



## The Northern Territory - In Focus

### Backpacker Tax

On 1<sup>st</sup> of December 2016, the Australian Parliament passed the bill establishing a 15% income tax rate for those who engage in short-term employment in Australia under certain visas known as “backpackers” or “working holiday makers (WHMs)”.

In the past 18 months, the tax rate to be applied to these temporary foreign workers has been a controversial issue. Released in May 2015, the 2015-2016 Federal Budget proposed to change the tax status of WHMs from that of resident, to that of non-resident, effective from 1 July 2016. The reason being that, under the resident approach, the earnings of WHMs are automatically exempt from income tax up to \$18,200.00 (the tax-free threshold). However, Administrative Appeals Tribunal rulings in March 2015 suggested that some WHMs could not claim the tax-free threshold due to failure to qualify as Australian residents under certain circumstances, such as staying in Australian for a period shorter than 183 days.

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Whilst under proposed non-resident approach, all WHMs regardless of the length of their stays, their earnings will be taxed at 32.5% for up to \$80,000.00. The proposal has raised the following concerns:

- The new policy may increase tax evasion activities
- The new policy could potentially reduce the number of WHMs who choose to come to Australia and undertake holiday work out
- The new policy may also contribute to the decline of the economy in regional areas of Australia, where WHMs are more likely to go due to Visa requirements

In March 2016 the Federal Government announced a review of the backpacker's tax. The review was commenced in August 2016, and relevant bills were introduced in the Parliament in October 2016. The bill was finally passed by both houses on December 1, 2016 with the new tax rate taking effect from January 2017.

The newly passed tax arrangement for WHMs involves a 15% flat tax rate for all earnings up to \$37,000.00, after which their earnings will be subject to the current resident income tax bands and rates. This new arrangement will take effect from 1 January 2017. Together with the new tax rate, a reduction in the percentage of superannuation from 95% to 65% that backpackers will forfeit when they leave Australia will also be effective from 1 July 2017.

If you are an employer who hires WHMs, you will need to consider the following:

- You need to register with the Australian Taxation Office to start withholding at the new tax rates for your staff who are on 462 and 417 Visas
- The registration with ATO must be made prior to your first payment to a WHM, if you did not register with the ATO, you must withhold the tax at non-resident rates which start at 32.5%
- Two pay as you go (PAYG) payment summaries will need to be issued for the financial year ending 30 June 2017, with one covering the period from 1 July 2016 to 31 December 2016, and the other covering the period from 1 January 2017 to 30 June 2017.

## Inpex Project Update

In November 2016, Chief Minister, Michael Gunner, met in Tokyo with Representative Director, President and CEO of INPEX Corporation, Mr Toshiaki Kitamura, to sign two important agreements supporting Darwin local jobs and economic growth.

The two agreements are the Recognition of and Recommitment to Industry Participation and the Optional Development Lease. As the Ichthys LNG project is expected to have at least 40 years life, the agreements mean ongoing opportunities during the operations of the plant.

It is estimated that during the construction phase of the project as far, the project has provided work for over 1,000 NT businesses, and has made over \$9 billion in contracts, procurement and other overhead commitments.

The extension of the lease is expected to bring further investment in the NT, and positive outcomes for both local business and individual Territorians.

Following the signing of two agreements, the INPEX project has been recently awarded a multi-million contract to a Darwin business, Berrimah RAM Services. This three-year contact is to support the operational phase of the project by delivering facility maintenance work including plumbing, painting, and landscaping.

## \$22 Million Immediate Works Stimulus Package

The Territory Government has recently released details of its \$22 million stimulus package. The package is designed to maintain the flow of work for tradies and smaller contractors through small infrastructure projects until the 37 new Fast-tracked projects worth \$120 Million commences mid-year. Applications for the Immediate Works Package has been opened since the middle of December and works began from 1 February 2017. The deadline for spending on all approved projects is 30 June 2017.

The package will be allocated to four different programs. \$10 million has been allocated to upgrades for community group's facilities. \$5 million will go towards urgent public housing repairs, another \$5 million for local steel fabricators and the final \$2 million for repairs and maintenance on remote clinics.

The first program includes a package of \$10 million which will be used for much needed upgrades, repairs and maintenance of existing not for profit community buildings and assets. Grants as much as a \$100,000 will be provided by the Territory government dollar for dollar so grants could total as much as \$200,000.

## Berrimah Farm Redevelopment Project

Darwin City is growing rapidly and requires provision of up to 1200 new dwellings a year, said a fact sheet titled "Berrimah Farm redevelopment" released by NT government. The NT government has committed to a plan to meet these demands of future housing requirements as well as alleviate the pressures of the cost of living in the Darwin by entering into one of the largest residential land release projects in the Northern Territory's history.

On 24 June 2016 the NT Government and Halikos Pty Ltd ("Halikos") signed the Berrimah Farm redevelopment project agreement. Halikos was awarded the \$20 million independently valued site at no cost however, the financial risk, cost and reward is exclusive to Halikos. Halikos has committed to providing the Territory with two school sites, a transport hub and preserve an existing RAAF World War II structure and will be responsible for providing municipal functions to the site for the life of the project.

A statement issued by the Northern Territory Minister for Primary Industry and Fisheries ("DPIF") confirmed that agricultural research in the NT will not be hindered by the development as 6.7 of the 168 Hectares will remain with the DPIF.

