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RESPONDING TO COVID-19

COVID-19:
GUIDE TO AUSTRALIAN TAX MEASURES

Accurate as at
8 April 2020

In light of the economic uncertainty triggered by COVID-19 related events, many businesses are looking to access Government stimulus packages. As events continue to move quickly, and the incentives and eligibility requirements vary across jurisdictions, the challenges in identifying and taking timely advantage of all available opportunities is intensifying.

Focusing solely on tax related measures, this guide provides a high level summary of the key incentives that are presently on offer at a Federal, State and Territory level.

While this guide provides high level information, it is not a substitute for advice on specific matters. This is particularly important at the present time as the incentives and eligibility requirements can change quickly and without notice.

We hope that you find this guide valuable. We look forward to working with you and welcome your feedback on any aspect of it.

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INTERNATIONAL CONSIDERATIONS

Central management and control:

- If a foreign company is not an Australian tax resident, but is required to either:
    - conduct board meetings in Australia; or
    - have directors attend meetings from Australia,

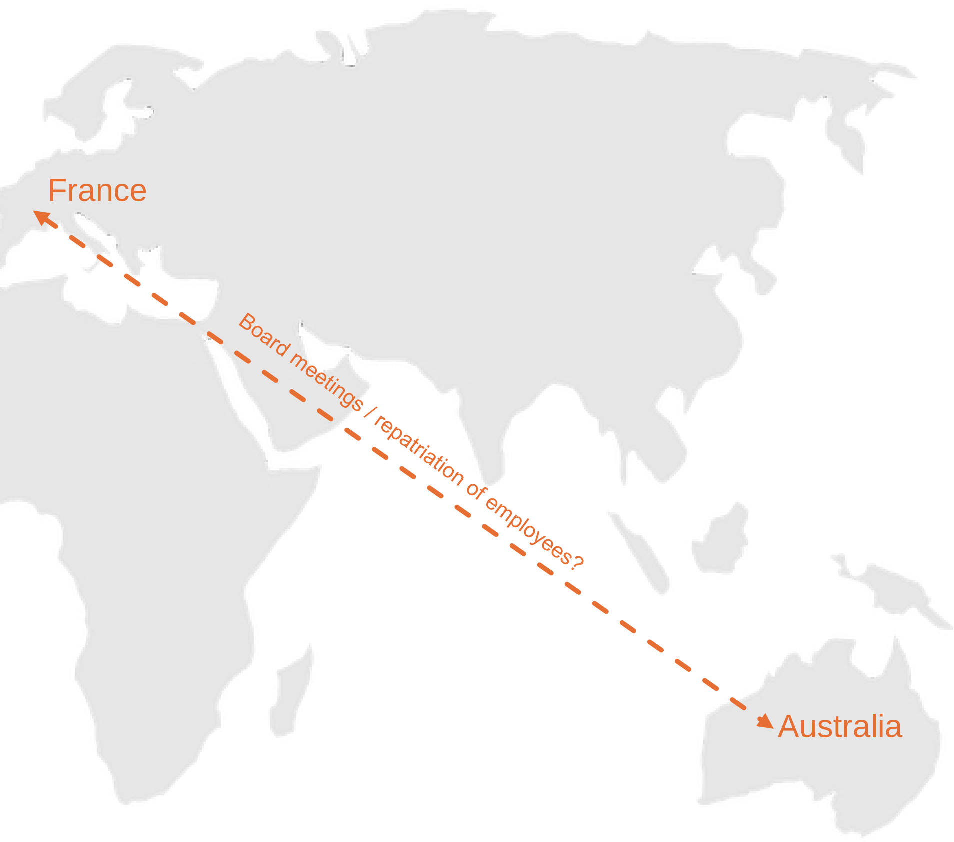
  during the COVID-19 crisis that will not result in the central management and control of the foreign company being in Australia.

- To this effect, we would recommend appropriate documentation be prepared and retained with the company's books to record why the company has suspended their normal pattern of board meetings and make alternative arrangements.

