

AUSFOG - CFO Tax Update

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Agenda

- Indian Agent Payments
- Scholarships
- Contractors – SGC Amnesty
- China Tax Structuring
- Education Australia Investment
- Asia Integrity Checks
- ATO Contractor Reporting
- Transnational Education Agreements

Indian Agents GST Issue





Indian Agents GST Issue

Key Issues

- 18% GST from 1 July 2017
- India representatives / agents now charging Australian Universities GST on their commissions earned for recruiting India students
- Initial Argument – GST-free Export
- Indian Authorities confirmed their position that the services are ‘Intermediary Services’. Assuming this is the correct position then the services are not classified as GST-free Export

Indian Agents GST Issue

Key Issues

- New Exemption: tertiary education related services requires the qualification to be ‘recognised by Indian Law’
- qualifications awarded by **universities in Australia** ‘recognised by Indian Law’
- all commentary cautionary
- Together with 8 universities, we are progressing the application to the Authority for Advance Ruling in relation to:
 - what Australian courses are ‘recognized by India law’
 - which services provided by agents and representatives in India are exempt from GST
- Seeking to make such application in the name of a currently GST registered representative in India.

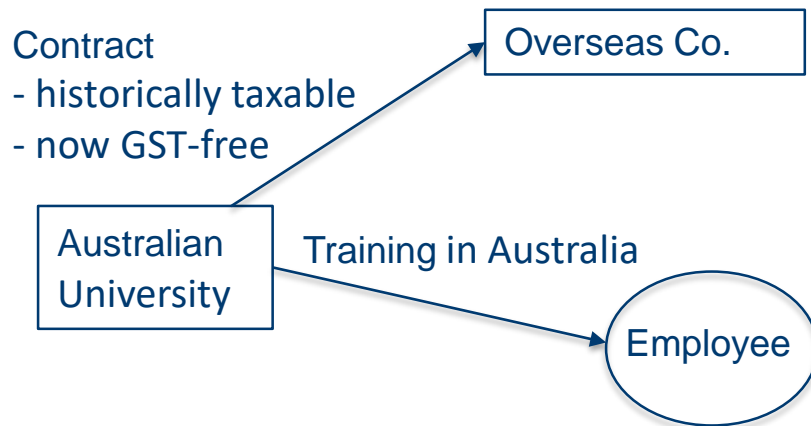
GST – training employees of overseas company



GST – training employees of overseas co.

Key Issues

- ATO have confirmed example 35 in GSTR 2004/7 is incorrect
- Training of employees of Overseas Co under a contract that the Uni has with Overseas Co is GST-free 38-190(3)(c)(iii) – Oct 2016



Scholarship Project - Update



Scholarship Project – Update

- ATO has the project on hold.
- The views expressed in the draft ruling are not ATO's final view.
- The law continues to apply as previously until such time that ATO provides further definite guidance (e.g. a tax ruling or a change in legislation).
- Where Universities had rulings (class or private) to treat certain scholarships as exempt, they may continue with that treatment.
- The law applicable to scholarships is in certain instances being discussed with the Treasury and where required legislation may be amended to provide clarity. No movement on extension of part-time.
- Any change to the ATO's view or the legislation will be not be retrospective.

Employee v Contractor – definitions under state and federal laws



Employee v Contractor – State v Federal laws

Recent Board of Taxation study raised concern in the difference in the definition of employee and contractor.

The study highlighted -

- Uncertainty around common law definition of employee
- Misclassification of workers as employees or contractors

Recommendations –

- Harmonisation of definition of an employee across all tax and non tax employer obligations at federal and state level
- Protection for those who use and rely on employee contractor decision tool
- Implement voluntary certification system to confirm worker status



Employee v Contractor

Employee	Contractor
<u>Ability to subcontract/delegate</u> : can not pay someone else to do the work	<u>Ability to subcontract/delegate</u> : can pay someone else to do the work
<u>Basis of payment</u> – time worked, price per item or activity or commission	<u>Basis of payment</u> – results based
<u>Equipment, tools and other assets</u> : Employer provides	<u>Equipment, tools and other assets</u> : worker provides
<u>Commercial risks</u> : borne by employer	<u>Commercial risks</u> : borne by worker
<u>Control over the work</u> : employer directs	<u>Control over the work</u> : worker chooses
<u>Independence</u> : part of employers business	<u>Independence</u> : workers own business

Education Australia



Education Australia Investment - Today

Entity Update – Highlights

1. Share Code “IEL”
2. Each University has a share 1/38th
3. Shares = 125,397,484 or 3,299,934 each
4. Value = @ \$9.50 ~ \$31,349,371 each in share value
5. Cash = \$72 Million in cash or \$2 Million each
6. Total Value of approx. ~ \$33.3 Million
7. Valued at 1 January 2018 at \$16.201 Million



