

GMS Flash Alert

2021-229 | September 3, 2021



Australia - Updated Guidance on Prolonged Employee Displacement and Business Travel

The Australian Taxation Office (ATO) has recently updated its guidance on the Australian tax implications for individuals that have been displaced in Australia due to the COVID-19 pandemic.¹

For individuals who previously resided overseas but who returned to Australia due to COVID-19 and who have remained in Australia during the 2021 tax year and beyond, the circumstances under which they may continue to be regarded as nonresidents for Australian tax purposes are limited. The ATO has clarified that if an individual had the ability to leave Australia and chose to remain, this will be a strong indicator he or she has established Australian tax residence.

WHY THIS MATTERS

Companies with employees who have been displaced in Australia due to the COVID-19 pandemic for a prolonged period of time should be aware that Australian tax residence may have been triggered. The concessions available for the sourcing of employment income for employees working remotely in Australia due to COVID-19 have also been updated, increasing the likelihood that such income will be treated as having an Australian source for tax purposes.

A combination of factors has made Australia a desirable remote working destination and many individuals have become displaced in Australia at various points during the COVID-19 pandemic, typically working remotely for their foreign employer.

Following the recently-updated ATO guidance on displaced workers, individuals who continue to remain in Australia are likely to have established Australian tax residency, and will be taxable on a worldwide basis. Likewise, nonresidents with employment income sourced to Australia will also be subject to Australian taxes.

Employers, meanwhile, will be required to comply with Australian employment tax requirements, even in circumstances where the employee continues to work for the benefit of a foreign employer with no Australian corporate presence.

These requirements include:

- Single Touch Payroll Reporting
 - Pay-As-You-Go Withholding
 - Fringe Benefits Tax
 - Employer Superannuation Contributions
 - State Payroll Tax
 - Workers Compensation.
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Key Details

As discussed in [GMS Flash Alert 2020-487](#) (9 December 2020), under previously-released ATO guidance, certain employees displaced to Australia as a result of the pandemic were not considered tax resident of Australia, and their employment income could be regarded as "foreign sourced."

This meant that foreign employers were not required to comply with some of the usual Australian employer reporting requirements outlined above.

Updated Tax Residency Guidance

Under the updated guidance released in mid-August, unless there are specific circumstances preventing taxpayers from leaving Australia and returning to their usual overseas home, they will likely have become Australian tax residents.

The following are factors the ATO has indicated would be considered in determining whether or not a taxpayer has been able to leave Australia:

1. Government restrictions preventing them from leaving Australia or entering their usual country of residence.
2. A lack of commercial flights available to their home country.

Proof of a declined travel exemption to leave Australia or to enter a taxpayer's home country, for example, may be important to substantiate an inability to leave. Similarly, proof of flight cancellations, or evidence that flights into a certain country simply are not available may help demonstrate an inability to leave.

The ATO has not indicated whether consideration would be given to the heightened costs of international flights during the COVID-19 pandemic. Such costs may be prohibitively expensive for an individual, thereby preventing him or her from leaving Australia without suffering serious economic hardship.

Updated Sourcing of Income Guidance

In addition to tax residency, the ATO has stated that the source of employment income for displaced employees physically working in Australia for a foreign employer should be carefully examined, as in most instances, the income will be considered Australian-sourced.

The ATO has indicated that it would consider salary to have an Australian source if:

1. the employee has chosen to stay in Australia, despite being able to leave, or
2. the employee has agreed with the employer that Australia can be his or her usual place of work until the employee chooses to travel again.

In addition, the ATO has noted the numerous Australian double taxation treaties that may "deem" employment income to be Australian-sourced if services are being performed in Australia, regardless of any potential Australian domestic tax concessions available.

Australian-sourced employment income will be taxable to individuals regardless of their Australian tax residency.

In addition, for those employees who have triggered residency but remain subject to foreign taxes on employment income earned remotely, such income being treated as Australian-sourced may further complicate their tax affairs and they may need to look to concessions available to them from the foreign country, or under a double taxation treaty, to mitigate potential double tax.

Other Important Things to Consider

Medicare Levy and Medicare Levy Surcharge

Employees who are Australian residents will be subject to the 2% Medicare Levy.

An employee whose income is above a certain threshold and who does not hold adequate Australian private health insurance may also be subject to the Medicare Levy Surcharge. Most foreign health insurance plans are not sufficient to afford exemption from the Medicare Levy Surcharge.

International Business Trips to Australia

Looking beyond the pandemic, as borders re-open and international travel resumes, the nature and purposes of business travel by employees are expected to change.

The ATO has also recently released its detailed "Practical Compliance Guideline & Taxation Ruling" related to business travellers and Fringe Benefit Tax, namely the deductibility of housing and food costs.² (For related coverage, see [GMS Flash Alert 2021-091](#), 23 March 2021.)

The ATO advises that it is satisfied an employee is travelling for work and will not apply compliance resources to determine if food or housing fringe benefits relate to expenses for living at a location, when the employee is working at the same location for no more than 21 continuous calendar days at a time and no more than 90 days in total at that work location during a fringe benefits tax year.

KPMG NOTE

The ATO guidelines note that a "small amount of additional time" may be accepted by the ATO in addition to the 21/90 days, which stretch to allow for hotel quarantine time upon arrival in Australia, or circumstances where an employee becomes unexpectedly stuck in a business travel location due to a border closure. This will be a welcome clarification for employers who may be planning what future business travel may look like moving out of the COVID-19 pandemic.

It is important to note however that any *de minimis* day rule referenced by the ATO in the guidelines and ruling is limited to the application of the fringe benefits tax rules for business travellers, and may not exempt an employee or his or her employer from Australian income tax and related employment tax and superannuation obligations on business travel to Australia.

KPMG will continue to have an open dialogue with the ATO and share further updates as guidance is released.

Now is the time for individuals and their employers to take stock of employees who continue to stay in Australia as a result of the COVID-19 pandemic, to help ensure the tax and reporting obligations for all parties are understood.

FOOTNOTES:

1 See most recent ATO guidance "[Residency and source of income.](#)"

2 ATO Practical Compliance Guideline [PCG 2021/3](#) and Taxation Ruling [TR 2021/4](#).

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People Services in Australia

Perth, Western Australia Dan Hodgson Partner – People Services Mobile: +61 416 017 dghodgson@kpmg.au	Melbourne, Victoria Mardi Heinrich Partner – People Services Mobile: +61 410 602 993 meheinrich@kpmg.com.au
Sydney, New South Wales Ablean Saoud Partner – People Services Mobile: +61 421 052 596 asaoud@kpmg.com.au	Brisbane, Queensland Hayley Lock Partner – People Services Mobile: +61 477 764 638 hlock@kpmg.com.au
Sydney, New South Wales Jackie Shelton Partner – People Services Mobile: +61 412 291 846 jsshelton@kpmg.com.au	Sydney, New South Wales Belinda Wright Partner – People Services Tel.: +61 2 9335 7031 bwright3@kpmg.com.au

Special Contributors: Terry Hoban, Kelly Lewis, and Nick Talbert

Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in Australia:



Dan Hodgson (in Perth)

Tel. +61 8 9278 2053

dghodgson@kpmg.com.au

Jackie Shelton (Sydney)

Tel. +61 2 9335 8511

jsshelton@kpmg.com.au

Mardi Heinrich (in Melbourne)

Tel. + 61 3 9838 4348

meheinrich@kpmg.com.au

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