果购买的物业价值低于100万，需要支付5000澳币的申请费
- 如果购买的物业价值高于100万，超出的部分每100万澳币需要多支付1万澳币的申请费

处置澳洲不动产

根据澳大利亚税法，适用于资产处置的税收处理办法取决于被处置资产的类型，比如说，上市股票、收益资产或资本资产。

即使在资本利得税（CGT）下某资产被视为资本资产，仍然存在诸多考虑，譬如：

- 澳大利亚应税资产
- 间接澳大利亚不动产权益
- 控股/投资结构
- CGT优惠

对于中国投资者来说，最显著的变化如下：

- 外国投资者不再有资格享受50%的资本利得税优惠。这意味着您需要对资本获利全额上税
- 不久以后，外国投资者将需要上缴其总销售收入10%的预提所得税，

为了实现更高的税后回报，有一些策略可供选择。然而具体情况因人而异，没有一个放之四海而皆准的解决方案。

与澳大利亚的跨境税务专家详谈

跨境税收规则和策略的确性质复杂。正因如此，任何中国投资者都应该咨询当地顾问的意见，以确保建立合理的投资结构。这可以实现持续最大化资产保护和税收效率，同时充分考虑了退出策略。

详情请来电咨询 02 9957 4033 联系我们的国际税务团队成员 Matt Zhou 为您提供指导

Contact Us

Bates Cosgrave Chartered Accountants

Ground Floor, 123 Walker Street, North Sydney NSW 2060
PO Box 497 North Sydney NSW 2059
Tel: 02 9957 4033 Fax: 02 9964 0610 Email: enquiry@batescosgrave.com.au
Web: www.batescosgrave.com.au

Disclaimer

Last updated October 2014. The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained. Please contact us on 02 9957 4033 to discuss your specific circumstances.