Performance	Earnings	Dividends	View more		
Open	9.68	Earnings per Share	0.162	Most Recent Dividend	0.085
Previous Close	9.59	Price/Earnings	59.2	Dividend Yield	1.5%
52 Week Range	4.37 - 9.89	Forward EPS	0.22	Dividend Ex-Date	07 03 2018
Market Capitalisation	2.4B	Forward P/E	44.52	Dividend Pay Date	29 03 2018
Shares Outstanding	250.3M	1 Yr EPS Growth	3.8%	Franking	70%



Education Australia Investment – What Next

Education Australia – Investment

1. Governed by EA and Constitution
2. Can only sell to each other so no real market
3. Some Uni's only share investment so overweight
4. 3rd Largest Export yet few education stocks listed on ASX (Vocation, Careers Aust, Redhill, Academics Australasia)
5. ASX 200 – Index Funds Must Buy (jump)
6. PE Ratio of 44.52 (Banks 12 / SEEK 33 / Navitas 22)

Education Australia – Discussions

1. Shareholders have expressed a preferred option of;
 - a) Investment is now material
 - b) EA receives dividends and holds listed ASX
 - c) EA provides financial support to Universities Australia
 - d) Ability to realise some of investment
 - e) IEL shares should be managed within University Investment Committee
2. Timing is right to consider alternatives available at Shareholder level



Education Australia Investment – Next 6 Months

Education Australia – Options Analysis

1. Shareholder Committee to be formed (already have 20 Universities showing interest)
2. Allan Tait who is known to all has now joined the Education Australia Board (at recent Board election)
3. Option analysis to be prepared for participants
4. Principles are to;
 - i. Protect the value in IEL and communicate with relevant IEL partners (Cambridge & British Council / IELTS Test)
 - ii. Ensure that arrangements with third parties such as UA are maintained at shareholder level
 - iii. Allow Universities to realise some value in foreseeable future
 - iv. Ultimately transfer IEL shares to Universities to be managed by Investment Committees
 - v. Minimise any taxation leakage – refund of franking credits

Challenge is to manage upwards of 25 University Participants – However as “good news” storey we believe achievable

Asia Integrity Checks

(China, Malaysia, Hong Kong, India,
Indonesia, Singapore)



Doing business in Asia is now a necessity

Key Issues

- Asia presents it challenges with regard to;
 - Language, Culture, Negotiation Methods, Commercial Experiences
 - Protection and use of IP (how can University protect IP once developed)
 - Documentation (preference is for a series of MoU that build up to a legal agreement)
 - Money Flows (many countries have limited international exchange accounts)
 - Ongoing corruption allegations across Government & Private organisations

Doing business in Asia is now a necessity

Key Issues

- Co-ordinated with our Asia Offices to develop a Integrity Check
 - Organisation History
 - Legal status of the Organisation
 - Ownership of the Organisation
 - Governance Structure
 - Key Personal
 - Financial Standing
 - Is organisataion known to ShineWing
 - Has a visit to their office been conducted by ShineWing staff
 - Registrations with regard to managing an “International Account” for fund transfers offshore
 - Recent "positive" or "adverse" publicity (if any).

Contractor ATO Reporting Obligations



ATO from 1 July 2017 require Government Related Entities to report contractor payments

All Government related entities must report include:

- federal government departments / executive or statutory agencies
- statutory authorities state or territory government departments and agencies
- local governing bodies established by or under state or territory law / government-owned corporations

Organisations that

- are either established by the federal government, a state or a territory (whether under a law or not) to carry on an enterprise, or established for a public purpose by an Australian law, and
- can be separately identified by reference to their location or nature of the activities they carry on, whether or not they're part of a department or branch.

ATO from 1 July 2017 require Government Related Entities to report contractor payments

Good News

The Commissioner has issued a determination excluding certain types of government related entities from having to report. 'Providers of education courses' is a class of government related entities that have been excluded. As such, Universities would be within this class of exemption and therefore excluded from reporting.

Bad News

However, University subsidiaries can be separate legal entities for tax purposes and therefore may have a reporting obligation if they are not within an exemption class. Where a subsidiary is not predominantly a provider of education then this exemption may not be available. **ATO has indicated University Subsidiaries caught if not in "education business"**.

Potentially Good News

We have argued to ATO that should not be caught given concessions provided in FBT Legislation and they have acknowledged this argument and as such no reporting unless advised ATO have changed their view on FBT Legislation.

