

www.pwc.com.au

PwC's Monthly Tax Update

Keeping you up to date on
the latest Australian and
international tax developments

September 2020



Corporate Tax Update

JobKeeper payments and R&D

The Australian Taxation Office (ATO) has issued for comment draft Taxation Determination [TD 2020/D1](#), which states that JobKeeper payments that relate to eligible employees who undertake research and development (R&D) activities should be addressed under the 'expenditure not at risk' provision of Division 355 of the *Income Tax Assessment Act 1997* (Cth). Specifically, this means that R&D claimants that receive the JobKeeper payment for R&D employees may be required to adjust their R&D claims downwards by an amount related to their JobKeeper payments, which effectively compensate the company for the cost of the employee expenditure – the precise amount will depend on when those R&D employees were conducting R&D activities and what proportion of their work time was spent on those activities. Refer to the [PwC Australia website](#) for further details of this as well as other COVID-19 related stimulus measures and their impact on R&D.

MEC groups and CGT arrangements under ATO review

The ATO has issued [Taxpayer Alert TA 2020/4](#) which addresses the ATO's concerns with internal restructures undertaken by multiple entry consolidated (MEC) groups that seek to avoid capital gains tax (CGT) through the transfer of assets to an eligible tier-1 company (directly or

indirectly) prior to divestment. The Alert is not directed at arrangements which merely consist of a choice by two or more existing eligible tier-1 companies of a top company to form a MEC group, other than in cases where the choice is an integrated or interdependent step in arrangements of potential concern.

Taxpayers who enter into these types of arrangements can expect to be subject to increased ATO scrutiny, including, for example, at first instance, requests for additional information and evidence to verify the stated commercial rationale for each step of the arrangement.

Incorrect R&D offset refund not subject to repayment

The Federal Court in [Auctus Resources Pty Ltd v Commissioner of Taxation \[2020\] FCA 1096](#) has held that the Commissioner of Taxation was not authorised to apply s8AAZN of the *Taxation Administration Act 1953* (Cth) to recover a tax refund which related to a claim for a R&D tax offset for the 2013 income year in relation to activities that were found to be ineligible. It is worth noting that where a taxpayer has no taxable income and instead received a refund arising from a refundable tax offset, which occurred in this case, the Commissioner had no power to issue an amended assessment relating to the 2013 income year, hence the purported recovery of the 2013 refund pursuant to a s8AAZN notice.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Chris Morris, Sydney
Australian Tax Leader
+61 (2) 8266 3040
chris.morris@pwc.com

Sarah Hickey, Sydney
Sydney Tax Markets Leader
+61 (2) 8266 1050
sarah.a.hickey@pwc.com

Kirsten Arblaster, Melbourne
Melbourne Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

James O'Reilly, Brisbane
Brisbane Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Rob Bentley, Perth
Perth Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Amy Etherton, Newcastle
Partner
+61 (2) 4925 1175
amy.etherton@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Jason Karametos, Melbourne
Industries Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Employment Taxes Update

JobKeeper update

The Government has [revised](#) the eligibility criteria for employers and employees to access JobKeeper under the existing program and also the proposed extended program which is to commence from 28 September 2020:

- Employees will now qualify for JobKeeper for periods from 3 August 2020, if they were employed on 1 July 2020, rather than 1 March 2020. To support this change, the Treasurer made the applicable amendments to the Rules ([Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 7\) 2020](#)).
- For the extended JobKeeper, the decline in turnover testing is now only required to be shown for one quarter, instead of multiple quarters, i.e. to access it from 28 September 2020 to 3 January 2021, an employer must have the requisite decline in goods and services tax (GST) turnover for the September 2020 quarter (rather than June and September, which was first announced by the Government) as compared to the comparable period in 2019, and then to access it for the final extended JobKeeper period, the employer must show the requisite decline in GST turnover for the December 2020 quarter as compared to the comparable period in 2019.

For more information on this latest JobKeeper payment proposal, view our [one-page summary](#).

For the latest up-to-date information, refer to our [JobKeeper payments webpage](#).

COVID-19 and FBT on cars

The Australian Taxation Office (ATO) has issued a [fact sheet](#) on employer fringe benefits tax (FBT) obligations in respect of work-provided cars which employees may have been garaging at their homes due to COVID-19. In summary, where a car is not being driven at all, or is only being driven for maintenance purposes, the ATO will accept that the car is not held for the purposes of providing fringe benefits for purposes of applying the operating cost method. However, where the statutory formula method is used, or odometer records are not kept, the employer will continue to have a FBT liability for the year because the car is garaged at the employee's home and is taken to be available for private use.

In cases where a home-garaged car is being used, under the operating cost method if there is a valid logbook in place (in any of the previous four years), the

ATO indicates that the employer can still rely on this logbook, despite changes in driving patterns due to COVID-19. In the absence of maintaining a new logbook that is representative of the car's usage throughout the year, the employer will however need to make a reasonable estimate of the percentage of business use of the car, taking into account logbooks, odometer records and any changes in the pattern of business use throughout the year, including changes due to COVID-19.

