



Chartered Accountants  
& Business Advisers

# Doing business in Australia



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## preface

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# Introduction



## Geography

Australia is both the largest island and smallest continent in the World, with a multi-cultural population of 22.5 million. The nearest neighbours are the South East Asian and Pacific nations, the closest of which are Indonesia, Papua New Guinea and New Zealand.

Australia is in a unique geographical, cultural and economic position to provide trade and business links between the Asia-Pacific region, Europe and North America.

## Advantages of Investing in Australia

The Australian economy enjoys a clear competitive advantage in producing and processing primary products due to an abundance of natural resources together with a world class transport and telecommunications infrastructure.

Australia also offers a low cost business environment, high skill levels, competitive salary costs for qualified professional/executives and a sizeable domestic market. The lifestyle, climate, educational opportunities and the availability of a pool of multilingual professionals competent in all of the Asian and European languages are key attractions. Australia is also a prime tourism destination.

Australia's financial deregulatory philosophy has seen the removal of many restrictive controls, which, coupled with relatively low risk on returns, has resulted in ardent foreign investment.

Australia has also introduced special taxation and financial incentives to encourage multinational companies to establish their regional headquarters in Australia.

Investment in Australia is a reliable entry point for investments in the exciting Asia-Pacific region.

## Constitution

Australia is a federation represented by a Federal Government, with specific powers derived from a constitution, six State and two Territory Governments, and Local Governments with powers vested by the State and Territory Governments.

Australia continues to enjoy sound political stability with democratically elected Federal, State and Territory, and Local Governments.

## Communications

Internal and external communications and transportation are excellent. The telephone direct dialling system gives instantaneous international communication from both fixed and mobile units.

## Language and Currency

The main language spoken in Australia is English. The currency used is Australian dollars (\$) and cents. One hundred cents = one Australian dollar.

## Legal System

Both Federal and State legislation is enacted in Australia, with generally uniform legislation between the States. The legal system is, to a large extent, based on the British legal system.

## Major Exports and Imports

Australia is one of the world's largest exporters of wool and meat, and a major international source of gold, wheat, iron ore, bauxite, mineral sands, coal, alumina, rice, sugar and cotton. Substantial export earnings are also derived from crude oil, paper products, plastics, chemical products, wine, services, tourism, and numerous forms of technology, biotechnology, manufactured items and computer software.

Major imports are motor vehicles, aircraft, manufacturing equipment and computer hardware.

## Government Policy on Foreign Investment in Australia

The Federal Government has established guidelines for foreign investment in Australia. The Government recognises foreign investment makes a substantial contribution to the development of Australia's industries and resources, and its policy is to welcome and encourage long-term direct foreign investment that has beneficial economic effects.

This policy is applied on a case-by-case basis by the Foreign Investment Review Board (FIRB) which is administered by the Federal Treasurer. Proposals required to be submitted to the FIRB include: substantial foreign takeovers; the establishment of major new businesses; all investments in civil aviation and the media; direct investments by foreign governments or their agencies; and most proposals to acquire real estate (with exemptions for most non-residential commercial real estate). Foreign investors are encouraged to increase the availability of urban residential accommodation but not to acquire the land for investment purposes.

## Import Controls

The Government levies customs duties on some goods entering Australia. Customs clearance must be obtained to import any goods. There are import and quarantine controls on certain goods, including certain drugs, animals, plants, food, firearms and motor vehicles.

## Exchange Controls

Exchange controls were substantially dismantled in 1983. In addition, the system of monitoring and tax screening of transactions with countries deemed as tax havens ceased to have practical effect from 1990, with the introduction of specific anti-avoidance measures and cash transaction reporting requirements.

Entities are now required to report currency transfers both into and out of Australia of \$10,000 or more. Suspect transactions, and currency transactions or international telegraphic transfers of \$10,000 or more must also be reported by cash dealers (e.g. banks and other financial institutions) and solicitors (lawyers or attorneys). In addition, all non-bank cash dealers must report all international funds transfer instructions they send or receive.

## Source of Finance

Australia is a major international financial centre with a deregulated environment attracting the cream of the world's financial institutions, offering a full range of competitive financial services. Australia is a member of the World Bank and the Asian Development Bank.

Major sources of finance include local and foreign trading and savings banks, finance companies, building societies, credit unions and the stock exchange.

## Australian Business Number

Individuals, companies and other entities that carry on business or other enterprises in Australia with an annual turnover greater than \$75,000 are generally required to register for an Australian Business Number (ABN). The ABN is the identifying number for all dealings with the Australian Federal and State taxation authorities and with other regulatory authorities.

# Business Structures



## Types of Business Structures

The main business structures used in Australia are:

- *companies*
- *partnerships*
- *joint ventures*
- *trusts*
- *foreign branches*

## Companies

The most common form of business structure is the limited liability company, referred to simply as a company. The shares in companies limit the liability of each shareholder to the share investment and any amount uncalled on the shares.

There are two types of companies: the public company and the proprietary company. All companies must register with the Australian Securities and Investment Commission (ASIC) and apply for an Australian Business Number (ABN).

