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Taxing times for Australians overseas

Many Australians dream about living and working overseas. However, before packing your bags, we recommend you think about what steps need to be taken to ensure you don't end up with a hefty tax bill on your return home.

There are some key areas to note when making the decision to live and work overseas.

CGT and the family home

The family home is usually your biggest asset, and the tax implications can be severe if it's not managed properly. It's also about to potentially become even more severe if proposed changes come into effect from 1 July 2019.

Under the changes, if you sell a property while still overseas you will pay CGT, and the current six-year absence exemption will no longer be available. If you move back to Australia and resume living in the property within six years, the tax-free status is retained. This will, however, only happen if your tax residency also reverts to Australia.

Tax residency

The status of one's tax residency should be reviewed if you are planning to move overseas for an extended period.

The ATO will determine whether a person's tax residency has changed based on their particular circumstances and arrangements. As a rule of thumb, anything longer than three years, especially with no fixed return date and a reasonable prospect of staying in the overseas country longer, makes it more likely that tax residency will change.

However, if you're planning to be overseas for less than two years, it is unlikely the ATO will treat the absence as a change in tax residency. Also, if you intend to move from country to country then you are more likely to remain an Australian tax resident.

By remaining an Australian tax resident, it is likely that you won't have issues with CGT, however all of your foreign salary and investment income will be taxed in Australia, with a credit for any foreign tax paid on the income.

Investment properties

While CGT will always apply to the sale of investment properties, the CGT discount is not available for any period after 8 May 2012 during which someone is a non-resident.

For investment properties already owned at the time you move overseas, there must be an apportionment of the CGT discount for the relevant periods. The same applies for periods between the date you return to Australia and a later property sale.

Other investments

If you become a non-resident then investments such as shares in companies are treated as having been sold at their market value, triggering deemed capital gains or losses unless you choose to defer the tax event. There would be no further Australian CGT implications if your assets are sold down the track while you are a non-resident.

If the investments are still owned when Australian tax residency is resumed, they will be deemed to

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How to set financial resolutions – and stick to them

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It's the time of year when nostalgia reigns as people take a retrospective glance on the year that was, but it's also a pertinent time to take stock of the coming 12 months and reset financial goals accordingly.

There are several key financial areas that should be in order for 2019 and beyond.

Superannuation

From 1 July 2017, the concessional superannuation contributions cap was lowered to $25,000 for all taxpayers, so be sure to review any existing salary sacrifice arrangements to remain within the contributions cap for 2018-19.

Also, from this date, the requirement that you derive less than 10 percent of your income from employment sources to claim a tax deduction for personal in relation contributions has been abolished.

Regardless of your employment arrangement you may be able to claim a tax deduction. Those aged 65 to 74 will still need to meet the work test in order to be eligible to make a contribution and claim a tax deduction.

This is particularly useful for individuals whose employer does not allow salary sacrifice contributions. When considering additional contributions to superannuation remember to include any premiums you pay for stand-alone life insurance or TPD insurance policies held under superannuation into your calculations.

Downsizer contributions

From 1 July 2018, if you are 65 years old or older and meet the eligibility requirements, you may be able to choose to make a downsizer contribution into your superannuation of up to $300,000 from the proceeds of selling your home.

Your downsizer contribution is not a non-concessional contribution and won't count towards your contributions cap.

The downsizer contribution can still be made even if you have a total super balance greater than $1.6 million, and won't affect your total super balance until your total super balance is re-calculated to include all your contributions, including your downsizer contributions, on 30 June at the end of the financial year.

Importantly, you can only make downsizing contributions for the sale of one home. These contributions are not tax deductible and will be considered for determining eligibility for the age pension.

Wills

Having a valid Will means that you will be able to ensure that you transfer the right assets to the appropriate people at the appropriate time. Without a valid Will, your best intentions may go unanswered. Dying without a Will means that your estate will be handled by a government appointed representative and distributed according to the laws of intestacy that apply in your state.