COVID-19 and PAYG withholding for foreign employers

The ATO has issued updated [guidance](#) on pay as you go (PAYG) withholding registration requirements for foreign employers who have foreign employees temporarily working in Australia due to COVID-19. According to the ATO, if an employee of a foreign employer was working in Australia temporarily because of the COVID-19 effect on travel, the foreign employer will not be expected to register for PAYG withholding if their employee left Australia before 30 June 2020 and the only reason the employee was working in Australia was because of the effects of COVID-19 on travel. A foreign employer may need to register for PAYG withholding, withhold amounts from their employee's wages if their employee continues to work in Australia after 30 June 2020 and is an Australian resident or a foreign resident who is not exempt from income tax under an applicable double tax agreement.

Superannuation guarantee amnesty ends on 7 September

The one-off superannuation guarantee (SG) amnesty applies until 7 September 2020 for employers who come forward voluntarily to disclose to the ATO and pay previously unpaid superannuation for the prior quarters from 1 January 1992 to 31 March 2018. The benefits of participating in the amnesty is that the employer:

- can claim a tax deduction for the SG charge amounts paid to the ATO by 7 September 2020,
- is not required to pay the administration component (AUD20 per employee per quarter) of the SG charge, and
- will not have a penalty applied.

The ATO has [indicated](#) that it understands that there may be some employers who wish to apply for the amnesty but are concerned that, as a result of COVID-19 they may not be able to pay the liability. In this respect, the ATO is prepared to work with

affected employers to establish a flexible payment plan. It remains the case however, that if any payments are made after 7 September 2020, they will not be tax deductible.

Draft practice statement on remission of additional super guarantee charge

The ATO has released Draft Law Administration Practice Statement [PS LA 2020/D1](#) which provides guidance for ATO staff on the remission of the additional superannuation guarantee charge (SGC) where an employer fails to lodge a superannuation guarantee (SG) statement to disclose any SG shortfall by the applicable lodgment due date. The maximum penalty that is automatically imposed is equal to double the SG charge payable by the employer for the relevant shortfall quarter.

With the one-off SG amnesty applicable until 7 September 2020, the draft practice statement indicates that any subsequent SGC non-compliance should be subject to significant penalties.

The draft practice statement sets out a four-step approach for ATO staff in considering the penalties to be imposed, including factors such as the employer's compliance history, attempts to voluntarily rectify any non-compliance, and whether there are any exceptional circumstances. It is made clear that the ATO generally expects remission of penalties would not exceed 50 per cent (ie 100 per cent of the SG charge) where an employer did not come forward voluntarily and it took ATO compliance action to result in the disclosure.

FBT treatment for the accommodation, food and transport benefits relating to COVID-19

The ATO recently released guidance on the FBT exemptions and concessions available to employers if they have to provide emergency accommodation, food, transport or other assistance to an employee who is, or is at risk of being, adversely affected by COVID-19. The expenses include relocating an employee, for food and temporary accommodation if

they are unable to travel, expenses incurred relating to self-isolation or quarantine and transport expenses to temporary accommodation.

NSW aged care payroll tax exemption

The [State Revenue Legislation Amendment \(COVID-19 Housing Response\) Bill 2020 \(NSW\)](#) provides, among other things, a payroll tax exemption for certain wages paid or payable to employees that are funded by the Commonwealth Aged Care Workforce Retention Grant Opportunity.

COVID-19 and ACT payroll tax exemption

The ACT Government has [announced](#) that it will offer a six-month payroll tax exemption for businesses that take on new or additional apprentices or trainees in a bid to address the economic impacts of COVID-19. The exemption applies to wages for eligible employees recruited between 1 August 2020 and 31 January 2021. For the latest up-to-date information on payroll tax relief in ACT and other States and Territories, refer to our [State Tax COVID-19 updates webpage](#).

ACT updated payroll tax circular on allowances and reimbursements

The ACT Revenue Office has released Revenue Circular [PTA011.1](#) which provides an update to the payroll tax circular dealing with employee allowances and reimbursements. According to the circular, allowances are generally subject to payroll tax. The only allowances that are not wholly taxable are motor vehicle allowances, accommodation allowances and living away from home allowances. On the other hand, reimbursements are only taxable where they are subject to FBT.

