



# ML | Partners Pty Ltd

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## Practice Update

Please read this update and contact this office if you have any queries

October - December 2020

### Improvements to be made to full expensing measure



The government will expand eligibility for the temporary 'full expensing measure', which temporarily allows certain businesses to deduct the full cost of eligible depreciable assets in the year they are first used or installed.

The government initially announced in the 2020/21 Budget that businesses with a turnover of up to \$5 billion would be able to immediately deduct the full cost of eligible depreciable assets as long as they are first used or installed by 30 June 2022.

The government will also allow businesses to **opt out** of temporary full expensing and the backing business investment incentive on an asset-by-asset basis.

This change will provide businesses with more flexibility in respect of these measures, removing a potential disincentive for them to take advantage of these incentives (*For example, where the automatic application of full expensing might cause the entity to make a loss*).

### JobMaker Hiring Credit passed



The government has passed legislation to establish the JobMaker Hiring Credit, which is part of the government's economic response to the COVID-19 pandemic.

The JobMaker Hiring Credit is specifically designed to encourage businesses to take on additional young employees and increase employment.

It does this by providing employers with a fixed amount of \$200 per week for an eligible employee aged 16 to 29 years and \$100 per week for an eligible employee aged 30 to 35 years, paid quarterly in arrears by the ATO.

To be eligible, the employee must have been receiving JobSeeker Payment, Youth Allowance (Other) or Parenting Payment for at least one of the previous three months, assessed on the date of employment. Employees also need to have worked for a minimum of 20 hours per week of paid work to be eligible, averaged over a quarter, and can only be eligible with one employer at a time.

The hiring credit is not available to an employer who does not increase their headcount and payroll.

Employers and employees will be prohibited from entering into contrived schemes in order to gain access to or increase the amount payable.

Existing rights and safeguards for employees under the Fair Work Act will continue to apply, including protection from unfair dismissal and the full range of general protections.

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### ATO Visa Data Matching Program

The ATO will acquire **visa data** from the Department of Home Affairs for 2020/21 through to 2022/23, relating to approximately 10 million individuals for each financial year.

The data will be used to identify non-compliance with obligations under taxation and superannuation laws, including registration, lodgement, reporting and payment responsibilities.

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### STP data-sharing with Services Australia



Single Touch Payroll ('STP') allows the ATO to share data in real-time with other government agencies, to *"help them deliver government services to the Australian community"*.

As part of the ATO's data-matching program, it has a STP data-sharing arrangement with Services Australia to help them administer Australia's welfare system.

This means that people who are on an income support payment from Services Australia and need to report their employment income fortnightly to Centrelink will now see their employer details are pre-filled.

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### Proposed FBT exemption — retraining and reskilling

The government has announced it will introduce an exemption from FBT for retraining and reskilling benefits provided by employers to redundant, or soon to be redundant, employees where the benefits may not be related to their current employment.

It is proposed that this exemption will not apply to:

- retraining provided under a salary packaging arrangement;

- training provided through Commonwealth supported places at universities; or
- repayments towards Commonwealth student loans.

If enacted, this proposed measure is intended to apply from the day it was announced (i.e., 2 October 2020).

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### Tax cuts pass Parliament



The Government announced various tax measures in the 2020 Budget on 6 October 2020, and it was able to secure passage of legislation containing some of the important measures very shortly afterwards, as summarised below.

#### Tax relief for individuals

The Government brought forward 'Stage two' of their Personal Income Tax Plan by two years, so that, from 1 July 2020:

- the low income tax offset increased from \$445 to \$700;
- the top threshold of the 19% tax bracket increased from \$37,000 to \$45,000; and
- the top threshold of the 32.5% tax bracket increased from \$90,000 to \$120,000.

In addition, in 2020/21, low and middle-income earners will receive a one-off additional benefit of up to \$1,080 from the low and middle income tax offset.

#### Tax relief for business

Businesses with a turnover of up to \$5 billion are now able to immediately deduct the full cost of eligible depreciable assets as long as they are first used or installed by 30 June 2022.

To complement this, the Government will also temporarily allow companies with a turnover of up to \$5 billion to offset tax losses against previous profits on which tax has been paid.

Also, businesses with an aggregated annual turnover between \$10 million and \$50 million will, for the first time, be able to access up to ten small business tax concessions.

Under the changes passed by the Parliament, the Government will also enhance previously announced reforms to invest an additional \$2 billion through the Research and Development Tax Incentive.

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## Employers need to apply recent tax cuts as soon as possible

The ATO has now updated the tax withholding schedules to reflect the 2020/21 income year personal tax cuts — the updated schedules are available at [ato.gov.au/taxtables](https://ato.gov.au/taxtables).