Proprietary companies must have at least one shareholder, limit the number of non-employee shareholders to fifty, and not engage in any activity that would require the lodgement of a prospectus or other disclosure document (e.g. public offering of securities).

Public companies are companies other than proprietary companies. They include companies whose shares are traded on a stock exchange which are referred to as listed companies. Not all public companies are listed companies.

## Governing Documents

The Corporations Law contains basic and replaceable rules for the internal management

of a company. Some of the rules are mandatory for all companies, and there are some special rules for single shareholder and single director companies. A company does not need to have its own separate constitution unless it wishes to amend or add to the replaceable rules.

A company must maintain a registered office open to the public. An accountant's office is often used for this purpose.

## Directors

The principal controlling body of a company is the Board of Directors, which is appointed by the shareholders. A public company must have at least three directors, two of whom are ordinarily resident in Australia, and at least one company secretary at least one of which must be an Australian resident. A proprietary company must have at least one director who ordinarily resides in Australia.

Company directors have a statutory obligation to ensure the annual financial report gives a true and fair view of the financial position and performance of the company, and whether the company will be able to pay its debts as and when they become due and payable. The directors have an obligation to ensure the financial report has been prepared in accordance with Australian accounting standards. Directors are also responsible for ensuring the company safeguards its assets and maintains a complete and adequate set of accounting records and statutory registers. Directors can face large fines or imprisonment for breaches of their duties, as well as a personal liability for debts incurred by the company in certain circumstances.

## Forming a Company

Investors may incorporate a company, although in most cases they will purchase a shelf company from a specialist provider. A shelf company is a company that has been registered with ASIC and has never traded. The investors can then change the name of the company, change Directors and the Secretary, and capitalise the company as required.

## Registration Requirements and Filing Procedures for Public Securities

Any listed company intending to register securities (e.g. shares or debentures) for public sale must issue a prospectus that complies with the rules contained in the Corporations Law.

Companies intending to invite public subscriptions may seek admission to the Australian Stock Exchange Ltd (ASX). The listing requirements are contained in the ASX Listing Rules.

The following entities (referred to as disclosing entities) are subject to continuous disclosure and periodic reporting requirements:

- *entities that are listed on a stock market or a securities exchange;*
- *entities raising funds pursuant to a prospectus;*
- *entities offering their securities as consideration for the acquisition of shares in a target company under a takeover scheme;*
- *entities whose securities are issued under a compromise or scheme of arrangement; and*
- *borrowing corporations.*

These entities must publicly disclose all information that is considered to have a material effect on the price or value of their securities, in addition to lodging half-year financial reports.

### Audit Requirements and Practices

All companies (other than small proprietary companies) must appoint auditors to annually report on their financial reports. A proprietary company is a small proprietary company if it satisfies at least two of the following conditions:

- *consolidated gross operating revenue of less than A\$25 million;*
- *consolidated gross assets of less than A\$12.5 million; or*
- *less than 50 employees.*

However, a small proprietary company has to appoint an auditor if it:

- *is controlled by a foreign company, and its results are not covered in financial statements lodged with ASIC by the foreign company;*
- *is requested to do so by 50% or more of the shareholders; or*
- *is requested to do so by ASIC.*

Disclosing entities have the option of having their half-year financial report either audited or reviewed by their auditors.

### Shareholdings by Non-residents

Shares in Australian companies do not have to be held by Australian resident shareholders. However, there may be restrictions in specific industries. The names of non-resident shareholders and the amount of shares they own does not need to be disclosed, whilst the percentage of foreign ownership does not affect the status of the company.

## Foreign Companies

If a foreign company wishes to carry on business in Australia, or if it wishes to issue or sign negotiable instruments, it must apply for an ABN and register as a registered foreign company with ASIC.

A registered foreign company must also appoint a local agent who is:

- *a resident of Australia; and*
- *authorised to accept, on behalf of the foreign company, service of notices.*

## Partnerships

Partnerships are defined as associations between two or more parties conducting business in common with the objective of sharing profits and losses. Laws relating to the formation and registration of partnership entities are found in the various State Acts. Although a written partnership agreement is common practice, it is not required.

## Joint Ventures

Joint ventures, either incorporated or unincorporated, are common business vehicles in mining exploration and extraction, and in property development. The joint venture agreement defines each participant's proportionate share in venture assets, liabilities and results. There are no special regulations governing the establishment of joint ventures. However, specific guidelines exist for new mining projects and for the acquisition of developed non-residential commercial real estate.

## Trusts

Trusts may be public (e.g. for a specific purpose or charity) or private (for benefit of private individuals) and may be formed as either non-fixed (where all or some interests in the trust are at the discretion of the trustee such as discretionary trusts or hybrid trusts) or fixed trusts (where the interests in the trust are fixed such as unit trusts). Unit trusts are often used for public investments in the form of managed investment trusts (MIT) which hold non-business assets such as real estate, shares and cash.

# Taxation



## Introduction

Income tax is levied by the Commonwealth Government upon the income of corporations and individuals. Certain capital gains are also brought within the income tax base.

The State and Territory Governments do not levy income tax.