SA guide to payroll tax

RevenueSA has released the [2020-21 Payroll Tax Guide to Legislation](#) which includes guidance on the COVID-19 South Australian (SA) payroll tax relief measures that apply for the 2019-20 and 2020-21 income years.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Katie Lin, Sydney
Partner
+61 (2) 8266 1186
katie.f.lin@pwc.com

Rohan Geddes, Sydney
Partner
+61 (2) 8266 7261
rohan.geddes@pwc.com

Greg Kent, Melbourne
Partner
+61 (3) 8603 3149
greq.kent@pwc.com

Anne Bailey, Melbourne

Partner

+61 (3) 8603 6818

anne.m.bailey@pwc.com

Paula Shannon, Brisbane

Partner

+61 (7) 3257 5751

paula.shannon@pwc.com

Stephanie Males, Canberra

Partner

+61 (2) 6271 3414

stephanie.males@pwc.com

Lisa Hando, Perth

Partner

+61 (8) 9238 5116

lisa.hando@pwc.com

Maria Ravese, Adelaide

Partner

+61 (8) 8218 7494

maria.a.ravese@pwc.com

Global Tax Update

Latest news from international tax and transfer pricing

ATO releases final guidance on the arm's length debt test

The Australian Taxation Office (ATO) has released its final guidance dealing with the application of the arm's length debt test (ALDT) which applies as one of the options for determining deductibility of interest and other debt costs under Australia's thin capitalisation rules. Specifically, the following publications set out the ATO's final views:

- [Taxation Ruling TR 2020/4](#) which provides the Commissioner's views on key technical aspects of the ALDT, and
- [Practical Compliance Guideline PCG 2020/7](#) which provides guidance on the practical application of the ALDT as well as a risk assessment framework under the ATO's compliance approach.

With the above releases, the Commissioner continues to expand the ATO public guidance on debt arrangements and thin capitalisation, confirming its ongoing strong focus on this topic. Common themes from this new guidance is the increased evidentiary burden required for taxpayers to support positions, the need to self-assess risks, and an invitation to proactively engage with the ATO to obtain certainty and mitigate risk in relation to positions taken for debt deductions in reliance on the ALDT. For further insights refer to our [Tax Alert](#).

ATO guidance on cross-border related party interest-free loans

The ATO released a draft update to its [Practical Compliance Guideline PCG 2017/4](#) which deals with tax issues associated with cross-border related party financing arrangements and related transactions. Specifically, the draft Schedule 3 of PCG 2017/4 provides additional guidance on the application of Schedule 1 of the PCG to cross-border outbound interest-free loans between related parties. While the draft guidance concludes that such arrangements may be reasonable from a

transfer pricing perspective based on specific factors and considerations which are covered by some worked examples, there remains a significant evidentiary burden for taxpayers to support such positions. For further insights refer to our [Tax Alert](#).

ATO concerns over interposed offshore entities used to avoid interest withholding tax

The ATO has released Taxpayer Alert [TA 2020/3](#) on arrangements that involve the interposition of a non-resident beneficiary of an Australian trust that indirectly funds an Australian investment with a high-interest debt in order to avoid interest withholding tax on the interest expenses. The interposed beneficiary deducts the interest expense against the Australian income it receives from the trust, giving rise to a refundable credit for all or almost all the tax already paid by the trustee of the Australian trust when distributed.

The ATO is not concerned with structures where deductible interest payments by a non-resident are merely incidental to what can be evidenced as ordinary and commercially appropriate business decisions. However, it's particularly interested in arrangements displaying some or all of the following features:

- no commercial rationale, other than tax reasons, to support the interposition of a non-resident beneficiary and/or the jurisdiction of that beneficiary,
- no commercial rationale, other than tax reasons, why the debt used for Australian business purposes should be borne by the non-resident beneficiary,
- the effective tax rate on Australian-sourced income is minimal or zero,
- the related-party debt is at a significant premium to referable third-party debt, or the lending entity's cost of funds and the arrangement

usually falls outside the 'green zone' referred to in PCG 2017/4,

- the beneficiary's capital structure maximises debt deductions under the thin capitalisation rules, and
- the beneficiary is resident of a low- or no-tax jurisdiction and/or a non-treaty jurisdiction.

Arrangements may involve other features beyond those described in the Alert.

Refinements to Australian hybrid mismatch rules

The [legislation](#) to amend Australia's current hybrid mismatch rules has now completed its passage through Parliament (and at the time of writing was awaiting Royal Assent). As the majority of these amendments are retrospective, taxpayers with a 31 December year end should particularly consider these new rules in the context of positions taken in the income tax return for the year ended 31 December 2019 which was most likely recently lodged (or soon will be lodged under any agreed ATO extensions of time). The tax return requires extensive disclosure in relation to the potential operation of the hybrid mismatch rules including restructuring designed to remove hybridity and the existence of offshore hybrid mismatches.

For further information about these amendments, refer to our previous [Tax Alert](#).

Reforms to Australia's foreign investment framework

Following the Treasurer's [announcement](#) of major new reforms to Australia's foreign investment review framework on 5 June 2020, the Australian Government has released part one of the [draft legislation](#) to implement these reforms for public consultation. This proposed law will cover the following aspects:

- new national security test measures;
- new information collation and sharing mechanisms, including most notably the establishment and maintenance of a new Register of Foreign Ownership of Australian Assets, and an increased ability to share information between Australian Government agencies and international counterparts;
- new monitoring and investigative powers to enable the Australian Government to more effectively monitor and investigate foreign persons' compliance with Australia's foreign investment review framework;
- additional regulatory powers giving the Australian Government broader powers to enforce compliance with Australia's foreign investment review framework, including increased civil and criminal penalties; and

- certain amendments to improve the integrity of the existing foreign investment review framework.