Permanent establishments:

- The temporary relocation or unplanned presence of employees (due to travel restrictions) in Australia will not result in a foreign company having a permanent establishment in Australia.

- Relocating employees back to Australia, however, may have GST implications, (e.g. it may be considered that the entity is carrying on an enterprise in Australia for GST purposes). As stipulated in LCR 2016/1, the test for when an *enterprise of an entity is carried on Australia* is used in the GST legislation in a variety of ways, and may affect the extent to which an entity is accountable for GST on supplies or acquisitions.



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THIN CAPITALISATION

The ATO's position:

- The Assistant Commissioner at the ATO has acknowledged that taxpayers may encounter disruptions with the thin capitalisation regime in this climate, including difficulties with their reporting obligations as well as changes to the underlying economic rationale for the choice of 'method' for calculating the maximum allowable debt.

- Specifically, for tax years covering the February-March 2020 period ("**the relevant year**"), non-ADI taxpayers may no longer be able to rely on the safe harbour or worldwide gearing tests to determine their maximum allowable debt as a result of balance sheet impacts brought by COVID-19, (e.g. from the impairment or decline of asset values or short term drawdowns on debt facilities). As such, the Assistant Commissioner has advised taxpayers to consider the following for the relevant year:

    - For the purpose of calculating average values for thin capitalisation amounts, the selection of alternative valuation measurement periods may allow a degree of smoothing of values in situations where wide variations have occurred throughout the income year.

    - A simplified arm's length debt test ("**ADLT**") may be used for the relevant year. Whilst further guidance is expected to be issued by the ATO later this week, the Assistant Commissioner has indicated the following:
        - Taxpayers would need to show that they would have satisfied the safe-harbour test, but for the COVID-19 related balance sheet impacts;
        - The ATO will still have an expectation that taxpayers use their best endeavours to apply all the criteria of the ALDT;
        - For inward investing entities that are not also outward investing entities, the ATO's compliance approach will apply only to the extent that no additional related party funding is received, save for short term (<12 months) debt facilities. Here, any new capital will be expected to be equity.
        - The ATO is not expecting inward investing entities to require the use of ALDT because dividends were paid.

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PRACTICAL CONSIDERATIONS

Due to COVID-19 and the rapidly changing domestic and international tax environment, there are practical considerations which taxpayers should bear in mind as they continue to operate in this uncertain market. We have outlined some of these key considerations below.

Key Tax Concession	Description
Capital management and dividends:	• The impairment of assets and increased level of losses may impact a company's capital management and repatriation strategies, (e.g. a company may not have the accounting profits to enable repatriation of cash via a dividend).
Tax losses:	• In a climate where businesses are being forced to be innovative and change business models, this may have an impact on those companies' ability to satisfy the various loss recoupment tests, (i.e. continuity of ownership test, same business test and similar business test). • There is a possibility that due to the increased levels of tax losses being used by businesses that the ATO may impose restrictions on the availability for taxpayers to recoup those losses. As at the date of this note, however, no such guidance has been issued by the ATO.
Foreign exchange considerations:	• To the extent that foreign exchange losses arise, (e.g. due to a drop in value of the Australian dollar), businesses may want to take this opportunity to crystallise those foreign exchange losses. • Consideration should be given on how foreign income tax offsets would flow through various fund vehicles in this climate and the impact this would have on distribution policy, (e.g. franked dividends).
Transfer pricing:	• Transfer pricing models may need to be adjusted and existing funding arrangements could be structured. • Appropriate evidentiary support should be retained by multinational taxpayers to demonstrate the commercial rationale for changes arising to their prices of goods and/or services, and income and expense allocations, and shift of operating functions and assets offshore.
Attribution managed investment trusts:	• In these circumstances, trusts may want to retain cash rather than distribute income. As such, trusts may want elect for the attribution managed investment regime to apply. If eligible, this enables the trustee to accumulate income rather than having the obligation to distribute all the income. Any withholding tax obligations would also need to be considered further.
Significant global entities:	• The ATO is encouraging all approved forms, including general purpose financial statements, to be lodged on time. • Should a taxpayer to fail to lodge on time, the ATO will remit the SGE penalty for a period of 30 days from the lodgment date of the approved form, subject to conditions.
Work expenses:	• Individuals working from home as a result of COVID-19 may be entitled to claim a deduction for work expenses (TR 2020/1).

