



# BATES | COSGRAVE

INTERNATIONAL TAX FACTSHEET: COVID-19 AND PERMANENT ESTABLISHMENT

# COVID-19 AND PERMANENT ESTABLISHMENT

## INTERNATIONAL TAX FACTSHEET

AUSTRALIA CLOSED ITS BORDERS TO FOREIGN TRAVELLERS IN MARCH 2020 AND CAUGHT FOREIGN NATIONALS OFF-GUARD WITH THEIR INABILITY TO RETURN HOME. SO WHAT HAPPENS FROM A TAX RESIDENCY PERSPECTIVE WHEN THE PRESENCE OF EMPLOYEES IN AUSTRALIA TRIGGERS SCRUTINY ON PERMANENT ESTABLISHMENT?

One of the unintended consequences of Australia's COVID-19 travel restrictions is whether the presence of employees in Australia for longer periods of time could cause non-resident businesses to have a permanent establishment in Australia.

However, in what has been an extraordinary 18 months, the Australian Tax Office has released new guidance on

what happens to companies with employees in Australia that are unable to return home and what may cause it to consider whether permanent establishment has occurred.

### HOW WILL THE ATO APPROACH THE POSSIBILITY OF PERMANENT ESTABLISHMENT?

The guidance indicates that for the period up to 31 December 2021 the ATO will not be applying compliance resources to determine whether a permanent establishment arises if:

- The business did not otherwise have a permanent establishment in Australia before the effects of COVID-19;
- The temporary presence of employees in Australia

continues to solely be as a result of COVID-19 related travel restrictions;

- Those employees temporarily in Australia will relocate overseas as soon as practicable following the relaxation of international travel restrictions; and
- The business has not recognised those employees as creating a permanent establishment or generating Australian source income in Australia for the purpose of the tax laws of another jurisdiction.

### START PLANNING NOW IF YOUR ARRANGEMENTS ARE LIKELY TO CONTINUE INTO 2022

From 1 January 2022, foreign companies will need to consider whether ongoing arrangements give rise to

permanent establishment in Australia, which could be a risk from a tax perspective.

We recommend engaging with Bates Cosgrave early to understand the implications of ongoing arrangements after that date and where necessary, engage with the ATO on your behalf.

Contact our International Tax Team on 02 9957 4033 if you or your business are impacted by travel restrictions within Australia.

Last updated July 2021. This factsheet is provided for information purposes only and is correct at the time of publishing. It should not be used in place of advice from your accountant. Please contact us on 02 9957 4033 to discuss your specific circumstances.

# ABOUT US

## Our Expertise

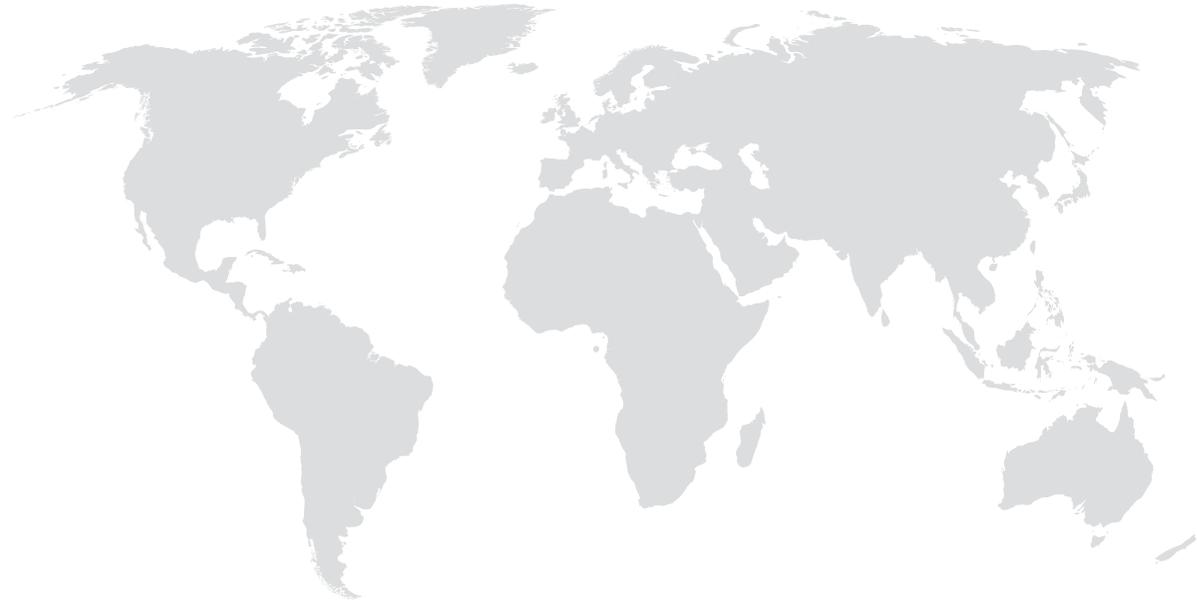
### Domestically

Bates Cosgrave advises domestic and international businesses.

We provide highly personalised services across a wide range of industries with in-depth knowledge in real estate, renewable energy, import and distribution, health professionals, inbound and outbound investments, and innovative/start-up businesses.

### Internationally

Although we are a boutique firm based in Sydney, we have access to a strong global network and specialise in advising cross-border transactions and global structuring.



# OUR TEAM

## Directors



MATT ZHOU

DIRECTOR

CA, B. COMM, M. ACC, M. TAX, MINTAX, CTA

[VIEW ONLINE PROFILE](#)

Matt joined Bates Cosgrave in April of 2007 as a manager and was promoted to Director from 1 July 2009. Matt has a reputation for his technical expertise and experience in specialist advice to professionals including medical doctors, professional investors and family offices, multinational companies.

His diverse knowledge on International tax, expatriates tax, employee share schemes, business structuring including cross border issues, CGT and GST is formidable.

His industry knowledge is broad and includes medical services, real estate, pharmaceuticals and technology companies. As tax advisors, we must think ahead and consider not just the current situation but the future.

Good advice reflects not simply value now, but lasting value.



GLENN COSGRAVE

DIRECTOR

CA, B.COMM, FTIA

[VIEW ONLINE PROFILE](#)

Glenn is passionate about business improvement and works with our clients to get the fundamentals of their business right, serving as a mentor through their business journey of establishment, growth and exiting when the time is right. His approach has helped many businesses evolve from start-up to commercialisation and ultimately setting up their business in the best possible position for sale. He also specialises in tax-efficient structuring. Glenn's extensive experience as a strategic advisor ensures his clients have a clear focus for their personal and business goals, including a roadmap for future success and alignment of multidisciplinary advice to achieve best outcomes. Glenn is also a professional adviser to engineers, valuers, project managers, accountants, lawyers and high net worth individuals, with a strong portfolio of clients in import and distribution, professional advisory and innovative businesses.



## contact us

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