For further information refer to our [LegalTalk Alert](#).

Foreign resident beneficiary of discretionary trust liable for CGT

The Federal Court in [N & M Martin Holdings Pty Ltd v Commissioner of Taxation \[2020\] FCA 1186](#) has held that the foreign resident beneficiary of an Australian discretionary trust, who received a distribution of capital gains from the sale of shares by the trust that were not "taxable Australian property", was deemed to have made capital gains as a result of being a presently entitled beneficiary under s115-215 of the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997). As a consequence, the Court found that the foreign resident beneficiary was liable for CGT as the capital gains were not disregarded under Division 855 of the ITAA 1997. The approach adopted by the Court in this case is consistent with the approach taken by the Federal Court in the decision handed down earlier this year in [Peter Greensill Family Co Pty Ltd \(trustee\) v Commissioner of Taxation \[2020\] FCA 559](#) (which is now on appeal to the Full Federal Court).

EU Court ruling on employer for multi-state workers

The European Court of Justice has issued a long-anticipated judgment on who is the 'employer' of a cross-border worker in the European Union (EU). In this recent case, the Court ruled that the employer was the undertaking that in reality exercised the functions of the employer rather than the other undertaking with which the employees had their formal employment contracts. Employers should consider whether the practical reality of their employment set up for cross-border workers in the EU is consistent with the contractual arrangements in place. For further information refer to [PwC Global Mobility Services Insights](#).

EU Commission tax package

The European Commission has adopted a new comprehensive and ambitious Tax Package which includes measures that address fair and simple tax, administrative cooperation and good governance. Refer to [PwC Global Tax Policy Alert](#) for further information.

OECD paper on reassessing the regressivity of VAT

The Organisation for Economic Co-operation and Development (OECD) has [released](#) a working paper which reassesses the often-made conclusion that a value-added tax (VAT) is regressive, drawing on tax

microsimulation models constructed for 27 OECD countries. In the broader context of the COVID-19 crisis, the findings of the paper suggest there may be scope in many countries for VAT reform to help

address revenue needs, as this revenue may be generated with less significant distributional effects than originally anticipated.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Chris Morris, Sydney
Australian Tax Leader
+61 (2) 8266 3040
chris.morris@pwc.com

Michael Taylor, Melbourne
Partner
+61 (3) 8603 4091
michael.taylor@pwc.com

Angela Danielelto, Sydney
Partner
+61 (2) 8266 0973
angela.danielelto@pwc.com

Gary Dutton, Brisbane & Sydney
Australian Trade Leader
+61 (7) 3257 8783
gary.dutton@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

Greg Weickhardt, Melbourne
Partner
+61 (3) 8603 2547
greg.weickhardt@pwc.com

Jayde Thompson, Sydney
Partner
+61 403 678 059
jayde.thompson@pwc.com

Ben Lannan, Melbourne
Partner
+61 (3) 8603 2067
ben.lannan@pwc.com

Peter Collins, Melbourne
International Tax Leader
+61 (3) 8603 6247
peter.collins@pwc.com

Nick Houseman, Sydney
Australian Transfer Pricing Leader
+61 (2) 8266 4647
nick.p.houseman@pwc.com

Jonathan Malone, Sydney
Partner
+61 (2) 8266 4770
jonathan.r.malone@pwc.com

Personal Tax Update

ATO updates employees guide for work expenses

The Australian Taxation Office (ATO) has updated its [employees guide for work expenses](#) for the 2019-20 income year to include:

- The "shortcut method" for calculating running expenses incurred as a result of working from home to help employees working from home during the COVID-19. This method is available from 1 March 2020 to 30 September 2020.
- Taxation Ruling TR 2020/1 *Income tax: employees: deductions for work expenses under section 8-1 of the Income Tax Assessment Act 1997* which provides guidance on when an employee can claim a deduction for a work expense. (See also PwC's [Tax Insight](#) which considers this Ruling.)

ATO consultation on occupation and industry-specific advice and guidance

The ATO has released a [consultation paper](#) on its current occupation and industry specific advice and guidance. The ATO proposes to retire 16 occupation and industry-specific taxation rulings on the basis that its views in these rulings are provided in *Taxation Ruling TR 2020/1* which provides guidance

on deductions for work expenses, the [Employees guide for work expenses](#), and an occupation and industry-specific [Guide](#). Comments are due on 20 September 2020.