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PRACTICAL CONSIDERATIONS

The ATO is also expected to provide further guidance on the following issues.

Key Tax Concession	Description
Tax residency:	• Individual residency matters, including for individuals who are a resident of a treaty country and are working in Australia for 183 days or less.
Fringe benefits tax:	• FBT issues for fly-in-fly-out workers
Commercial debt forgiveness:	• Deductions for bad debts.
Division 7A:	• Compliance with Division 7A obligations to make minimum yearly repayments.

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ADMINISTRATIVE TAX CONCESSIONS

Key Tax Concession	Description

PAYG concessions:	• If the PAYG instalments being paid exceed the tax liability payable at the end of the year then taxpayers can:
	  • vary the PAYG instalment amounts to zero to make no payment this period; or
	  • a reduced amount to cover the estimate for the period.
	• Claim a 5B refund for any instalments made for the September and December 2019 quarters.
	• The ATO has confirmed that interest and penalties will not be imposed on the varied PAYG instalments.

Payment deferrals:	• Deferral of payments of up to 6 months: these relate to payments, including income tax, activity statements, PAYG instalments, FBT and excise payments (therefore, provide a cash flow benefit). • Available to taxpayers who can provide a valid reason as to how the business is affected by COVID-19.
Moving from quarterly to monthly BAS:	• Taxpayers with quarterly reporting obligations may want to consider opting into monthly GST reporting in order to access BAS refunds quicker. This can be effective from 1 April 2020. • Reporting cycle can be amended via BAS agent, business portal or by phone.

Interest and penalty remissions:	• Interest and penalties may be remitted if incurred on or after 23 January 2020.
	• However, for debts owed before 23 January 2020, the ATO has stated that will:
	  • consider whether your circumstances before 23 January 2020 would enable you to be granted a remission of interest and/or penalties; and
	  • arrange to stop interest being charged while the COVID-19-affected period continues, and for the life of a payment arrangement if you put one in place.
	• Low interest payment plan options are also available to taxpayers finding it to difficult to satisfy their ongoing tax liabilities.

Large businesses:	• Large businesses, (i.e. a group with a turnover of greater than $250 million), may be able to access the aforementioned administrative concessions on a case by case basis. • No new tax audits will be commenced and postponement of recently notified reviews. • Instant asset write off threshold of up to $150,000 for assets acquired by 30 June 2020. • Accelerated depreciation of 50% in the first year on new Division 40 assets acquired and installed ready for use by 30 June 2021.

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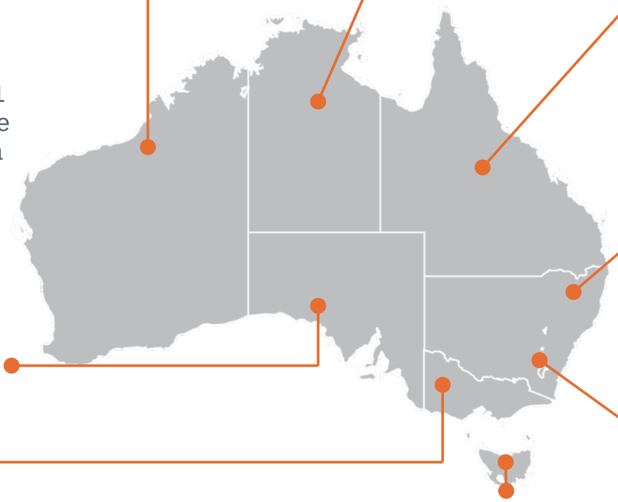
PAYROLL TAX CONCESSIONS



WA:

- **Grant:** one-off $17,500 grant for businesses with annual Australian taxable wages between $1-$4 million.
- **Payroll tax threshold:** increased from $950,000 to $1 million from 1 July 2020.
- **Deferral:** businesses with annual Australian taxable wages of less than $7.5 million can defer their 2019-20 payroll tax payment until 21 July 2020. Businesses must complete an online payroll tax deferral application and submit it via a web enquiry.