The Commonwealth Government also levies a value added tax called the Goods and Services Tax (GST) which is imposed on the purchase of most goods and services by Australian residents, or on goods and services for use in Australia.

All State and Territory Governments levy stamp duties, payroll tax, and land taxes. Each State and Territory Government is responsible for their own duties and taxes. As such, there is no uniformity in relation to State taxes, and this can create competition amongst the States in attracting investment. Nonetheless, a movement to harmonise payroll tax administration across the State and Territory borders is underway.

## Federal Income Taxation Law and Administration

The Australian income tax regime is contained within a number of statutes, the centrepieces being the Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997. The Federal taxation system is administered by the Commissioner of Taxation, through the Australian Taxation Office.

## Fiscal Year

Taxable income (defined below) is ordinarily determined by reference to the year ending 30 June, which is the standard Australian financial year. However, with the consent of the Commissioner of Taxation, taxpayers may choose a substituted accounting period for the purpose of determining taxable income. This generally applies to local branches and subsidiaries of foreign companies that adopt a different balance date.

## Taxpayers

Individuals, corporations and superannuation funds that derive assessable income are taxpayers, and they are liable to income tax.

Partnerships and most trusts do not pay income tax. Whilst they are required to file income tax returns which disclose their taxable income, any taxable income they derive is generally taxed in the hands of the partners, trustees or beneficiaries.

Unincorporated joint ventures are not treated as separate taxpayers. If a joint venture is not a partnership it is not required to file income tax returns. Each participant in the joint venture includes their share of the income and expenses of the venture in their own tax return.

## Taxable Income

The Australian income tax regime is based on a formula whereby tax is levied on taxable income. Taxable income is the excess (if any) of gross assessable income over allowable deductions.

Assessable income can be categorised as either ordinary income or statutory income. Ordinary income includes salary and wages, business income, income from property, periodical receipts of rent or interest and gains on disposal of assets acquired for resale at a profit. Statutory income is receipts that are specifically included as assessable income by statute law (e.g. capital gains).

Allowable deductions are:

- a) are generally allowable as deductions because they are incurred in gaining or producing assessable income;
- b) are necessarily incurred in carrying on a business for the purpose of producing assessable income; or
- c) expenses, losses or outgoings that are either specifically provided under statute law to be deductible.

Expenses will be non deductible if they relate to private or domestic expenditure, are capital in nature, or they relate to income that is exempt from Australian income tax (unless it is made specifically deductible under the statute law).

For an item of income to be exempt, it must fall within a specific exempting provision within the statute.

## Payment of Tax

A taxpayer's taxable income is annually assessed on the lodgement of an income tax return. Their liability to income tax is calculated based on the amount of taxable income returned. The tax liability or the balance of the tax liability is generally paid at or after the lodgement of the income tax return.

Most taxpayers are subject to some form of prepayment of income tax. Salary and wage earners are subject to income tax deductions from all payments they receive from employers. Business taxpayers that do not quote an Australian Business Number (ABN) when they receive payment for goods and/or services may have tax deducted by the payer. Self-employed persons, persons who derive non-salary income, companies and superannuation funds are required to make tax payments through either quarterly or annual instalments, depending on their size.

The instalment payments are generally offset against the taxpayer's annual tax liability as determined in its annual tax return. Any amount remaining after the liability has been satisfied may be refunded to the taxpayer. Any shortfall is made up by an additional tax payment from the taxpayer.

Non-residents deriving Australian-sourced dividend, interest and royalty income usually have withholding tax deducted at source. The amount of tax withheld is determined according to whether the recipient is resident in a country that has a Double Tax Agreement with Australia.

## Lodgement of Returns

Taxpayers (as previously defined), trusts and partnerships are required to lodge returns annually.

## Residence and Source

Australian residents are generally subject to tax on all income, irrespective of its source (i.e. on worldwide income). By contrast, non-residents are only subject to income tax on Australian sourced income. The determination of an entity's tax residency and/or liability to Australian income tax may be affected by the relevant Double Tax Agreements.

- *Residence of Individuals*

A taxpayer's residency status is determined according to traditional common law tests and statute extended tests. Under the common law tests, an individual will be a resident if the individual has such an attachment to Australia that they are determined to be a resident of Australia.

If that test is not satisfied, the individual may be a resident of Australia under the statutory tests. Under these tests, an individual will be determined to be an Australian resident if they are domiciled in Australia (unless they have a permanent place of abode outside of Australia).

Failing that, they will also be an Australian resident if they spend more than one-half of the year of income (i.e. to 30 June) in Australia (unless they establish their usual place of abode outside Australia and that they do not intend to take up residence in Australia).

From 1 July 2006, individuals who qualify as “temporary residents” of Australia (i.e. a person that holds a temporary visa) are exempt from Australian tax on:

- *most non Australian sourced income; and*
- *capital gains on non - “Taxable Australian Property” (see below under capital gains tax).*

“Temporary residents” may be assessed at resident marginal tax rates on their domestic income (see resident tax rates below).