In drafting a Will, your solicitor will advise you if incorporating a testamentary trust will benefit the beneficiaries of your estate. Testamentary trusts can be valuable tax planning structures and are often used where potential beneficiaries are minors, spendthrifts, or have relationship or drug and alcohol issues.

Remember that assets which are held in a trust will not form part of the individual's estate, so they cannot be dealt with in the Will. However, the trust deed should be reviewed to determine the process of appointing new trustees (or directors of the trustee company) on the death of a current trustee or director.

Income protection

Income protection should routinely to reviewed to ensure that it adequately reflects current circumstances.

Likewise, if your policy was issued on an indemnity basis (perhaps if you were new in business at the time) check to see if the cover can now be altered to an agreed value policy. If you have group salary continuance through your superannuation fund, make sure the fund has your current salary correctly recorded. ■

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be re-acquired at that time for their current market value, so any future capital gains or losses on sale would relate only to the movement in value for the period of Australian tax residency.

Non-resident withholding tax

Non-resident withholding tax is payable on the receipt of unfranked dividends, interest and managed fund distributions, assuming the institution making the payments has been correctly notified that the taxpayer has become a non-resident.

Superannuation

If you're planning to work overseas for an extended period, you will need to consider what happens to your superannuation contributions and balance.

The longer the absence, the harder it will be to build up a super balance sufficient enough to fund retirement. It can be very hard to make up for lost time and advice and planning is recommended.

SMSF members and trustees who lose their Australian tax residency status may also discover that their fund has become non-complying.

Careful planning can help anticipate and overcome any negative consequences that may arise. ■

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While the findings of the Royal Commission have made some question the integrity of some financial planners, there will always be a place for quality financial advice as Jonathan Philpot explains.

Five key times you need a financial planner

There are five key times in a person's life that are financially crucial.

Purchasing a property

For most Australians, purchasing their home is the largest financial transaction they will do in their lifetime, and careful consideration of how much debt should be taken on is needed.

It's in the bank's best interest to lend the borrower as much as they can possibly afford over the next 25 or 30 years. But what if you don't want to repay a mortgage for the next 25 years? A financial adviser can help you carefully consider how much debt should be taken on against other lifestyle and investment expectations.

Issues to consider include the best way to save the deposit for a property, and how much risk you should take with your savings considering the expected timeframe to purchase.

Mortgage reduction

When the value of the mortgage is reduced to 50 percent of the home value, this is the point when funds that have previously been directed towards swift repayment of the mortgage, can now be put towards other investment options as well.

With the changes to the deductible super contributions to allow personal contributions in addition to employer contributions provided the total does not exceed $25,000, many PAYG earners should now be considering additional super contributions for the tax benefits received.

Withdrawing $10,000 from the mortgage offset account will cost 4-5 percent in interest cost but could provide a net tax benefit of 32 percent for those in the top tax bracket.

Building up investment wealth outside of superannuation is also an important consideration and could involve the purchase of shares or an additional investment property.

Five years to retirement

Ideally, to maximise superannuation savings, planning needs to start 20 years from retirement, with consideration of how much you think you would like to retire on and how you will get there. As a minimum, a five-year retirement strategy focused on building superannuation will provide a few years to maximise the concessional super contributions.

If you're able to also take advantage of the non-concessional contributions, in particular the three-year bring forward rule, careful planning is needed around the age in which the contributions will be made, to maximise the total amount that goes into super.

Once income hits $100,000

The largest financial risk that we face is the loss of future income. We have no problem with insuring our home, car and assets at whatever cost the annual premiums are, yet we question the value of insuring our future income earning ability.

Personal insurances have an important role to play at different times in our lives, particularly when debt levels are high and dependent children are young.

Intergenerational transfer

With longer life expectancy, inheritance for many people is not occurring until well into retirement. While this may still be a very welcome boost to retirement savings, it may also be a point where parents may wish to help their children. And while receiving inheritance via a testamentary trust can provide significant asset protection and tax advantages, more people are starting to consider some type of assistance to children prior to death.

If it is a large sum of money, say $50,000 or more, careful consideration should be given as to whether it is simply a gift or whether it should take the form of a loan, with a signed loan document in place, and typically some type of repayment required. In the event of any relationship breakdown for the child, this money is then better protected than what it would have been as a gift.

