



BATES | COSGRAVE

INTERNATIONAL TAX FACTSHEET: COVID-19 AND THE CROSS-BORDER WORKFORCE

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INTERNATIONAL TAX FACTSHEET

CROSS-BORDER WORKFORCES HAVE FELT THE IMMEDIATE AND NOW LONGER-TERM CONSEQUENCES OF THE COVID-19 PANDEMIC AND QUESTIONS ARE BEING ASKED ABOUT HOW PROTRACTED TRAVEL RESTRICTIONS WILL IMPACT INTERNATIONAL TAX STRATEGY AND RESIDENCY.

The rate and scale of the COVID-19 pandemic prompted governments around the world to introduce restrictions on the movement of citizens and foreign nationals in a bid to stall the spread of the virus among their populations.

The impact was immediate for multinational businesses. As global - and typically highly mobile - employees and contractors found themselves stranded in countries

that are not their typical countries of residence, employers had to grapple with questions of what it meant for international tax, both for their entities and for their employees. One of the core concerns is whether their global workforce may create a 'permanent establishment' - a trigger for tax obligations - or tax obligations for employees as executives, employees, and contractors became stranded as a result of border closures.

THE QUESTION OF EMPLOYEES AND PERMANENT ESTABLISHMENT

The exceptional and temporary nature of where employees reside during the pandemic has been raised by the OECD as a cause for concern from an international tax perspective, however its view is that this alone should not create new permanent

establishment for employers. The fluid nature of COVID and government responses to border controls and quarantine measures has, however, created uncertainty about how organisations can or should manage their stranded employees.

The Australian Government has sought to provide some assurance that if an organisation did not have centralised control and management in place prior to the pandemic, it is unlikely to apply its compliance resources to determine permanent establishment in the short term - a temporary measure until 31 December 2021. Beyond 1 January 2022, the Government expects organisations to put in place strategies to manage their workforces and residency requirements while COVID restrictions persist, which should prompt an organisational review of current and future cross-border tax planning.

THE QUESTION OF RESIDENCY FOR INDIVIDUALS

The taxation of employment income has been fraught with challenge for global work forces operating in Australia, however the OECD model for taxation typically gives the right of taxation to the individual's place of residence unless they are '....physically present when performing the activities for which employment income is paid...' in another state.

International tax treaties and the application of residency rules are guiding factors, however the ATO has proven that the intention of individual tax payers, where their assets and families are located, and how employment occurs can be subjectively determined.

Within Australia, there are four residency tests that determine whether an employee is an Australian tax resident. Foreign residents and Australian nationals caught by Australia's travel restrictions are faced with a great deal of uncertainty over whether the typical residency tests can or will be applied.

The extraordinary nature of the COVID crisis means that cross-border employees are also subject to government directives in the countries they've been stranded in. This could create challenges if they were not already

considered permanent or temporary residents for tax purposes prior to the pandemic. Examples include government subsidies designed to keep employees on the payroll e.g. JobKeeper or other stimulus measures, tax withholding, and change of place implications for workers who undertake their employment duties within Australia.

Given the complexity of Australia's cross-border tax laws, there are likely to be potential landmines created by lower thresholds for domestic tax law and individual tax residency.

The Australian government appears to have recognised that the complexity of 80-year-old tax residency rules need to be simplified and modernised, signalling that it will replace individual residency rules with primary and secondary tests. However its proposed primary and secondary tests may prove complicated to apply by the fact that many taxpayers have been impacted by its border security measures.

We strongly advise seeking advice for individuals impacted by COVID restrictions. Despite the Australian and other tax jurisdictions signalling legislative change or temporary measures to manage COVID's impacts, confirming tax residency is a lengthy and complicated

process until legislation is passed. Given the nature of tax treaties, differing approaches across tax jurisdictions, and the protracted nature of the pandemic, it will be complex for organisations and individuals to navigate the potential consequences of cross-border taxation.

WHEN TO ENGAGE INTERNATIONAL TAX SPECIALISTS

We encourage foreign and Australian companies with projects, staff, or offshore operations to engage with international tax planning specialists as early as possible to ensure that they have documentation and robust tax strategies in place.

Please contact us via email or call 02 9957 4033 to connect with a member of our International Tax team and discuss your or your organisation's specific circumstances.

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

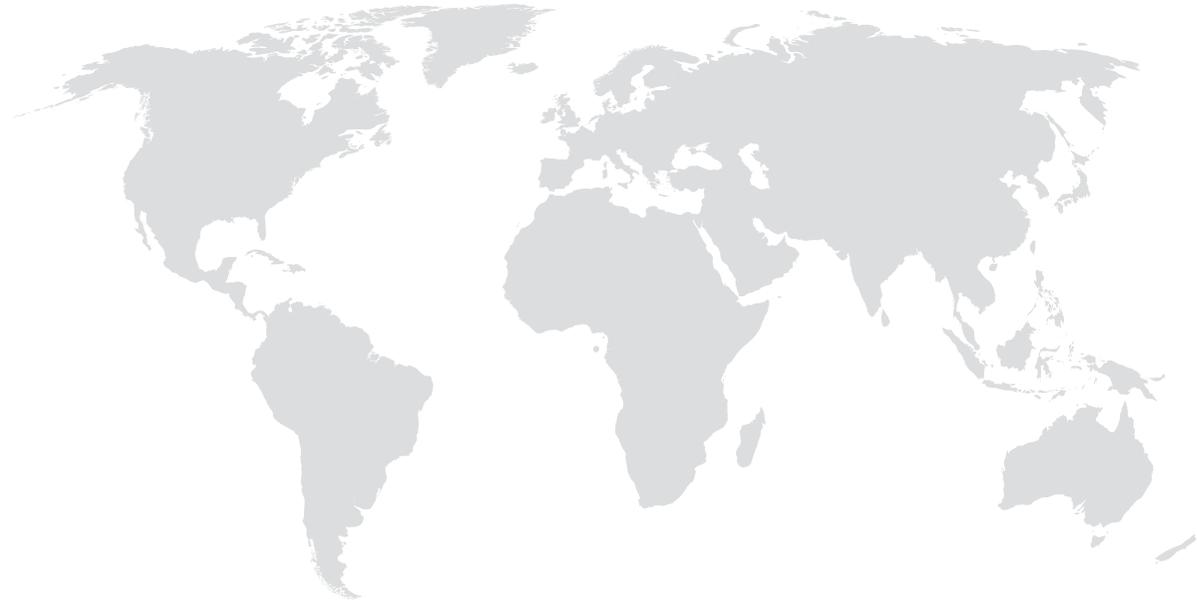
Domestically

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

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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

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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.



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