There is no set time limit on how long a person can be a “temporary resident”. It is possible that a person can be a “temporary resident” even though they have previously been a “temporary resident”.

A person cannot be a “temporary resident” if they or their spouse are Australian citizens or permanent residents. New Zealanders that have been in Australia since 26 February 2001 and held a protected special category visa also cannot be “temporary residents” but others may be “temporary residents”.

- *Residence of Companies*

A company is resident in Australia if it is incorporated in Australia. If the company is not incorporated in Australia, it will be a resident in Australia if it carries on business in Australia, and either its central management and control is in Australia, or its voting power is controlled by shareholders that are residents of Australia.

Australian incorporated subsidiaries of foreign companies will be residents of Australia for taxation purposes.

## Source of Income

The source of income is ordinarily determined according to the circumstances surrounding its receipt. Where a payment is for services rendered, the income will ordinarily be sourced in the place where the service is rendered. Where a payment is related to the performance of a contract, the source of the income will be generally determined by reference to the terms of the contract.

In certain instances, the relevant Double Tax Agreement may also impact the determination of where an item of income is sourced. For example, business income, income from property, dividend, interest and royalty income can be impacted by terms of the Double Tax Agreement.

## Taxation of Partnerships, Trusts

As already discussed under the heading “Taxpayers”, these entities are not taxable entities in their own right. They are required to lodge income tax returns, although the income they derive is taxed in the hands of the related partners, trustees or beneficiaries.

## Taxation of Companies

- *Taxation of Profits*

The taxable income for companies is determined on the same basis as for individual taxpayers, with allowable deductions set off against gross assessable income. However, whilst individuals are assessed on a sliding, progressive scale of tax, companies are taxed at a flat rate of 30%, regardless of whether the company is controlled by resident or non-resident shareholders.

Where allowable deductions exceed assessable income, the company incurs a loss. Losses may be carried forward indefinitely to be set off against income derived in future income years.

However, there are a number of anti-avoidance measures that apply to prevent trafficking in company losses, and in loss companies. Where there has been a majority change in the underlying ownership of the company, losses can only continue to be carried forward if the company conducts the same business after the change of ownership as it did before the change.

- *Tax Consolidation*

Companies, trusts and partnerships that are wholly owned by the same ultimate corporate owner can elect to lodge a single income tax return covering the income derived by all members of the consolidated group. This means all transactions between members of the consolidated group are ignored for taxation purposes (only transactions with entities external to the consolidated group are taxable).

Where entities elect to lodge a consolidated income tax return, the head company of the group is primarily liable to pay the group's tax liability. However, if the head company does not pay the tax, all members of the group are jointly and severally liable for the group's income tax liability unless they have a valid tax sharing agreement. If a corporate group does not elect to consolidate, there is no tax relief for intra group transactions (such as the transfer of assets between group members).

- *Dividend Imputation*

Under the Australian income tax system, distributions out of company profits are subject to a single incidence of income tax, due to the operation of an imputation system. When an Australian resident company pays tax on its taxable income, it can impute this tax to resident shareholders by means of tax credits attached to dividends paid by the company (franked dividends).

Where the shareholder is an Australian resident, these tax credits entitle the shareholder to a rebate against their own income tax liability, either in respect of the dividend received, or against other income. If the shareholder's rebate is in excess of their tax liability for the year, the excess is refunded. However, companies that receive franked dividends are not entitled to a refund of their excess tax credits. They can however, convert the excess credits into tax losses that may be used to offset income in the year or carry them forward to future years.

Where the shareholder is a trust or partnership, the benefit of the franking credits flows through the entity to the beneficiaries or partners.

Companies that receive franked dividends may pass on the franking credits to its own shareholders by attaching franking credits to dividends that it pays.

- *Dividend Withholding Tax*

Where a franked dividend is paid to a non-resident shareholder, the dividend will not be subject to dividend withholding tax to the extent the dividend is franked. For instance, if the dividend is 40% franked, only 60% of the dividend will be subject to dividend withholding tax.

If the dividend is unfranked, it will be subject to dividend withholding tax.

The general rate of dividend withholding tax is 30% unless it is modified by a Double Tax Agreement.

However, the company can choose to obtain a deduction for the on-payment of an unfranked (or partially franked), non-portfolio dividend to the company's foreign wholly owned parent company (subject to certain rules).

- *Repatriation of Foreign Income*

An unfranked distribution made by an Australian company from a foreign source to a foreign resident shareholder is not assessable income and is not subject to dividend withholding tax, provided the company declares this distribution to be "conduit foreign income" (CFI).

The CFI can pass through a chain of interposed Australian entities without being subject to Australian tax provided the CFI is ultimately paid to a non-resident.

Alternatively, where the company chooses to avail itself of the deduction for on-payment of unfranked dividends as mentioned above, it must treat the unfranked dividend as assessable income and withhold tax on the dividend paid to the non-resident.

- *Taxation of Branches*

The Australian sourced income of Australian branches of foreign companies is subject to income tax at the ordinary corporate rate of tax. The taxable income is calculated as if the branch was a separate entity from the foreign company.