Corporate tax rate changes bring certainty but add complexity

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New legislation passed by Parliament has finally brought some certainty to the application of the lower corporate tax rate. However, the new rules also introduce additional complexity.

In August 2018 legislation was passed to change the eligibility criteria for determining whether a corporate taxpayer is a base rate entity. This change was made so companies with mostly passive investment income cannot access the reduced corporate tax rate.

In October 2018 separate legislation was passed by Parliament to accelerate the reduction of the tax rate for base rate entities by five years. As a result, eligible businesses with turnover below $50 million will have a tax rate of 25 percent by the 2021-22 income year, rather than 2026-27 as previously legislated.

Definition of base rate entity

The definition of a base rate entity has been modified by replacing the 'carrying on a business' requirement with a new 'passive income' test. Under the passive income test, companies will not be eligible for the reduced corporate tax rate if more than 80 percent of their assessable income is Base Rate Entity Passive Income (BREPI).

The aggregated turnover test remains unchanged with the thresholds for the 2017-18 and 2018-19 financial years being $25 million and $50 million respectively.

Taxpayers do not have a choice to opt-in or opt-out of applying the lower corporate tax rate. Application of the reduced corporate tax rate is dependent only on a company meeting the relevant eligibility criteria.

The new definition of a base rate entity applies retrospectively from the 2017-18 financial year.

What is BREPI?

BREPI includes dividends (other than 'non-portfolio dividends'), net capital gains, rent, interest, royalties and amounts that are included in partnership or trust distributions to the extent they are attributable to an amount of BREPI of the partnership or trust.

The new passive income test introduces additional complexity when determining a company's tax rate.

In addition to calculating a company's aggregated turnover (which is based on ordinary income), companies are now also required to perform an analysis of their assessable income to determine the proportion of BREPI.

Imputation of dividends

The new rules also impact the maximum rate companies can attach franking credits to dividends.

To determine its 'corporate tax rate for imputation purposes' for an income year, a company must use its aggregated turnover, assessable income and BREPI from the previous income year.

As a result, a company's tax rate for an income year may be different to the rate it can frank distributions for the same year.

If a company didn't exist in the previous year, its corporate tax rate for imputation purposes is 27.5 percent (irrespective of whether the company was a base rate entity eligible to apply the lower corporate tax rate for that year).

Impact on prior years

Due to previous uncertainty, companies may have issued distribution statements for the 2016-17 or 2017-18 income years using an incorrect corporate tax rate for imputation purposes. The ATO's proposed administrative approach allows companies to inform their shareholders in writing of the correct franking credits attached to the dividends paid, rather than reissuing distribution statements.

Companies may have also applied the incorrect corporate tax rate for the 2015-16 and 2016-17 income years.

However, the ATO advised it will not allocate compliance resources specifically to conduct reviews of whether corporate tax entities have applied the correct corporate tax rate for these income years.

Looking ahead

While the Federal Government brought forward the introduction of a lower 25 percent tax rate for base rate entities by five years, it also confirmed it will no longer extend the 25 percent tax rate to companies with aggregated turnover of greater than $50 million. Therefore, it seems a multi-rate corporate tax system is here to stay.

Corporate taxpayers should assess the impact of the lower company tax rate for future years and plan accordingly by considering their level of aggregated turnover, the nature of their assessable income and timing of dividends paid. ■

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the AAT instead found it was when application of options was made.

Additionally, for companies that are considering offering their employees ESS, they should seek advice to make sure that this is appropriately designed to maximise the incentive to staff.

In this case, the fact that the company listed less than 12 months after the ESS was issued and forced these to be cancelled illustrates that the ESS offered was never going to provide a long-term incentive to staff so perhaps a different offer should have been made to the employees. ■

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As the one-year anniversary of the crowd-sourced funding Bill passes, we recap the progress made and look at whether more needs to be done.

New funding source gains traction

The 'Corporations Amendment (Crowd-sourced funding) Bill 2016' took effect on 29th September 2017. At that time, only unlisted public companies were eligible to access equity crowd funding.