The ATO has said that employers now need to make adjustments in their payroll processes and systems in order for the tax cuts to be reflected in employees' take-home pay.

Employers must make sure they are withholding the correct amount from salary or wages paid to employees for any pay runs processed in their system from **no later than 16 November** onwards.

Employees should be aware that any withholding on the old scales will be taken into account in their tax return.

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## Deferrals of interest due to COVID-19

Many lenders have recently allowed borrowers with investment property loans to defer repayments for a period of time.

While repayments are being deferred, interest (and fees) will usually be added to the loan balance (i.e., the deferred interest will be 'capitalised').

However, it is important to recognise in such situations that, while repayments are not being made during the relevant period, borrowers continue to 'incur' the interest during that time.

Further, interest will continue to be calculated and will accrue on both the unpaid principal sum of the loan and the unpaid (i.e., capitalised) interest. The interest that accrues on the unpaid or capitalised interest is referred to as 'compound interest'.

Importantly, the ATO has previously acknowledged that, if the underlying, or ordinary, interest is deductible, then the compound interest will also be deductible.

Accordingly, interest expenses (including any compound interest) will generally be deductible to the extent the borrowed monies are used for income producing purposes (such as where the borrowed funds are used to purchase a rental property).

However, interest on a loan will not be deductible to the extent to which the borrowed funds are used for private purposes (e.g., to

purchase a home, a private boat, or to pay for a holiday).

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## Simplified home office expense deduction claims due to COVID-19

Given that many Australians continue to work from home due to COVID-19, the ATO has updated its Practical Compliance Guideline which allows taxpayers working from home to claim a rate of 80 cents per hour, by keeping a record of the number of hours they have worked from home, rather than needing to calculate specific running expenses.

The application of the Guideline has been extended so that it now applies from 1 March 2020 until 31 December 2020.

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## Companies holding meetings and signing documents electronically



The Government has made another determination extending the timeframe within which companies can hold meetings electronically and enabling electronic signatures to be used, to relieve companies from problems they face due to the Coronavirus situation.

This determination is intended to be in effect until (and will be repealed from) 22 March 2021, unless the Government determines otherwise.

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## COVID-19 and loss utilisation

The ATO understands the way some businesses operate has been impacted as a result of COVID-19.

Some of these impacts may have resulted in changes that affect whether they are able to utilise their carried-forward losses in the current or a future income year.

For companies to utilise their carried-forward losses in a particular year, they need to satisfy the continuity of ownership test or, if they fail that test, they need to satisfy the business continuity test ('BCT').

Whether a company can utilise carried-forward losses requires a consideration of its facts and circumstances.

Generally, a company that has completely closed its business with no intention to resume will **fail** the BCT. However, a company that has temporarily closed its business may still be able to satisfy the BCT.

Importantly, the mere receipt of JobKeeper payments will **not** cause a company to fail the BCT.

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### Employees on JobKeeper can satisfy the 'work test'

The Australian Prudential Regulation Authority ('APRA') has confirmed that, where an employer is receiving the JobKeeper wage subsidy for an individual, superannuation funds should consider the individual to be 'gainfully employed' for the purpose of the 'work test', even if that individual has been fully stood down and is not actually performing work.

As such, superannuation funds can assume that all members in receipt of the JobKeeper subsidy satisfy the 'work test' when determining whether they can make **voluntary superannuation contributions**.

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### Tax treatment of JobKeeper Payments

Broadly, JobKeeper Payments received by an employer are assessable income to the employer.

Likewise, the payments an employer subsequently makes to an employee that are funded (in whole or in part by the JobKeeper Payment) are generally allowable deductions to the employer.

The ATO has recently issued some guidance for employers in receipt of JobKeeper Payments.

For sole traders, they will need to include the payments as business income in their individual tax return.

For partnerships or trusts, JobKeeper payments should be reported as business income in the relevant partnership or trust tax return.

For a company, report JobKeeper payments as income in the company tax return.

For a taxpayer that has repaid (or is in the process of repaying) any of their JobKeeper payments to the ATO, these amounts do **not** need to be included in their tax return.

Note a business would be refunding JobKeeper payments to the ATO if it had been discovered that the business had incorrectly claimed JobKeeper payments, and had either voluntarily disclosed this to the ATO, or the ATO made this determination as a result of audit activity.

The normal rules for deductibility apply in respect of the amounts a taxpayer pays to their employees, even where those amounts are subsidised by the JobKeeper payment.

That is, if the underlying salary is deductible, then it is still deductible to the employer where it has been subsidised by a JobKeeper payment.