## Interest Deductions

Interest paid on loans and other debts is deductible to the extent it relates to borrowings made for income producing purposes. Thin capitalisation rules apply to reduce the deduction available where the taxpayer is a foreign entity operating in Australia, a foreign controlled Australian entity or an Australian resident with foreign business investments. In each of these cases, the tax deduction for interest may be reduced if the taxpayer's debt exceeds the levels permitted under the thin capitalisation provisions.

## Repatriation of Profits and Transfer Pricing

In addition to paying interest and dividends, the payment of management fees, service fees and royalties are methods of repatriating profits to the non-resident associates, controllers and owners of Australian entities. In these circumstances, the payments made by the Australian resident to the non-resident associate must reflect the market value of the goods and/or services to the Australian company, that is, all payments must be calculated with reference to arm's length market rates.

Where the Tax Office takes the view that the Australian company has paid an excessive amount for the goods and/or services, the Tax Office can disallow the deduction claimed by the Australian company, and substitute an alternative price.

Other transactions between Australian taxable entities (or branches), and their related foreign entities or head offices are also subject to the transfer pricing rules.

Where an Australian branch of a foreign company remits profits to its parent by way of management fees or service fees, the profits are not subject to withholding tax or branch profits tax but could be subject to the transfer pricing rules if the payments exceed arm's length values.

## Taxation of Capital Gains

Australia also taxes gains realised on the disposal of capital assets other than depreciable assets or assets acquired for resale (such as trading stock and short term investments held by share traders and certain private equity vehicles and managed funds), which are subject to income tax under ordinary concepts. However, from 1 July 2009 certain Australian controlled managed investment trusts (MIT) can elect to have gains on certain types of investments treated as capital gains instead of ordinary income.

Taxable capital gains will generally arise where an asset, acquired after 19 September 1985, is disposed of for consideration in excess of its cost base (i.e. its purchase price plus other incidental costs) at the time of disposal.

The taxable capital gain is included in the taxpayer's assessable income, and taxed together with their other assessable income.

Individuals and most trusts that realise capital gains can claim a 50% reduction on the assessable gain provided the entity that realised the gain held the relevant asset for at least 12 months (the 12-month holding period rule). Superannuation funds are entitled

to a 33% reduction in the assessable capital gain subject to the same 12 month holding period rule. This is referred to as the capital gains tax (CGT) discount. Companies are not entitled to the CGT discount, whilst individuals, trusts and superannuation funds are only entitled to the discount if they elect to use the discount rather than indexation (for assets acquired prior to 21 September 1999).

Capital losses may be incurred when a relevant asset is disposed of for less than its cost. In calculating the loss realised on the disposal of any CGT asset the CGT discount and indexation is ignored.

The net capital gain included in the assessable income is the excess of taxable capital gains in the year of income over current and prior year carried-forward capital losses (i.e. capital losses are applied against taxable capital gains first). Then the CGT discount is applied to the net capital gain.

Australian residents are subject to the capital gains tax provisions in respect of their worldwide transactions. Non-residents are generally only subject to capital gains tax where the gain is attributable to “taxable Australian property”. Taxable Australian property is limited to:

- *Australian real estate (land and buildings);*
- *Australian mining, prospecting and quarrying rights;*
- *non-portfolio interests in another entity (e.g. company, trust etc.) where that entity's assets consist of more than 50% of direct or indirect interests in Australian real estate or mining, prospecting and quarrying rights; and*
- *business assets of an Australian permanent establishment (e.g. an Australian branch).*

### Interaction with International Tax Regime

Australia is a signatory to a number of Double Taxation Agreements, based upon the OECD Model. Counter parties include Canada, Japan, China, most South-East Asian nations, New Zealand, the United States of America, the United Kingdom and many European nations.

New foreign loss rules commenced on 1 July 2008. These rules allow foreign losses (incurred after that date) to be offset against both foreign and domestic income (without subdividing foreign losses into separate classes). Foreign losses arising before 1 July 2008 may be converted into tax losses and recovered over five years (subject to certain restrictions).

The new foreign tax offset regime which also commenced on 1 July 2008 replaces the previous complex foreign tax credit system. Under these new rules, the ability to carry forward excess tax offset ceased from 1 July 2008. However transitional rules will apply to utilise excess tax offsets available at that date.

Restrictions operate against Australian residents who shelter passive income and certain related party income in foreign countries through controlled foreign companies and trusts. Such income is attributed to those residents, and taxed in Australia on an accrual basis. However, income derived by companies resident in Canada, France, Germany, Japan, New Zealand, the United Kingdom and the USA is generally exempt from that accruals tax.

As discussed previously, Conduit Foreign Income (CFI) is not assessable and not subject to withholding tax when paid to a non-resident shareholder as an unfranked dividend. Profits derived by foreign branches of Australian resident companies from active businesses are also exempt from Australian tax.

The Australian foreign source income anti-tax deferral rules are currently under extensive government review. To date the Foreign Investment Fund (FIF) rules have been repealed with effect from 1 July 2010. Under the FIF rules as they were then, unrealised increases in the value of certain uncontrolled interests in foreign companies, trusts and insurance policies were taxed to the Australian residents who hold interests in these foreign companies, trusts or policies. Specific anti-avoidance rules to target investments in certain foreign accumulation funds which provide a tax deferral benefit are proposed to be introduced. To date those rules (referred to as anti-roll up rules) have only been initiated in draft form.