Personal services income – unrelated clients test

The Full Federal Court in [Commissioner of Taxation v Fortunatow \[2020\] FCAFC 139](#) has overturned the [decision](#) of the Primary Judge and held that the taxpayer did not satisfy the "unrelated clients test" under the personal services income (PSI) provisions (ie the exception in s87-20(2) of the Income Tax Assessment Act (Cth) (ITAA 1997)). The Federal Court had previously held that the ATO and the Administrative Appeals Tribunal (AAT) had applied the exception for services provided through intermediaries (e.g. recruitment agencies) too broadly and instead the Court preferred a narrow interpretation of the exception. As none of the taxpayer's clients made their decision to engage the taxpayer's services as a direct result of an offer or invitation constituted by the taxpayer's LinkedIn profile, the provision of services was not a "direct result" of the making of offers or invitations

Error made in salary sacrifice arrangement for super

The AAT in [Kander v Commissioner of Taxation \[2020\] AATA 2635](#) has held that a taxpayer derived assessable income when they mistakenly instructed their employer to direct a part of their salary to a superannuation fund and the employer acted on that instruction. The taxpayer had intended to enter into a salary sacrifice arrangement such that the amounts would be “pre-tax” contributions but mistakenly instructed the employer to make “after-tax” deductions from her salary. The Tribunal also noted that it had no power to correct the taxpayer’s error.

Taxpayer not entitled to deduction for settlement payment

The AAT in [Duncan v Commissioner of Taxation \[2020\] AATA 2540](#) has held that the taxpayer who made a payment in full and final settlement of all legal actions against him in his role as a director of relevant entities for trading while insolvent was not entitled to a deduction for the outgoing. The Tribunal found that the payment was not incurred in gaining or producing the taxpayer’s assessable income and that the character of the advantage sought by the payment indicated it was of a capital nature. In particular, the Tribunal had regard to the manner in which the taxpayer will rely on the advantage gained from the outgoing which was for the preservation and protection of his reputation and earning capacity as a company director and employee in the future, and the means adopted to secure the advantage which was a one-off payment.

Discretionary trust beneficiary not entitled to interest deduction

The AAT in [Chadbourne v Commissioner of Taxation \[2020\] AATA 2441](#) has held that the taxpayer, a beneficiary of a discretionary trust, was not entitled to a deduction for interest on monies he borrowed which were used by the trust for purposes of it acquiring investment properties and shares. The Tribunal found that there was no nexus between the taxpayer’s interest expense and his assessable income as a trust beneficiary as the taxpayer’s interest in the income of the discretionary trust was a mere expectancy.

Full Federal Court finds backpacker tax not “disguised form of discrimination”

The Full Federal Court in [Commissioner of Taxation v Addy \[2020\] FCAFC 135](#) has overturned the [decision](#) of the Federal Court which was brought by a British individual having worked in Australia as a working holiday maker. The Full Federal Court held

that the “backpacker tax” was not a “disguised form of discrimination based on nationality” prohibited by the Australia-United Kingdom (UK) Double Taxation Agreement (DTA). Specifically, although there was a greater tax burden imposed on the taxpayer because she did not have the benefit of the tax-free threshold, this did not trigger the operation of Article 25 of the Australia-UK DTA. Article 25 precludes a contracting state from subjecting nationals of the other contracting state to a greater tax burden than its own nationals “in the same circumstances”. The imposition of a tax at a higher rate on the holders of specific visas did not discriminate against the holder solely on the basis of nationality and did not offend the agreement. The Court also concluded that the taxpayer was resident of Australia under the “183 days” test.

Accordingly, the taxpayer had to pay the “backpacker tax” and was not entitled to the tax-free threshold which applies to Australian resident taxpayers that have the first AUD18,200 of taxable income tax-free and then pay 19 per cent until they earn AUD37,000.

Citizen working overseas found to be tax resident of Australia

The AAT in [Joubert v Commissioner of Taxation \[2020\] AATA 2645](#) has held that an Australian citizen working in Singapore while his family was based in Australia was a tax resident of Australia. The Tribunal found that the taxpayer’s objective connections and the contemporaneous evidence of the taxpayer’s intention with Australia supported a finding that they were a resident of Australia.

AAT finds individuals on working-holiday visas were non-residents

The AAT in [Dapper Coelho v Commissioner of Taxation \[2020\] AATA 2474](#) has held that four individual taxpayers, foreign nationals on a work and holiday visa, were not residents of Australia. The Tribunal found that even though each of the taxpayers were present in Australia for more than half of the year, their usual place of abode was overseas and they did not intend to take up residence in Australia.

IGTO final report on death and taxes

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has [released](#) the report of her investigation into the ATO’s systems and processes for dealing with deceased estates. The IGTO investigation sought to identify opportunities to improve tax administration for deceased individuals and their estates, aimed at making it easier to engage with the ATO, and to reduce unnecessary red tape and tax compliance. The ATO has agreed

either in full or in part or in principle with the vast majority of the recommendations.