Whilst not reported by ATO nor are they actively advising Universities; we are advising Universities including Subsidiaries should be no impacted by this Legislation and at this stage should not report by 28 August 2018.

Transnational Education Agreements





Transnational Education Agreements

What are they

- A joint venture between an Australian and a Overseas Education Institution (particularly in China)

Why do they exist

- Governments want to control the education business in their country and make it near impossible to register in that country
- Can hold the in country JV partner to account for actions of the JV

What are commercial terms

- usually a royalty or a share of the profits from the activity undertaken



Transnational Education Agreements

How are they taxed

- no matter how much or little the Australian Institution does the country it will be taxed as a “branch” and your share of the funds will need to have tax paid “in country” before payments are made to the home institution

Any Tips

- Try and get the JV partner to administer your taxes on your behalf as it speeds up payments
- Understand the tuition rates before you sign up too quickly as local tuition rates can be as low as \$8K AUD with your share 50%?

China – Set up structure



China – Set up Structure

Currently, not allowed to provide education services in China

Education services, can only be provided under a Co-Op arrangement with a Chinese University.

Co-Op arrangement can be either:

- A Co-op Institution; or
- A Co-op Project

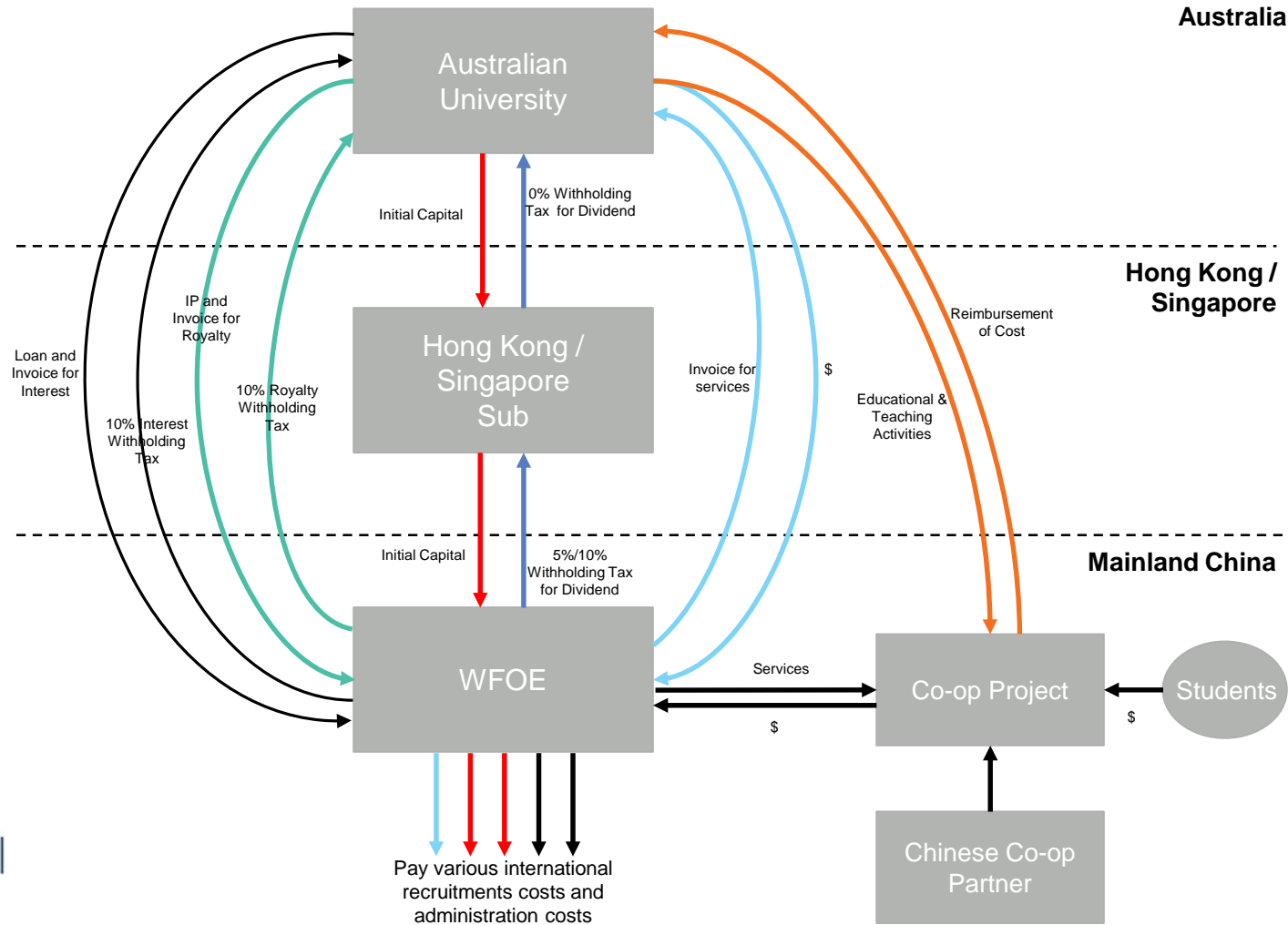
China – Set up Structure

	Co-op Institution	Co-op Project
Establishment	Incorporated body in China	Un-incorporated joint venture
Contributions	The parties need to contribute cash, land use rights, intellectual property and other assets	No legal requirement but contributions from the Co-op partners may be required under Ministry of Education regulations
Management	A management council or a board of directors is required	No legal requirement but a governing body with appropriate representation from the Co-op partners may be required under Ministry of Education regulations
Revenue	Can only claim ‘reasonable return’ that is limited to the industry benchmark	Full amount of fees received is considered revenue and is subject to tax in China. Reimbursement of University’s expenses (which may be contracted to almost equal revenue) can be made directly to University’s bank account in Australia.
Staff	Can employ both Chinese and international staff in its own right	Each co-op partner has to employ staff. Both Chinese and international staff can be employed by the respective co-op partners

China – Set up Structure

Optimal structure – WFOE and Co-Op Project

WFOE	Co-op Project
