



CHANGES AFFECTING COMPANIES

Temporary loss carry back for eligible companies

The Government has announced that it will introduce measures to allow companies with a turnover of less than **\$5 billion** to carry back losses from the 2020, 2021 or 2022 income years to offset previously taxed profits made in or after the 2019 income year.

This will allow such companies to generate a **refundable tax offset** in the year in which the loss is made. The tax refund is limited by requiring that the amount carried back is not more than the earlier taxed profits and that the carry back does not generate a franking account deficit.

The tax refund will be available on election by eligible companies when they lodge their tax returns for the 2021 and 2022 income years. Note that, companies that do not elect to carry back losses under this measure can still carry losses forward as normal.

Clarifying the corporate residency test

The corporate residency rules are fundamental to determining a company's Australian income tax liability. The Government will amend the law to provide that a company that is incorporated offshore will be treated as an Australian tax resident if it has a 'significant economic connection to Australia'. This test will be satisfied where both the company's core commercial activities are undertaken in Australia and its central management and control is in Australia.

This change will ensure the principles governing the residency of foreign incorporated companies will reflect the position prior to the 2016 court decision in *Bywater Investments Limited & Ors v. FCT; Hua Wang Bank Berhad v FCT* [2016] HCA 45 (after this decision the ATO withdrew Taxation Ruling ('TR') 2004/15 and later released TR 2018/5, incorporating the High Court's residency test). The measure will have effect from the first income year after the date of Royal Assent of the enabling legislation, but taxpayers will have the option of applying the new law from 15 March 2017.

Meetings conducted via virtual attendance

In order to reduce regulatory barriers, the Government has announced it will undertake public consultation on making permanent changes to the *Corporations Act 2001*. These changes would allow companies to call and conduct meetings electronically (with a quorum achievable through virtual attendance of shareholders and officers) and also to provide certainty that company officers can electronically execute a document.