

DOING BUSINESS IN AUSTRALIA

2021



A photograph of a person in a dark hoodie herding sheep in a field at sunset. Two dogs are visible: one black and tan dog is jumping over a metal fence, and another black and white dog is sitting on the ground behind the fence. The background is filled with sheep and trees, with a warm, golden light from the setting sun.

Contents

Introduction	3
Country profile	4
Legal overview	5
Conducting business in Australia	10
Tax system	12
Labour	20
Audit	22
Trade	23
Finance	24
Infrastructure	25

Introduction

A guide to “Doing Business in Australia” provides insights for foreign investors into the key aspects of undertaking business in the country.

Australia welcomes dynamic foreign investment and is one of the most attractive business locations in the world. Australia has a relatively deregulated and open economy, offers opportunities from a broad range of diverse industries, providing investors with a stable political and economic environment, as well as a skilled and multilingual workforce.

In order to attract foreign investors, the government has almost halved tariff rates on imports in the last decade. Additionally, other major tax changes have resulted in substantial cuts to the corporate tax rate. The Australian government encourages foreign investment with a transparent and liberal screening process. While certain investments require prior approval, there are currently no general foreign exchange restrictions.

Impacts of COVID-19:

Like other nations, Australia spent much of 2020-21 dealing with the economic and health impacts of the COVID-19 pandemic. Australia benefitted from decisive action to minimise the spread of the COVID-19 virus in the community, and the numerous economic stimulus packages helped sustain businesses and households. The result was that Australia was less hard hit economically than other countries and its fundamental economic indicators remain strong by global standards. Continuing to manage the virus at safe levels will see Australia’s economy go from strength to strength in calendar year 2022 and beyond.

Close ties with Asia:

Multinational businesses view Australia as a strategic centre for their operations in the Asia Pacific region. Most of Australia’s principal export partners are located in Northeast Asia and Southeast Asia, and a network of 15 free trade agreements gives Australian companies preferential access to these fast-growing markets. Australia is well positioned to grow its resources, energy, agriculture, and education and tourism services exports to Asia Pacific’s booming middle-class. This group is projected to make up 90 per cent of the new 2.4 billion middle-class consumer population entering the global economy by 2030.

The Australian economy:

Home to just 0.3% of the world’s population, but accounts for 1.7% of the global economy

One of the strongest and most competitive economies in the world experiencing close to three decades of annual growth, stable inflation, and a low unemployment rate.

Forecast to have average annual real GDP growth of 2.44% per cent between 2022 and 2026¹. Main trading partners include Japan, USA, China, South Korea, New Zealand and the United Kingdom. Key business centres are its capital cities Adelaide, Brisbane, Melbourne, Perth and Sydney.

This guide makes reference to some of the most common issues investors might face; however, it must be noted that certain industries are subject to special regulation and therefore those wishing to invest in Australia should seek legal advice.

¹ Digital Benchmark Report June 2021 – Growth – Austrade
The information in this publication is current at October 2021.

Country profile

Capital city	Canberra
Area	7.6 millin sq. km
Population	25.36 million
Language	English is the national language. However, due to Australia's multicultural population, 21.5 per cent of the population fluently speaks a language other than English at home.
Currency	Australian Dollar (AUD)
International dialing code	+61
National holidays 2021/22	1 January – New Year's Day 26 January – Australia Day 2 April – Good Friday 4 April – Easter Monday 25 April – ANZAC Day 10 June – Queen's Birthday 25 December – Christmas Day 26 December – Boxing Day
Business and banking hours	Business – 09:00 to 17:00 Monday to Friday Banking – 09:30 to 16:00 Monday to Friday
Stock exchange	Australian Stock Exchange
Political structure	Federal Constitutional Parliamentary Democracy and Constitutional Monarchy
Doing business rank 2020	14

Ease of doing business

Topics	2018 rank	2020 rank	Change in rank
Starting a business	7	7	No change
Licenses and Permits	6	11	+5
Getting Electricity	47	62	+15
Registering property	51	42	-9
Financing	6	2	-4
Protecting Investors	57	57	No change
Paying Taxes	26	28	+2
Trading Across Borders	95	106	+11
Enforcing Contracts	3	6	+3
Resolving Insolvency	18	20	+2

Legal overview

Political and legal system

The Australian political and legal system is very stable. It is a federal system of government within which there are three divisions: Commonwealth, state/territory and local governments. Australia is divided by a written Constitution into a federation of six states (New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia) and two territories (Australian Capital Territory and the Northern Territory).

The law is sourced from the Constitution, statute and common law.

The Australian legal system is developed from British law; however, unlike Britain, Australia has a written Constitution which divides the powers of the government into three: the legislature, the executive and the judiciary.