UK – Individual tax residency clarifications for COVID-19 remote workers

The UK's Her Majesty's Revenue and Customs (HMRC) has published a Q&A to respond to the most common questions in respect of the impact of COVID-19 on UK individual tax residence. The guidance and clarifications demonstrate that the

HMRC intends to apply the UK tax residency rules in accordance with the legislation and are not looking at further relaxations. The longer employees remain working remotely, the greater chance that the individual's UK tax residency status will switch as a result of COVID-19 displacement. Employees and employers should be aware that much will depend on the individual facts and circumstances and those impacted will need to carefully review their positions. For further insights refer to our [Insights from Global Mobility Services](#).

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Martina Crowley, Melbourne

Partner

+61 (3) 8603 1450

martina.crowley@pwc.com

Glen Frost, Sydney

Partner

+61 (2) 8266 2266

glen.frost@pwc.com

Amy Etherton, Newcastle

Partner

+61 (2) 4925 1175

amy.etherton@pwc.com

Samantha Vidler, Brisbane

Partner

+61 (7) 3257 8813

samantha.vidler@pwc.com

Matt Gurner, Perth

Partner

+61 (8) 9238 3458

matthew.gurner@pwc.com

Alistair Hutson, Adelaide

Partner

+61 (8) 8218 7467

alistair.hutson@pwc.com

State Taxes Update

COVID-19 – Victoria extends land tax relief to landlords and tenants

The Victorian Government has [announced](#) a number of new measures in relation to land tax relief, as well as additional support for tenants. From a [land tax perspective](#):

- Landlords of residential and commercial properties who provide a 50 per cent or more outright rent waiver of at least three months' rent to eligible tenants can claim a 50 per cent waiver of the property's 2020 land tax and defer payment of the remaining tax to 31 March 2021.
- Owner-occupiers of commercial properties can obtain a 25 per cent waiver of the property's 2020 land tax and payment of the remaining tax can be deferred to 31 March 2021 if their business meets certain conditions.

In other measures, eligible residential tenants and landlords will be supported with up to AUD3,000 in rental payments as part of the Rental Relief Grant program, with new recipients able to apply for the full amount, and up to AUD1,000 extra available for previous recipients. There is also an extension of the ban on evictions and rental increases until the end of the year. Additional measures will require commercial landlords to provide rent relief in proportion with the fall in turnover being experienced by eligible tenants going forward.

For this and the latest up-to-date information in relation to all States and Territories and COVID-19 relief measures, refer to our dedicated [State Tax COVID-19 updates webpage](#).

NSW – Build-to-rent land tax measures now law

The [State Revenue Legislation Amendment \(COVID-19 Housing Response\) Bill 2020 \(NSW\)](#) has been introduced and enacted since our last update to give effect to the concessional land tax treatment to apply to certain build-to-rent properties and also stamp duty concessions under the First Home Buyers Assistance scheme for certain agreements and transfers that are entered into during the period beginning on 1 August 2020 and ending on 31 July 2021, among other things. Specifically, in relation to build-to-rent properties, the amendments provide:

- a land tax concession to apply until 2040, being that the value of land on which certain build-to-rent properties are constructed is, for the purposes of assessing land tax, to be reduced by 50 per cent, and
- exemptions from, and refunds of, surcharge purchaser duty and surcharge land tax payable in respect of land on which build-to-rent properties are situated.

Refer to our [last monthly update](#) for further details around the built-to-rent measures.

COVID-19 – NSW tax relief measures

The following COVID-19 relief measures were announced in NSW since our last update:

- The NSW Government has [announced](#) that the threshold above which stamp duty is charged on new homes for first home buyers will increase from the current AUD650,000 to AUD800,000, with the concession reducing on higher values before phasing out at AUD1 million. The stamp duty threshold on vacant land will also rise from AUD350,000 to AUD400,000 and will phase out at AUD500,000. It will be in place for 12 months and will apply to contracts executed from 1 August 2020 to 31 July 2021.
- Revenue NSW has [announced](#) that it will automatically defer the gaming machine tax paid by clubs and hotels as a response to the effects of COVID-19. Specifically, gaming machine tax normally paid by clubs between 1 March 2020 and 31 August 2020 is deferred to 1 September 2020, while the tax normally paid by hotels between 1 April 2020 and 30 September 2020 is deferred to 1 October 2020.

SA – COVID-19 land tax relief extended for landlords

The South Australian (SA) Government has [extended](#) the land tax relief for non-residential and residential landlords in response to COVID-19, with applications now closing on 30 September 2020. By way of reminder, under this relief, landlords who provide tenants impacted by COVID-19 with rent relief may be eligible for a 25 per cent reduction on the 2019-20 land tax payable. This relief is also available to residential and non-residential land owners who are unable to secure a tenant because of COVID-19.

SA land tax guide

RevenueSA has released the following guide on land tax in South Australia – [2020-21 Guide to Legislation: Land Tax](#).