The redevelopment of the Berrimah farm is expected to provide a significant boost to the NT as it would generate more than 3200 jobs over the 13 year life of the project. The land is expected to yield over 2000 new homes. Considering the size and nature of the project and the regulatory approvals planning is expected to take one to two years prior to the commencement of construction. The development is expected to cost in the region of \$300 million and boost the NT economy by over \$1 billion.

## East Arm's New Logistics Park

The Chinese-owned port operator Landbridge Infrastructure Group Australia ("LIGA") signed another agreement with the NT government. On this occasion, LIGA acquired a 34-hectare parcel of land to develop a new industry and logistics park to support Landbridge's existing activities connected with their long-term lease of the Darwin Port.

The park will be host to cold store and warehouses and the proposed tenants of the Landbridge Industry and Logistics Park are expected to be Chinese and Australian businesses focussing on trade between the Territory and Landbridge's Chinese base in Rizhao.

The land for development was sold under a commercial arrangement, which means the sale price is commercial-in-confidence. The company has also signed a \$506 million agreement with the NT government for a 99-year lease of the port as well as a \$250 million hotel project.

The development is expected to take place over the next 12 years and generate several construction and operational jobs in the NT.

## PPSA to Assist the Hire Industry

A Bill to narrow the scope of the PPS lease has been introduced to the Commonwealth Parliament on 1 March 2017. The purpose of the amendment is to lighten the administrative burden on some lessors/bailors, an amendment to the definition of 'PPS Lease' is proposed so that a lease/bailment of personal property will not be a PPS Lease unless the lease/bailment is:

- for a term of two years;
- for a term of up to two years that is either automatically renewable or renewable at

or more terms if the total of all the terms might exceed two years; or

- for a term of up to two years or for an indefinite term and the lessee/bailee, with the consent of the lessor/bailor, stays in possession of the goods for more than two years (i.e. only once the lessee/bailee has been in possession of the property for two years will the lease become a PPS lease).

This reform will be welcome news to the hire industry who have consistently argued, since its introduction, the PPSA legislation should not apply to it. The proposed amendment will commence the day after the PPS Bill receives the Royal Assent. Once in operation, the amendments will only apply in relation to leases or bailments that were entered into after the commencement date of the PPS Bill. Retrospective application of all existing leases or bailments of personal property is prohibited and remains subject to the current regime .

## The Inaccuracies of A Security Interest Registration May Prove Costly

The Supreme Court of New South Wales issued an uncompromising warning to all creditors and cautioned them that inaccurate security interests registered on the Personal Property Securities Register (PPSR) will have significant consequences through the decision *In the Matter of OneSteel Manufacturing Pty Ltd (Administrators Appointed)* [2017] NSWSC21.

Alleasing Pty Ltd (Alleasing) leased plant and equipment to the value of \$23 million to One Steel Manufacturing Pty Ltd (One steel) for a premium of \$4 million per annum. The Administrators of One Steel notified Alleasing that the Registration was defective due to the registration being referenced to One Steel's ABN and not the ACN. As a result Alleasing lodged a new registration using One Steel's ACN.



Alleasing approached the courts to recover the equipment leased, the court found in favour of One Steel ruling:

- The original registrations were defective because they did not include One Steel's ACN.
- A search of the PPSR registrations by reference to One Steels ACN would not locate the registration.
- The defect was considered 'seriously misleading' and although Alleasing lodged a new registration the interest was unperfected at the 'critical time'.

The court dismissed the proceedings with costs and declared that Alleasing's interests in the plant vested with One Steel.

Below are some tips for businesses to protect themselves against the technicalities of the PPSR registration:

- I. Register security interests against both the ACN and the ABN of any grantor company that identifies itself as a company 'as trustee for' (often abbreviated to 'ATF') a trust in its own letterhead, purchase orders, receipts, etc.
- II. When you are doing business with a new customer, particularly if you are not entirely sure of its credit-worthiness, ask its representative whether it trades as a trustee for another company and ask that question in writing, so that you have some evidence of the answer.
- III. conduct a current company search in relation to a new corporate customer. Check under the heading 'Current (Shareholder/Member)' (usually on the second page of the search) whether an 'N' or a 'Y' appears next to the words: 'Beneficially Owned'. If the letter 'N' appears next to those words, this means that the named shareholder is holding the shares as a trustee on trust for another person or entity, which you should take as a warning sign and investigate further.
- IV. Check where the registered office address of the company is. If it appears to be an accountant's firm (and most Proprietary Limited companies are registered at their accountant's office), ask the company's authorised representative to permit you to speak to its accountant. Then contact the accountant and ask whether the company trades as a trustee or in its own right.

*Disclaimer: This is not advice. Clients should not act solely on the basis of the material contained in this Newsletter. Items here-in are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Newsletter is issued as a helpful guide to clients and for their private information.*

**Have you been wondering whether your business is struggling to pay its debts as and when they fall due?**

**Are you concerned that if not today or tomorrow but the day after you might not be able to pay your debts?**

**How often are you using your personal credit card to pay company debts?**

**Are you looking to friends and family to help out a little here and there?**

**Perhaps you haven't been keeping up with your tax lodgements/payments?**

**For advice on how we can help you, contact Joanna Gawlak on (08) 8943 0645**