Intermediary platforms were then able to apply for the requisite Australian Financial Services Licence (AFSL) to enable companies wishing to raise equity via crowd sourcing, to be an intermediary to investors.

In January 2018, the Australian Securities and Investments Commission (ASIC) approved seven intermediaries with appropriate licence to act as a platform for Equity Crowd Source Funding, including Equitise and On-Market Book Builds.

Some nine months later the 'Corporations Amendment (Crowd-Sourced Funding for Proprietary Companies)' Bill 2017 received Royal Assent, advising that from 19th October 2018 the eligibility criteria to equity crowd fund extended from unlisted public companies, to private companies.

The market has regarded this extension as being well overdue, with the advantage of facilitating many more companies to access to equity crowd-sourced funding.

Since January 2018, 10 public unlisted companies have made successful equity crowd-sourced funding offers, raising more than $8.2 million in capital via equity crowd-sourced funding (as at 5th October 2018). Some of the larger of these investments include West Winds Gin ($933,500 invested by 288 investors), Xinja ($2,419,000 invested by 1,319 investors), DC Power Co ($2,181,750 invested by 14,950 investors), and PT Blink Limited ($815,000 invested by 468 investors).

Despite the success of these and other companies, some have been unsuccessful in their offers as they likely set their minimum too high. While equity crowd-sourced funding remains in its infancy and with investor appetite still relatively unknown, there will need to be a disciplined approach in setting the minimum and maximum amounts to be raised to ensure success.

The equity crowd-sourced funding offer document has certain requirements it needs to follow, with ASIC providing a template and guidance papers to help companies wishing to do an equity crowd-sourced funding offer.

Offer eligibility criteria includes the company needing to have less than $25 million revenue and less than $25 million in gross assets, have the principle place of business in Australia, and have the majority of directors residing in Australia.

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CGT questions for employees

A recent Administrative Appeals Tribunal (AAT) case which considered whether an employee was entitled to the capital gains tax 50 percent discount on share options acquired under an employee share scheme (ESS) has raised questions.

The critical issue contained in the Mangat and FCT [2018] case was the determination of when exactly Dr Mangat had acquired the ESS interest and therefore whether she had held the share options for 12 months prior to the cancellation.

Dr Mangat started employment with the company when she signed an employment contract on 30 December 2011 and contended that the employment contract contained the offer of share options. However, the ATO was successful in its argument that that the taxpayer acquired the share options when she completed a Share Purchase Application Form on 17 August 2012.

In March 2013, the share options were cancelled because the company was converted into a public company. This resulted in a capital gain for Dr Mangat of $494,190. As the ESS interests were acquired less than 12 months before the cancellation, she was not eligible for the discount method to calculate her capital gain.

This particular case has highlighted several key issues. Firstly, there is a need for employees to carefully consider ESS being proposed and to seek advice and understand the tax consequences of their later disposals of ESS interests.

In this case, the employee had incorrectly assumed that the offer of an ESS upon signing an employment contract was sufficient enough to be considered a legally enforceable right to acquire an ESS interest, however

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Appointments

Melbourne

HLB Mann Judd Melbourne has appointed **Michael Gummery** as partner in its Audit and Assurance division.

Michael is a registered company auditor with experience in both the private and public sectors spanning over 12 years. He has worked with a variety of clients ranging from small owner managed businesses and start-ups to listed multinational corporations.

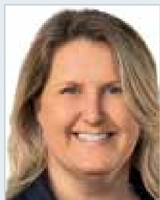
He is experienced in working on cross border assignments, interacting regularly with clients and teams across Asia, especially mainland China.

He has a strong technical knowledge and a background working with IFRS, UK GAAP and US GAAP.

Sydney

HLB Mann Judd Sydney has appointed **Melinda Measday** a director in the Wealth division, and **Alexander King** a director in the Tax division. **Lauren Whelan** and **Edgar Gavidia** have been promoted to manager in the Tax division.