## Taxation of Individuals

- *Residents*

Resident individuals are assessed to pay tax on taxable income from 1 July 2008 according to the following scales:

Income	Tax Payable
\$0-6,000	Nil
\$6,001-37,000	15% of excess over \$6,000
\$37,001-80,000	\$ 4,650 + 30% of excess over \$37,000
\$80,001-180,000	\$17,550 + 37% of excess over \$80,000
Over \$180,000	\$54,550 + 45% of excess over \$180,000

In addition, a welfare levy of between 1.5% to 2.5% (the “Medicare Levy”) is imposed on individual taxable income (with exemptions for low-income earners).

A range of rebates are available to Australian resident individual taxpayers.

Most individual taxpayers fall within the “pay as you go” (PAYG) withholding system, whereby tax instalments are deducted from each wage or salary payment by the employer who must regularly remit PAYG deductions to the Tax Office. Individuals who carry on a business can also have PAYG withheld from payments to them if they do not give their Australian Business Number (ABN) to the payer.

Individual taxpayers who are self-employed, or who otherwise earn income that is not subject to the PAYG withholding system, pay their tax via the PAYG instalment system. PAYG Instalment payments are interim payments made during the year in anticipation of the assessment of tax after the end of the year of income

- *Non-Residents*

Individual taxpayers that are not residents of Australia do not qualify for rebates, are not liable for the Medicare levy, and are taxed from 1 July 2010 as follows:

Income	Tax Payable
\$0-37,000	29%
\$37,001-80,000	\$10,730 + 30% of excess over \$37,000
\$80,001-180,000	\$23,630 + 38% of excess over \$80,000
Over \$180,000	\$60,6300 + 45% of excess over \$180,000

## Other Federal Taxes

### Fringe Benefits Tax (FBT)

Where employers provide benefits (other than salary and wages) to their employees (including former and future employees) and/or associates of employees, the employer could be subject to FBT.

FBT is imposed on a wide variety of benefits including motor vehicles, discounted goods and services, subsidised accommodation and food. However, there are a number of benefits that are exempt from FBT, primarily including work related items, minor benefits that are under a statutory limit and certain living away from home benefits, whilst other benefits are taxed at a reduced value, including the provision of discounted in-house goods and services.

FBT is calculated at the rate of 46.5% on the grossed-up value of the benefits provided. The statute details how each benefit should be valued for FBT purposes. In general, the values of fringe benefits include Goods and Services Tax (GST) in respect of the benefits where the employer is entitled to the GST credits.

### Goods and Services Tax (GST)

The GST is levied on the supply of most goods and services in Australia and on goods imported into Australia. It also taxes some other transactions including dealings in property and rights that are not goods or services. The GST rate is currently 10% of the GST exclusive price of the transaction.

GST is a value-added tax which has the effect of taxing the end user of the goods or service. GST is paid by the supplier of the goods or service, but the price charged for a good or service usually includes the GST payable by the supplier (GST-inclusive price). In addition, the supplier is entitled to credits for any GST that was paid on inputs involved in the supply. Therefore, GST is paid on the value added at each step of the process of transforming the goods or service to the end user for their private consumption.

Some transactions are input taxed, such that the supplier does not charge GST on the transaction. However, the supplier will also not be entitled to credits for the GST paid on their purchases. Input taxed supplies include residential premises (other than newly built residential premises), and financial transactions such as loans and interest, bank charges, currency transactions, life insurance (but not general insurance), and dealings in company shares, trust units and other types of securities and derivatives.

Some supplies are GST-free, such that the supplier does not charge GST on the supply, although the supplier will be entitled to credits for the GST paid on their inputs. GST-free supplies include most medical supplies, education, food for human consumption (excluding most prepared meals and snacks), charities, religious services and exports.

Entities that are required to pay GST and/or claim input tax credits are required to have an ABN and register for GST. Non-resident entities that have dealings with Australia may need to appoint an Australian resident agent to deal with the GST.

Registered entities have to submit GST returns to the Australian Taxation Office with their GST payment or GST refund claim. Entities with an annual turnover of \$20 million or more must lodge their GST returns monthly. Entities with annual turnovers of less than \$20 million must lodge quarterly GST returns, although they can elect to lodge monthly.

## Customs Duty

Customs duty is imposed on various goods imported into Australia including textiles, clothing, footwear and motor vehicles with the duty generally expressed as a percentage of the free on board (FOB) value of the goods. Many goods are exempt from duty, and concessions may also be available where the importation of goods does not have an adverse effect on the market for locally produced goods.

## Superannuation Guarantee

Australia has a compulsory superannuation scheme with employers required to make quarterly contributions to approved superannuation funds on behalf of their employees. Currently, the rate is 9% of an employee's salary and wages. Where the employer fails to make the minimum level of quarterly contributions, they are subject to a superannuation guarantee charge. This charge includes the shortfall of employee superannuation contributions (which are subsequently paid to the employees' benefit), an administration charge and an interest penalty.