SA:

- **Deferral and waiver:** 6 month deferral and waiver for payroll tax for businesses with Australian grouped wages over $4 million.

VIC:

- **Waiver:** payroll tax for FY19/20 waived for businesses with annual taxable wages up to $3 million. If relevant, the SRO will contact eligible businesses to reimburse any payroll tax already paid for the period.
- **Defer:** these eligible businesses can also defer their payroll tax for the first quarter of FY20/21 until January 2021.

NT:

- **Exemption:** the payroll tax exemption for hiring Territory employees has been extended to 30 June 2021.

TAS:

- **Waiver:** payroll tax waived for hospitality, tourism and seafood industry businesses, and approved applicants (i.e. businesses with annual payroll of up to $5 million in wages) for the last four months of FY19/20. The waiver application will shortly be published by the SRO.
- **Rebate:** from 1 April 2020, a one year rebate is available to employers who employ new youth (i.e. persons aged under 24).

QLD:

- **Deferral and refund:** all businesses are able to defer their payroll tax for the 2020 calendar year and may be entitled to a refund of payroll tax for 2 months. An online application must be completed.
- **Waiver:** business that pay $6.5 million or less in Australian taxable wages may also be entitled to a payroll tax holiday for 3 months. An online application is required prior to 31 May 2020.

NSW:

- **Relief:** businesses whose total grouped Australian wages for FY19/20 are less than $10 million will have their annual tax liability reduced by 25% when they lodge their annual reconciliation (due 28 July).
- **Waiver:** payroll tax waived for businesses whose total Australian wages for the current financial year is less than $10 million and lodge and pay monthly, for each of March, April and May 2020.
- **Payroll tax threshold:** increased from $900,000 to $1 million from 1 July 2020.

ACT:

- **Deferral:** 12 month interest-free deferral of the 2020-21 payroll tax for businesses with Group Australia-wide wages of up to $10 million (i.e. until 1 July 2022).
- **Waiver:** 6 month waiver for hospitality, arts and entertainment industry businesses from March to August 2020.

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LAND TAX AND OTHER CONCESSIONS

WA:

- The WA State Government offers payment arrangements for land tax assessments. In the current climate, these arrangements will be interest-free.
- Penalty tax for late payment of land tax, landholder duty, transfer duty and vehicle licence duty may be remitted in full.

SA:

- Deferral of the third and fourth instalment for 2019-20 land tax liabilities.
- Increase of amount paid for first year of the land tax reform transition fund.
- Revenue SA allows land tax payments to be made in quarterly instalments.

VIC:

- Land owners due to pay 2020 land tax that have at least one non-residential property and total taxable landholdings below $1 million can defer their 2020 land tax payment until after 31 December 2020.
- No application required. The SRO will contact eligible taxpayers.

NT:

- There is no land tax in NT.

QLD:

- $500 million loan facility, interest-free for the first 12 months. If eligibility criteria is met, it will allow for loans of up to $250,000.
- No land tax measures announced to date, but the Queensland Government offers taxpayers an extended payment option to make 3 equal instalment payments.

NSW:

- No moratorium on land tax, but Revenue NSW offers the following payment options:
  - **Instalments:** payment required in three instalments; or
  - **Payment plan:** set up a payment plan and extend the payment dates.
- Revenue NSW will also consider extending deadlines for payments and applying leniency for late payment.

TAS:

- No land tax measures announced to date.
- $50 million in interest-free loans over three years for local governments.
- $50 million in maintenance on public buildings brought forward.

ACT:

- No land tax measures announced to date.
- The ACT Revenue Office offers alternative payment arrangements.
- Commercial property owners with an average unimproved value of $2 million or less on their property are eligible for a rebate on their commercial rates fixed charge.