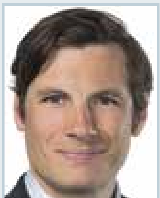
Melinda first joined HLB Mann Judd's



Adelaide firm as a graduate in 1989, moving to Sydney in 1992. Melinda returned to HLB Mann Judd Sydney's wealth division in 2006, specialising in SMSFs and aged care.

She holds a bachelor of economics (accounting) from the University of Adelaide and a diploma of financial planning, and is a member of CAANZ, an ASIC Registered SMSF auditor and an accredited aged care advisor.

Alexander King joined HLB Mann



Judd Sydney as a graduate in 2008. His areas of specialisation include corporate taxation and business restructuring, advising business in industries including funds management, property, agribusiness and transport. He holds a bachelor of commerce from the University of Sydney and is a member of CAANZ and The Tax Institute.

Lauren Whelan joined HLB Mann Judd as a graduate accountant in 2012. An experienced adviser to both publicly listed and privately owned businesses, she has a particular interest in tax issues facing multinationals having worked in New Jersey and New York.

She holds a bachelor of business from the University of Technology Sydney and has presented to The Tax Institute. Lauren is a member of CAANZ and The Tax Institute.

Edgar Gavidia joined HLB Mann Judd in 2011 and is an experienced tax adviser to HLB Mann Judd's private client base. He specialises in entrepreneurial and private tax, working with high net wealth individuals, ATO reviews and audits and has significant experience in setting up offshored tax compliance processes. Edgar holds a bachelor of commerce (accounting) from Curtain University. He is a member of CAANZ and The Tax Institute.

Adelaide

HLB Mann Judd Adelaide has promoted **Mike Rowe** to the newly created role of chief executive officer to lead the accounting and advisory firm through the next phase of its growth.

Mike is an accomplished financial and change management executive and first joined the firm in January 2018 as chief financial officer.

Prior to his time at HLB Mann Judd Adelaide, Mike had worked in Big 4 consulting roles and spent 20 years in various senior leadership roles both in Australia and abroad in the technology, e-commerce and professional services sectors.

Perth

HLB Mann Judd Perth has appointed **Rowan Tracey** as director in its Business Advisory division. He has been a member of the HLB Mann Judd Perth team for more than 13 years. Rowan has extensive knowledge and experience in accounting and taxation issues across a diverse range of industries, with a particular focus on the building and construction sector.

He qualified as a Chartered Accountant in 2008 and has since developed strong working relationships with many clients of the firm over the years and enjoys helping clients achieve ongoing success both personally and within their business.

Australasian Association

The HLB Mann Judd Australasian Association has appointed **Michelle**

Warren in the newly created role of director of financial reporting. Michelle will oversee all financial reporting matters within the network, including implementing a national technical consultation process, quality monitoring, training, and providing technical accounting advice as required.

Michelle has over 11 years' experience in audit working with a wide range of clients. She holds a bachelor of commerce and accounting sciences from the University of Pretoria. Michelle is a member of CAANZ and the South African Institute of Chartered Accountants. ■

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Planning is essential for the long-term care and accommodation needs of a family member with a severe disability, advises Joelle Tabone.

Special Disability Trusts providing families with comfort

The planning process usually starts with a review of the family's needs, financial capacity, estate planning, tax planning, social security entitlements and the special needs of the family member.

An option to consider is the establishment of a Special Disability Trust (SDT). An SDT is a trust established in accordance with Part 3.18A of the Social Security Act 1991 of Australia, for a family member with a severe disability, known as the principal beneficiary. An SDT can help ensure the ongoing needs of the principal beneficiary continue to be met, even when family members can no longer provide assistance.

An SDT enables family members to contribute money and/ or property into the trust to be used for the reasonable care and accommodation needs of the principal beneficiary, without impacting their entitlement to a Disability Support Pension.

This type of trust also provides concessions under the social security means tests for those who contribute to the SDT, whilst providing asset protection, tax concessions, succession planning and other benefits when used in the right circumstances. It can be established by trust deed during the life of the donor or by Will.