Superannuation contributions made by employers are tax deductible, whilst the superannuation guarantee charge is not tax deductible.

## Gift, Estate and Death Duties

There are no Federal or State gift, estate or death duties. However, the CGT provisions can apply to certain gifts.

## State Taxes

### Pay-roll Taxes

Each State and Territory levies pay-roll tax on the gross salaries and wages paid by an employer for services rendered in that State. The tax can also be levied on certain fringe benefits provided to employees. There are exemption thresholds for small businesses.

Employers with operations in more than one State or Territory could be required to register for, and pay, pay-roll tax in all jurisdictions in which they have employees. Whilst there is some uniformity in the various States' legislation, differences exist in relation to exemption thresholds, what constitutes wages and the treatment of contractors (i.e. non employees).

### Stamp Duties

Each State and Territory levies stamp duty on a number of transactions including transfers of property, mortgages, leases, deeds, hire purchase agreements and contracts. There are different rates that apply to different transactions, and the stamp duty is often calculated based on the amount of money involved.

### Land Tax

Each State and Territory imposes land tax on the owners of land situated within that State, based on the freehold land value. Most States provide a tax-free threshold, whilst a number of exemptions also apply, including an exemption in most States for a person's place of residence.

# Grants and Incentives



## General Introduction

A number of grant schemes and other incentives are provided by the Federal and State Governments to foster business establishment and development in Australia. Most incentive payments are taxable.

The following paragraphs list some of the significant grants and incentives opportunities. In addition, there are other industry-specific or special-purpose programs.

## Federal Government Incentives

### Research and Development (R&D)

The income tax system is used to provide incentives for expenditure on certain research and development projects.

The R&D provisions of the income tax legislation enable Australian companies to claim deductions of 125% (or 175% in some cases) of eligible expenditure undertaken on R&D projects involving innovation or technical risk. In the absence of such provisions the cost associated with such projects would not necessarily be tax deductible.

Companies with a group turnover of less than \$5 million and who spend between \$20,000 and \$2 million on R&D are eligible for a refundable tax offset instead of a tax deduction. The offset is 30% of the R&D expenditure.

In addition to the tax incentive, the Federal Government also offers discretionary grant assistance to companies carrying out R&D and commercialisation activity.

Following a review of the R&D tax concession, changes to the R&D tax incentive were proposed by the Federal Government to commence from 1 July 2010. There are two core components of the new R&D incentive:

- *a 45% refundable tax offset for eligible entities with turnover of less than \$20 million; and*
- *a 40% non-refundable tax credit for all other eligible entities.*

At the date of publication of this booklet the legislation has been introduced into Parliament, but it has lapsed due to the calling of the 2010 Federal Election.

The Federal Government has also established the Innovation Investment Fund which aims to develop a venture capital market where private sector investors can invest in new technology companies in a regulated format. The Government also fosters co-operative research centres, which are long-term national and international collaborative research ventures between universities, Federal and State Government agencies and industry. In addition, the Commercialising Emerging Technologies Scheme supports the commercialisation of innovative products, processes and services.

### Export Market Development Grants

The Export Market Development Grants Scheme is administered by Austrade and provides cash grants of up to \$150,000 per annum as an incentive to Australian residents who export eligible Australian goods, services, industrial property rights and know-how, (exports to New Zealand are excluded). To be eligible, the entity must have a turnover of less than \$50 million.

Whilst there is local content criteria to be met, the main requirement is that the claimant must have incurred at least \$20,000 of eligible expenditure in the claim year. A grant of 50% is payable for eligible expenditure in excess of \$20,000.

Grants may be claimed for promotions to new export markets. Provision also exists for exporters to form joint ventures or consortia that, subject to Austrade's approval, can claim grants under special status categories.

A rebate in respect of certain types of expenditure incurred in developing the overseas market qualify for the grant. The notable exception is wages costs. However, the cost of consultants are eligible. There are also limitations on claims for the cost of airfares and accommodation, meals etc. while travelling.

## Regional Headquarters (RHQ) Concession

A number of concessions are designed to encourage non-resident multinational corporations to establish their Asia Pacific regional headquarters in Australia. These concessions include tax deductions for certain costs of locating RHQs in Australia, and an exemption from withholding tax on certain dividends distributed through Australia.

## Export Finance and Insurance

The Export Finance and Insurance Corporation assists exporters of goods and services that are wholly or mainly of Australian origin. Assistance is by way of insurance or finance, which would otherwise be unavailable to exporters. In addition, finance can also be arranged for the foreign customer to assist them purchase the Australian goods or services.

## Tariffs and Bounty Payments

There is Customs Duty on a limited number of imported items such as motor vehicles. There has been a trend away from tariff protection, to assistance provided by customs duty credits provided to importers that use Australian content in their manufacture and processes.

There is also a ship building bounty scheme that assists in the cost of the construction of vessels in Australia.

As a related matter, the Federal Government has developed industry plans in several areas, including steel, motor vehicle and componentry.