COVID-19 – ACT tax relief measures

The ACT government has [announced](#), among other things, that a land tax (or general rate) rebate will be provided to landlords who reduce tenants' rent in respect of residential premises by at least 25 per cent. The benefit will be an amount equal to 50 per cent of the rent reduction to a maximum of \$2,600 over six months or \$100 per week.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Rachael Cullen, Sydney
Partner
+61 (2) 8266 1035
rachael.cullen@pwc.com

Barry Diamond, Melbourne
Partner
+61 (3) 8603 1118
barry.diamond@pwc.com

Stefan DeBellis, Brisbane
Partner
+61 (7) 3257 8781
stefan.debellis@pwc.com

Rachael Munro, Perth
Partner
+61 (8) 9238 3001
rachael.munro@pwc.com

Cherie Mulyono, Sydney
Partner
+61 (2) 8266 1055
cherie.mulyono@pwc.com

Superannuation Update

COVID-19 and impact on investment properties held by SMSFs

Where a self-managed superannuation fund (SMSF) offers a deferral of rental income under an arm's length lease directly to a related party tenant, the deferral can constitute a loan to the related party within the meaning of that term in the *Superannuation Industry (Supervision) Act 1993* and result in the trustee of the fund acquiring an in-house asset that is not covered by any of the exemptions. Similarly, where a company or unit trust

that is a related party of the SMSF allows a tenant a deferral of rent under a lease (on arm's length terms), the SMSF investment in the company or unit trust will become an in-house asset.

In recognition of such rental deferrals in the context of the COVID-19 pandemic and the long-term effects of not complying with the in-house asset provisions, the Commissioner of Taxation is proposing to exercise his powers as Regulator. In this regard, the Australian Taxation Office (ATO) has released [Draft Self Managed Superannuation Funds \(COVID-19 Rental income deferrals – In-house Asset Exclusion\)](#)

[Determination 2020](#) which provides that an asset of a SMSF will not be considered an in-house asset where, during the 2019-20 and 2020-21 financial years, the fund either:

- allowed a related party tenant a deferral of rent under a lease (on arm's length terms) due to the financial impacts of COVID-19, or
- held an interest in a related party which is exempt from being an in-house asset due to the operation of Regulation 13.22B or 13.22C of the *Superannuation Industry (Supervision) Regulations 1994*, and that related party allowed a tenant a deferral of rental income under a lease (on arm's length terms) due to the financial impacts of COVID-19.

Comments were due on 31 August 2020.

Annual fund reporting obligations

A reminder that funds (excluding a SMSF) and every life insurance company that is required to lodge a Member Account Transaction Service (MATS) form have until 31 October 2020 to report for all open account-based super interests as at 30 June 2020, the 30 June account balance amounts, any applicable retirement or accumulation phase values, notional taxed contributions and defined benefit contributions for members. Funds should refer to the [ATO's protocol document](#) which provides guidance to superannuation providers in meeting the annual reporting obligations.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Naree Brooks, Melbourne

Partner

+ 61 (3) 8603 1200

naree.brooks@pwc.com

Alice Kase, Sydney

Partner

+ 61 (2) 8266 5506

alice.kase@pwc.com

Marco Feltrin, Melbourne

Partner

+ 61 (3) 8603 6796

marco.feltrin@pwc.com

Matthew Strauch, Melbourne

Partner

+ 61 (3) 8603 6952

matthew.strauch@pwc.com

Abhi Aggarwal, Brisbane

Partner

+ 61 (7) 3257 5193

abhi.aggarwal@pwc.com

Ken Woo, Sydney

Partner

+ 61 (2) 8266 2948

ken.woo@pwc.com

Legislative Update

Since our last update, Federal Parliament resumed sittings on 24 August 2020. The following tax-related Bills were introduced:

- [Coronavirus Economic Response Package \(JobKeeper Payments\) Amendment Bill 2020](#),

which was introduced into the House of Representatives on 26 August 2020, makes various amendments to the JobKeeper framework, including:

- extending the period over which the Government can make payments authorised by the Coronavirus Economic Response Package (Payments and Benefits) Act 2020 until 28 March 2021 (i.e. to support the proposed extended JobKeeper program)
- amending the tax secrecy provisions in the *Taxation Administration Act (1953)(Cth)* to allow protected information relating to the JobKeeper scheme to be disclosed to an Australian government agency for the purposes of the administration of an Australian law, and

- extending the operation of the temporary JobKeeper provisions in the *Fair Work Act 2009 (Cth)* until 28 March 2021, in line with the proposed extended end date of the JobKeeper scheme, and creating two broad categories of employers who can access particular flexibilities under the Act from 28 September 2020 (i.e. those who are eligible for JobKeeper after 28 September 2020 and those who received JobKeeper prior to 28 September 2020 but no longer qualify after 28 September 2020).

The following key tax and superannuation related Bills have completed their passage through Parliament:

- [Treasury Laws Amendment \(2020 Measures No. 2\) Bill 2020](#) which, among other things, includes the technical amendments to the hybrid mismatch rules (announced in the 2019-20 Federal Budget and the 2019-20 Mid-Year Economic and Fiscal Outlook), broadens the amounts that employers can voluntarily report under the Single Touch Payroll rules relating to child support information, and also amends the

tax secrecy provisions in the *Taxation Administration Act (1953)(Cth)* to allow protected information relating to the JobKeeper scheme to be disclosed to the Fair Work Commission and the Fair Work Ombudsman.