For employees who have received JobKeeper payments, these will be included as salary and wages (or an allowance) in their income statement (or payment summary) as provided by their employer.

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### Deduction for work-related vehicle expenses disallowed



In a decision of the Administrative Appeals Tribunal, a taxpayer, Mr Bell, was denied a deduction for \$21,565.73 of work-related vehicle expenses for the 2016 income year.

Mr Bell, was a construction worker who predominantly worked on a construction site in an eastern suburb of Melbourne and lived approximately 100 kilometres away from that worksite.

Mr Bell owned a ute that had a load carrying capacity of more than one tonne – so it fell outside the definition of a 'car' for the purposes of the ITAA 1997.

Mr Bell claimed a total deduction for \$24,865.73 for motor vehicle expenses and received an allowance under his Enterprise Bargaining Agreement.

This allowance did not vary with the amount of travel undertaken and totalled \$15,221 for the year.

**Mr Bell contended that he was required** to use his vehicle to transport **heavy/bulky goods** (tools) between his home and his workplace and to collect supplies and equipment from hardware stores while travelling between his workplace and his home.

Ordinarily, travel from home-to-work (and back again) is considered non-deductible. However, if an employee is required to carry heavy/bulky equipment **for which there are no secure storage facilities at work**, the travel between home and work with the heavy/bulky equipment can be considered deductible.

Unfortunately for Mr Bell, evidence before the Tribunal indicated that there were safe and secure storage facilities for his tools (the bulky/heavy equipment) at the worksite.

Accordingly, Mr Bell was unable to rely upon the **'bulky goods' exception** to re-characterise home-to-work travel as being a deductible work expense.

Instead, it retained its ordinary private and non-deductible status.

Mr Bell was unsuccessful in advancing the argument that he was entitled to a deduction in relation to the motor vehicle expenses because he was in receipt of an allowance.

However, Mr Bell was able to convince the ATO that he had undertaken at least some work-related travel using his vehicle. The ATO allowed Mr Bell a deduction under the 'cents per kilometre method' up to the maximum dollar amount for 5,000 kilometres for the 2016 income year of \$3,300.

*This decision provides a timely reminder that simply carrying bulky equipment between home and work will not make these trips deductible, where there is a secure place for the equipment to be stored at the employee's worksite. The decision also highlights the fallacy of assuming that being in receipt of an allowance somehow entitles the taxpayer to an offsetting deduction.*

*The taxpayer was technically 'lucky' that he was allowed the 'cents per kilometre method' deduction for work-related travel, given that his motor vehicle fell outside the definition of a 'car'.*

*This is because the cents per kilometre method **only** applies to 'cars', so it could be said that the ATO was generous to the taxpayer in these circumstances.*

*Please contact our office if you have any queries as to the deductibility of work-related travel.*

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### HomeBuilder & the housing industry



The HomeBuilder scheme provides a tax-free grant to those building a new home or renovating. To date, around 27,000 homes are expected to be covered by the scheme. The highest number of applications so far have come from Victoria (7,636), followed by Queensland with 5,954. New South Wales property prices mean that many homes exceed the eligibility threshold (4,350).

The Assistant Treasurer recently announced an extension of the HomeBuilder scheme from 1 January 2021 to 31 March 2021. For all new build contracts signed between 1 January 2021 and 31 March 2021:

- Eligible owner-occupier purchasers will receive a \$15,000 HomeBuilder grant (down from \$25,000); and

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

- The property price caps for new builds in New South Wales and Victoria will be increased to \$950,000 and \$850,000 respectively (from \$750,000).

In addition, the construction commencement deadline will be extended from three months to six months for all eligible contracts signed on or after 4 June 2020 (applications for HomeBuilder can be submitted up to 14 April 2020).

There is also a change in the licensing requirements and registration for builders and developers:

- Where an eligible contract is signed on or after the 29 November 2020, the builder or developer must have a valid licence or registration before 29 November 2020
- Where an eligible contract is signed before 29 November 2020, the builder or developer must have a valid licence or registration before 4 June 2020

The eligibility criteria to access HomeBuilder remains the same. To be eligible you need to be an individual owner occupier, 18 years of age or more, an Australian citizen, and pass the income test. The income test for individuals is \$125,000 and \$200,000 for couples (based on your 2018-19 or later tax return).

The grants are available if you build a new home where the value of the house and land does not exceed the threshold (\$750,000 to \$950,000 depending on when the contract was signed and the State you live in), or a renovation where the value of the property is \$1.5m or less.

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### Quote of the month

"Tomorrow is the first blank page of a 365 page book. Write a good one." ~ Brad Paisley