## State Government Incentives

There are a number of incentive schemes provided by the States and Territories. These incentives are designed to encourage business to remain in the State, or to encourage businesses to move to or set up in the State. These schemes range from pay-roll tax rebates and holidays, to low-cost land for new businesses, to financial and relocation assistance.

Decentralisation is a priority for many State incentives in certain geographic regions. These incentives may include loans and grants, and subsidised freight and other charges. The Federal Government is also a participant in decentralisation programs.



# Protection of Intellectual and Industrial Property



## Copyright

Copyright is protected in Australia by the Copyright Act 1968 and the copyright owner has the exclusive rights to license others in regards to copying the work, performing it in public, broadcasting, publicising and adapting the work. Copyright materials created overseas are protected under the Australian Copyright Act as a result of Australia's obligations under various international treaties.

## Trade Marks

The Trade Marks Act 1995 gives the exclusive use of a registered trademark to its registered proprietor. Owners of trademarks in other countries must register them in Australia to benefit from the protection.

## Trade Names

The Business Names Act in each State provides that trade names registered in Australia cannot be used by others in business. A common law action for passing off is also available.

## Patents

The Patents Act 1990 gives a patent holder the exclusive right to exploit the invention or allow others to do so. Protection is only provided where an Australian patent has been granted.



# Immigration



## Migration to Australia

Migration to Australia is very complex and it is recommended that specific advice be sought prior to making business plans that involve the transfer of principals or employees to Australia.

The following information relates to business activities in Australia.

## Permanent Residence

The categories within the economic migration component are:

- *Labour Agreements;*
- *the Employer Entry Nomination Scheme;*
- *the Business Skills Migration Program;*
- *Independent Regional Skilled Migration;*
- *Special Skills Migration;*
- *Invest Australia Support Skills Program;*
- *Regional Sponsored Migration Scheme; and*
- *Business Development - Permanent.*

## Who is Eligible?

Australia wants to attract people whose business, entrepreneurial, trade or professional skills will contribute to its economic growth.

## Labour Agreements

These are "tripartite" arrangements between employers, trade unions and government covering industries where a shortage of skilled workers is identified and where all parties agree that some migration of skilled workers in that industry is warranted.

## The Employer Nomination Scheme

This scheme allows Australian employers to sponsor highly skilled workers for migration to Australia when they are unable to find or train appropriately skilled workers in the Australian labour market.

## The Business Skills Migration Program

The program is for intending migrants who are already experienced and successful in their own business or investment activity or have been a senior executive in a large business, and who can bring sufficient capital or entrepreneurial skills to successfully set up business enterprises which would benefit Australia.

Specific conditions apply to each category of Business Skills Migration, in some cases including minimum investments in Australia.

## Temporary Residence

Temporary residence may be granted in the following situations:

- *Sponsorship by Australian or Overseas Businesses – Australian or overseas businesses who are unable to meet their skills needs from the local labour market can sponsor, on a temporary basis for up to four years, overseas workers to fill skilled positions in Australia;*
- *Service Sellers – Temporary business visa available for foreign nationals who are representatives of overseas suppliers of services who are seeking to negotiate, or enter into, agreements to supply their services in Australia;*
- *Medical Practitioners and Educational Workers – Sponsorship arrangements can be entered into for temporary visas for medical practitioners and educational workers;*
- *those employed via Labour Agreements and the Employer Nomination Scheme; and*
- *spouses of temporary residents.*

## Visitors

### Business Development – Provisional

Business skills visas are available for people to establish a business in Australia, manage a new or existing business or invest in Australia.

### Business Development – Permanent

Business skills visas are available for people who have established a required level of business in Australia while holding a provisional visa.

### Business Visitor Visas

Business (short stay) visas (up to 3 months) to engage in activities such as conferences, negotiations or exploratory business visits. Business (long stay) visas (3 months to 4 years) to enable employers who would like to employ overseas workers to fill nominated skilled positions in Australia.

### APEC Business Travel Card

Business visitors from Brunei, Chile, China, Hong Kong, Indonesia, Japan, Korea, New Zealand, Papua New Guinea, Peru, the Philippines, Malaysia, Singapore, Taiwan, Thailand and Vietnam can apply for an APEC Business Travel Card, which gives them visa-free travel to Australia and the other participating APEC countries.

### Electronic Travel Authority (ETA)

This is an electronically stored authority for travel to Australia for short-term visits or business entry and replaces the visa stamp/label in passports. It allows single or multiple entries into Australia for a maximum stay of up to 3 months. The ETA system is available to passport holders from a list of nominated countries including the United Kingdom, the United States and many European and Asian countries. The ETA can be granted within seconds and applications can be processed by travel agents, airlines, service providers and on the internet at the time that travel bookings are made.

### Work Permits

All foreign nationals (apart from New Zealand citizens carrying New Zealand passports), are prohibited from working in Australia unless they obtain a migrant or resident return visa, refugee/special humanitarian migrant visa, provisional resident visa or permanent resident visa. Some other visas specifically state the limited circumstances in which the visa holder can work in Australia.