- [Treasury Laws Amendment \(Your Superannuation, Your Choice\) Bill 2019](#) which

provides that employees under workplace determinations or enterprise agreements have the right to choose their superannuation fund.

A reminder that the 2020-21 Federal Budget is expected to be delivered on 6 October 2020.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Chris Morris, Sydney
Australian Tax Leader
+61 (2) 8266 3040
chris.morris@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Sarah Hickey, Sydney
Sydney Tax Market Leader
+61 (2) 8266 1050
sarah.a.hickey@pwc.com

James O'Reilly, Brisbane
Brisbane Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Jason Karametos, Melbourne
Industries Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Kirsten Arblaster, Melbourne
Melbourne Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Rob Bentley, Perth
Perth Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

Other News

ATO approach to trust liquidity issues and COVID-19

The Australian Taxation Office (ATO) has published [guidance](#) on trust liquidity issues due to COVID-19 in relation to meeting the obligations to discharge a present entitlement of a trust beneficiary. Specifically, the ATO has stated that it will not undertake compliance action to consider the validity of an entitlement or the application of section 100A of the *Income Tax Assessment Act 1936* (Cth) (reimbursement agreements) in circumstances where a trustee is affected by liquidity issues due to COVID-19 and unable to satisfy the entitlement.

ATO approach to loans impacted by COVID-19

The ATO has [clarified](#) its position on loans that have been put on hold during COVID-19. According to the

guidance, if a creditor only postpones an amount payable and the debtor acknowledges the debt, a debt is not considered forgiven. In the context of debt forgiveness for purposes of the deemed dividend rules ("Division 7A") applicable to loans by private companies to shareholders (or their associates), allowing more time to repay a debt due to COVID-19 will not result in the debt being treated as forgiven.

ATO Corporate Plan 2020–21

The ATO has released its [2020-21 Corporate Plan](#) that outlines the ATO's focus areas and its eight strategic initiatives for the 2020-21 financial year, including administering the COVID-19 stimulus measures, optimising taxpayer interactions through self-service channels, improving small business tax performance, strengthening cybersecurity and unlocking data potential.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Chris Morris, Sydney
Australian Tax Leader
+61 (2) 8266 3040
chris.morris@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Sarah Hickey, Sydney
Sydney Tax Market Leader
+61 (2) 8266 1050
sarah.a.hickey@pwc.com

Kirsten Arblaster, Melbourne
Melbourne Tax Market Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

James O'Reilly, Brisbane
Brisbane Corporate Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Rob Bentley, Perth
Perth Corporate Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Jason Karametos, Melbourne
Industries Corporate Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Contacts

To discuss how recent updates in the areas of corporate tax, employment tax, international tax, indirect tax, personal tax, state taxes, superannuation or legislation might affect you, please contact:

Chris Morris, Sydney
Australian Tax Leader
+61 (2) 8266 3040
chris.i.morris@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

Sarah Hickey, Sydney
Sydney Tax Leader
+61 (2) 8266 1050
sarah.a.hickey@pwc.com

James O'Reilly, Brisbane
Brisbane Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

Kirsten Arblaster, Melbourne
Melbourne Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Jason Karametos, Melbourne
Industries Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Hayden Scott, Brisbane
Tax Controversy Leader
+61 (7) 3257 8678
hayden.scott@pwc.com

Rob Bentley, Perth
Perth Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Luke Bugden, Sydney
Partner
+61 (2) 8266 4797
luke.bugden@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Norah Seddon, Sydney
People & Organisation Tax Leader
+61 (2) 8266 5864
norah.seddon@pwc.com

Ellen Thomas, Sydney
Deals & Stamp Duty Tax Leader
+61 (2) 8266 3550
ellen.thomas@pwc.com

Michelle Tremain, Perth
Indirect Tax Leader
+61 (8) 9238 3403
michelle.tremain@pwc.com

Editorial

PwC's Monthly Tax Update is produced by the PwC's Financial Advisory Marketing and Communications team, with technical oversight provided by PwC's Tax Markets & Knowledge team.

Editorial

Kate Fawcett
Senior Manager, Communications
+61 (3) 8603 0986
kate.a.fawcett@pwc.com

Lynda Brumm
Principal, Tax Markets & Knowledge
+61 (7) 3257 5471
lynda.brumm@pwc.com

Abdur Mohamed
Manager, Tax Markets & Knowledge
+61 (2) 8266 2176
abdur.mohamed@pwc.com

PwC's Monthly Tax Update

© 2020 PricewaterhouseCoopers. All rights reserved. PwC refers to the Australia member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details. This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors. Liability limited by a scheme approved under Professional Standards Legislation. At PwC Australia our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 250,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.au.