

7 April 2020

The Hon Josh Frydenberg MP
Treasurer
House of Representatives
Parliament House
PO Box 6022
CANBERRA ACT 2600

By email: josh.frydenberg.mp@aph.gov.au

CC:

Dr Steven Kennedy, Secretary, The Treasury

Ms Maryanne Mrakovic, Deputy Secretary – Revenue Group, The Treasury

Mr Chris Jordan AO, Commissioner of Taxation, Australian Taxation Office

Dear Treasurer,

URGENT Tax Policy Measures affected by COVID-19 Crisis

The National Tax Liaison Group (**NTLG**) is the Australian Taxation Office's (**ATO**) longest standing consultative forum, focusing on strategic taxation matters of national interest. The primary objective of the NTLG is to provide a wide range of stakeholders with the opportunity to discuss the strategic direction of the tax system and to deliver opportunities for improvements to the administration of the tax system. The NTLG's membership is comprised of senior ATO and Treasury officers and representatives of the major tax, law, and accounting professional associations. Details of the activities of the NTLG, including its membership, can be found [here](#).

Chartered Accountants Australia and New Zealand, Corporate Tax Association, CPA Australia, Institute of Public Accountants, Law Council of Australia and The Tax Institute (together **the Joint Bodies**) are the external members of the NTLG. We write to you as the peak professional accounting and tax practitioner bodies in Australia representing the tax profession at this critical time.

We request that urgent attention be given to a number of key tax policy measures. The urgency has arisen due to the unfolding COVID-19 crisis which has deeply affected taxpayers and their representatives. Many taxpayers affected by tax measures due to take effect from 1 July 2020 will, through no fault of their own, not be in a position to meet the requirements of these new measures. Further, we consider a number of announcements are required to ease the burden on taxpayers.

The measures of concern include (this is not an exhaustive list):

- Division 7A, *Income Tax Assessment Act 1936* (Cth);
- Non-resident CGT Main Residence exemption;
- Superannuation Guarantee Amnesty;
- Superannuation Guarantee Charge;

- Division 129 GST Act;
- Fringe Benefits Tax; and
- R&D Bill currently before Parliament.

Details of what we believe is required for each measure are included in the table in the Appendix.

The Joint Bodies are available to assist with any consultation or further discussion of any of these items and given the urgent nature of this request in the context of the COVID-19 crisis, we will be ready to respond promptly.

As the COVID19 crisis continues to unfold, the Joint Bodies will consider whether further deferrals for any other key tax policy measures will be required in the 2020-21 income year and will make appropriate submissions if required in due course.

If you would like to discuss any of the above, please contact Tax Counsel Stephanie Caredes on 02 8223 0059 in the first instance.

Yours faithfully,



Peter Godber
President
The Tax Institute




Michael Croker
Tax Leader Australia
Chartered Accountants Australia and New Zealand




Michelle de Niese
Executive Director
Corporate Tax Association




Dr Gary Pflugrath
Executive General Manager, Policy & Advocacy
CPA Australia




Greg Rodgers
Chair – Business Law Section
Law Council of Australia




Tony Greco
General Manager Technical Policy
Institute of Public Accountants



APPENDIX

Table of Measures and Required Outcomes

Measure	Required Outcome
Division 7A <i>Income Tax Assessment Act 1936</i> (Cth) – new measures	<p>Announce that the start time for any new measures related to Division 7A (such as the 2018-19 Budget measure to clarify the operation of the integrity rule in Division 7A) will be deferred until 1 July 2022.</p> <p>This will alleviate the current uncertainty regarding if/when changes to Division 7A may be made.</p>
Division 7A <i>Income Tax Assessment Act 1936</i> (Cth) – benchmarking (section 109N(2))	<p>Announce a temporary reduction in benchmark interest rate from 5.37% (current legislated percentage) to the medium business variable lending rate (currently 3.46 per cent) or lower.</p> <p>This will ease the cost of Division 7A loans during the COVID-19 crisis period.</p>
Division 7A <i>Income Tax Assessment Act 1936</i> (Cth) - minimum loan repayments (section 109E)	<p>Announce temporary relief from minimum yearly loan repayments.</p> <p>This will alleviate the cost of Division 7A loans during the COVID-19 crisis period.</p>
Non-resident CGT Main Residence Exemption – transitional measures contained in section 118-110 of the <i>Income Tax (Transitional Provisions) Act 1997</i> (Cth), as introduced by the <i>Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Bill 2019</i> (Cth).	<p>Extend the transitional measures to disposals on or before 30 June 2022.</p> <p>The transitional measure for the removal of the main residence exemption for non-residents applies to disposals (contracts for sale) to occur by 30 June 2020.</p> <p>Real estate sales have been significantly impacted by the COVID-19 crisis. Consequently, selling opportunities have diminished in the current market.</p>
Superannuation Guarantee Amnesty - <i>Treasury Laws Amendment (Recovering Unpaid Superannuation) Act 2019</i> (Cth)	<p>Extend the Superannuation Guarantee Amnesty end-date to 30 June 2022</p>

	<p>Practitioners and clients are not operating under normal conditions. The review of records and tracing required to participate in the amnesty takes time. The 7 September 2020 deadline may not be met due to impacts of the COVID-19 crisis.</p>
<p>Superannuation Guarantee Charge - <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth).</p>	<p>Provide the Commissioner with the temporary power to defer the reporting and payment of the Superannuation Guarantee Charge or waive the application of penalties for the late lodgement of Superannuation Guarantee Charge Statements and payments.</p> <p>The Commissioner does not have the power to defer reporting and payment of the Superannuation Guarantee Charge payable by employers under the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth). To help alleviate the burden employers may be facing in meeting their superannuation guarantee charge obligations on time during the COVID-19 crisis, we ask that the Commissioner be provided with the power to waive penalties for late superannuation guarantee charge statements and penalties during the COVID-19 crisis.</p>
<p>Division 129 <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) - GST on new residential premises for sale, not rent</p>	<p>Announce that increasing adjustments following a change in use under Division 129 should be waived (not just deferred) until further notice.</p> <p>A change in the use of new residential premises from being 'for sale', to instead being used for residential rent, leads to a Division 129 increasing adjustment (ie some of the GST input tax credits previously claimed will have to start being paid back to the ATO in the developers' BASs ending June 2020).</p> <p>This results in negative cash flow for property developers in extremely challenging times and results in permanent double imposition of GST, when the release of residential accommodation should be encouraged rather than restrained.</p>
<p>Fringe Benefits Tax</p>	<p>Rather than focusing on minor and infrequent benefits (and/or the \$300 test), the Government should consider introducing a temporary COVID-</p>

	<p>19 FBT exemption for the provision of new benefits supplied to employees by employers after a certain date (say 23 January 2020) that are due to COVID-19 including medical screening, counselling, protective clothing, working from home expense payment benefits and FIFO accommodation due to border lock downs etc. This exemption would be subject to any such expenses not being salary sacrificed.</p>
<p>Research and Development – <i>Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019</i> (Cth)</p>	<p>Announce the deferral of the start date for the Bill to 1 July 2021</p> <p>Following the cancellation of the proposed public hearings on <i>Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019</i>, the Senate Economics Legislation Committee has a new reporting deadline of 7 August regarding the Bill to reform the Incentive, the same month when Parliament is now slated to next return. If the Bill does eventually pass, it will be well into the 2020/21 financial year so it is difficult to see how it can be applied retrospectively from 1 July 2019. As such, we propose that the Government confirm as a matter of priority that 2019/20 R&D tax claims will be made under the current legislation and that the start date for <i>Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019</i> be deferred until 1 July 2021.</p>