<ul style="list-style-type: none">• enables University to issue invoices to their customers in RMB,• enables University to employ staff (both local and foreign nationals) directly in Mainland China,• allows greater efficiency in operations, management and future development opportunities (including international student recruitment).• cannot be used to carry out Educational and Teaching Activities• can undertake profit making operations	<ul style="list-style-type: none">• offers lower cost and more flexibility in entry and exit strategies• Chinese partner university manage the financial affairs of the project• allows the University to carry out Educational and Teaching Activities that cannot be performed through a WFOE.



Country-by-Country Reporting (CbCR)



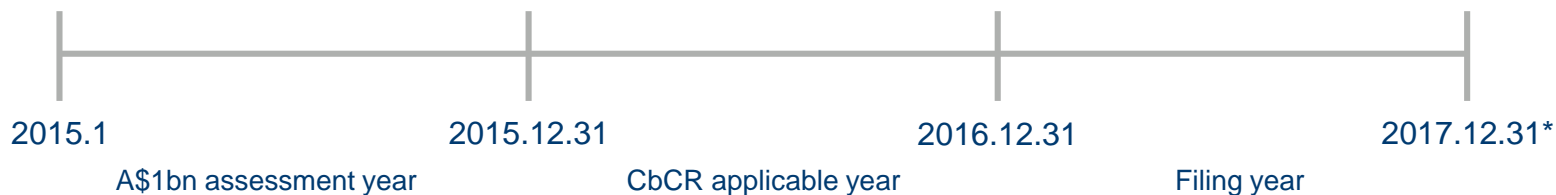
Country-by-Country Reporting (CbCR)

The CbCR obligation applies to:

1. Significant Global Entities (SGE)

- a member of a group of entities (for accounting purpose)
- the group's global annual consolidated turnover greater than A\$1 billion

2. Determination



(*For first-year filing, the deadline has been postponed to 2018.2.15)



CbCR – continued...

The CbCR filing obligation in Australia consists of three-tier documentation:

1. **CbC report** – prepared by global parent
2. **Master File** – prepared by global parent
3. **Local File** – prepared by local entity

CbCR – Exemption / Relief

- Exemption may be requested for some or all three types of documentations
- Case-by-case assessment, key factors are:
 - CbCR implementation status in foreign jurisdictions
 - Materiality of international related party dealings
- Transfer pricing / BEPS risks
- Exemption, in most cases, is granted for 1 year, some cases can be up to 3 years
- Applicants need to weigh the risk as rejection decision is 'non-reviewable'.
- In certain circumstances, Master File and Local File may be relieved



CbCR – practical perspective

1. Failure to lodge penalty is up to \$525,000.
2. If AUS and overseas entities have different year ends, may need to apply ‘replacement reporting period.
3. Non-for profit organizations, or tax exempt entities are likely to be granted an exemption for Master File and Local File, but not CbC report if they have presence in overseas jurisdictions which expect CbC report exchange

Single Touch Payroll



Single Touch Payroll

For employers with 20 or more employees, Single Touch Payroll reporting mandatory from 1 July 2018

- custom-built or in-house payroll solution - update to a version that is Single Touch Payroll enabled
- off-the-shelf solution - Contact your payroll solution or service provider to obtain update for the product to comply

Do you have a team working on upgrading for Single Touch Payroll reporting from 1 July 2018

Thank you



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