Benefits of an SDT include the trust being able to spend up to $12,000 (2018-2019) on discretionary items not related to the care and accommodation needs of the beneficiary. A gifting concession of up to $500,000 combined is available for eligible family members of the principal beneficiary to contribute to an SDT and not be affected by the pension gifting rules.

Tax concessions available to an SDT include the net income generated by an SDT and is taxed at the principal beneficiary's marginal tax rate, instead of trust penalty rates, and the allowance of CGT exemption for the recipient of the principal beneficiary's main residence (if disposed of within two years of the beneficiary's death).

As SDTs are regulated by a stricter regulatory regime than other trusts, it is imperative that the SDT is setup correctly, the principal beneficiary continues to meet the definition of having a severe disability and the trustee clearly understands and meets the ongoing compliance requirements of the trust. ■

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Tax residency attracts review

The rules for determining an individual's tax residency have remained largely unchanged since being enacted in 1930. It's now the subject of a government review.

With the changing global workforce and a rise in the number of cases surrounding an individual's residency, the Board of Taxation undertook a review in August 2017 and found that the current rules require both modernisation and simplification.

During its initial consultation, the Board considered principles such as current global work practices, providing certainty to individuals of their tax residency status, and removing antiquated concepts such as domicile.

The Board recommended the current definition of resident be replaced to include a policy statement that outlines the government's overarching individual tax policy objectives of equity, efficiency, simplicity and integrity.

Among a number of other observations by the Board, it noted that the ATO increase its compliance efforts in relation to assets that are deemed to remain taxable Australian property when an individual ceases to be an Australian tax resident.

The Board also suggests such assets be catalogued and reported to the ATO to use as a reference point for tracking future disposals of such assets for CGT purposes.

In its Consultation Guide released in September 2018, the Board sought to consult on the eight core design features identified in its 2017 report.

The Board's preferred design includes a primary test that provides a bright line for most individuals to be able to conclusively determine their residency status.

Until conclusive determinations are made, we continue to rely on both established case law and ATO rulings in determining an individual's tax residency. ■

Mann Judd

Giving while living philanthropy

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With investors seeking more socially responsible means of investing, 'giving while living' is gaining traction.

Rather than waiting to benefit charitable causes via bequests under the terms of a Will, discerning and generous donors are finalising their philanthropic intentions sooner rather than later.

There are a number of ways to bring forward charitable giving – most notable through public or private ancillary funds. These are tax-advantaged trust structures commonly used for strategic long-term giving and provide a link between those who wish to give and organisations which are eligible to receive tax-deductible donations (known as deductible gift recipients, or DGRs). Public and private ancillary funds are tax exempt for both income and capital gains earned within the structure.

There are currently over 3000 of these funds in Australia. In the 2015-16 financial year they distributed over $850 million. The largest private ancillary fund in Australia is the Ramsay Foundation, holding approximately $4 billion in assets.

Public ancillary funds (PAFs) are communal philanthropic structures established for the purpose of making distributions to DGRs. They are quick and simple to establish – usually with an amount of at least $20,000 - and offer tax deductions to donors that can be spread over four years, helping to spread the cost of the upfront contribution. These funds are required to have a formal investment strategy, and to distribute a minimum of 4 percent of the fund's net assets annually.

Private ancillary funds were introduced by the Federal Government in 2001 to encourage personal and corporate philanthropy. Contributions to PAF's are also tax-deductible, but they are unable to receive contributions from the public.

They are often established as family foundations and are best understood as the SMSFs of the philanthropy world. They offer a high level of control to those wishing to direct their gifts for specific charitable purposes, and must distribute 5 percent annually (or $11,000, whichever is greater) of the fund's value. An extra benefit is the opportunity these funds provide to establish a long-term legacy within a family's business affairs by including younger generations in investment and distribution decision-making.

Professional advice will ensure philanthropic structures are established correctly within the legal framework, and that investments are well-managed, tax advantages are maximised, and grants are directed effectively.

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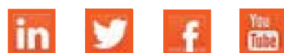

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The HLB Mann Judd Australasian Association comprises a number of independent accounting firms in Australia, Fiji and New Zealand.

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