The Federal Parliament is divided into a “lower” house (House of Representatives) and an “upper” house (Senate). Its responsibilities include (but are not limited to) foreign affairs, immigration, social security, communications, collection of income tax, defence, trade practices and commerce and insurance law. Bills introduced into parliament must be passed by both the upper and lower houses to become law.

Each State and Territory has their own Parliament and Constitution.

The Commonwealth and the State/Territory Governments cooperate in many areas such as education, transport, health and law enforcement even if the States/ Territories are formally responsible.

While Australia is an independent country, Queen Elizabeth II of Great Britain is the Queen of Australia. She has the power to appoint a Governor General who advises the elected government and represents her. Although the Governor has a wide range of powers, generally he/she acts only on the advice of ministers in virtually all matters. There are six State Governors that perform similar duties in their respective States.

The legal system of courts operates at both the Commonwealth and State level. Judicial power of the Australian Government is vested in the High Court of Australia. In addition, all States have a Supreme Court and their own court systems, with the High Court of Australia as the ultimate superior appellate court. Law enforcement responsibilities are shared between the Federal and State police forces.

Data protection

Privacy legislation regulates the manner in which private sector organisations can collect, use, keep, secure and disclose personal information.

The main regulation is the Privacy Act 1988. There are many other Federal and State Acts that address privacy law.

The Privacy Act defines personal information as information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an identified individual or an individual who is reasonably identifiable.

The provisions of the Act apply to:

- Private entities with an annual turnover of at least AUD3 million per year or that trade in personal information or provide a health service
- Australian Government federal public sector entities that collect, use and/or disclose the personal data of individuals

As a general rule, the Privacy Act only applies to acts and practices in Australia; however, in certain circumstances, it can apply to overseas acts and practices of entities that have a jurisdictional link with the country. For instance, a practice engaged outside Australia by an organisation that carries out business in Australia, or that has collected personal data in Australia would be subject to the Privacy Act.

There are 13 principles established by the Australian Privacy Principles (which are contained in the Privacy Act) that must be adhered to ensure that data is processed properly.

In summary, the principles cover the following:

1	Open and transparent management of personal information
2	Anonymity and pseudonymity
3	Collection of solicited personal information
4	Dealing with unsolicited personal information
5	Notification of the collection of personal information
6	Use or disclosure of personal information
7	Direct marketing
8	Cross-border disclosure of personal information
9	Adoption, use or disclosure of government related identifiers
10	Quality of personal information
11	Security of personal information
12	Access to personal information
13	Correction of personal information

Personal information about racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership to a trade union, sexual preferences or practices, criminal record, genetic or health information is considered as sensitive information.

It can only be processed and used if one of the following conditions applies:

- The collection is required by law
- The collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual
- The individual has consented and the information is reasonably necessary for one or more of the organisation's functions or activities

The Privacy Act sets out a list of requirements as to the form and content of the notices that are to be sent to individuals when collecting their personal and sensitive information.

An organisation processing personal information must take reasonable steps to protect the personal data it holds from misuse, interference, loss, unauthorised access, modification or disclosure. Where cross-border disclosure of information may be involved there may be further obligations and responsibilities imposed on the collecting entity for the overseas recipient's use of the information.

In addition to the provisions of the Privacy Act, there are other privacy-related provisions in sectorial legislation such as that governing the telecommunications sector or health and medical research.

Additionally, the Corporations Act 2001 imposes a number of obligations on financial services businesses relating to data security and data management.

Notifiable Data Breaches (NDB)

Under the NDB scheme any entity the Privacy Act 1988 covers must notify affected individuals and the OAIC when a data breach is likely to result in serious harm to an individual whose personal information is involved. An entity must take all reasonable steps to complete an assessment within 30 calendar days after the day the entity became aware of the grounds (or information) that caused it to suspect an eligible data breach

A data breach occurs when personal information an organisation or agency holds is lost or subjected to unauthorised access or disclosure. The notification to individuals must include recommendations about the steps they should take in response to the data breach.

Whistleblowers

The Corporations Act 2001 (Corporations Act) protects certain whistleblower activities, and protects whistleblowers from persecution. These protections are designed to encourage people within companies, or with special connections to companies, to alert ASIC and other authorities to illegal

behaviour¹. Changes to the Corporation Act 2001 effective from 1 July 2018 require all public and large proprietary companies to have a whistleblowing policy in place by January 2019. Companies will need to protect a broader range of potential whistleblowers from victimisation including former employees. To qualify for these protections the whistleblower need not have acted in good faith in making their allegations.

An organisation processing personal information must take reasonable steps to protect the personal data it holds from misuse, interference, loss, unauthorised access, modification or disclosure.

Personal Properties and Securities Act

The Personal Property Securities Act 2009 (PPSA) is a nationalised scheme which centrally provides for the creation, registration, priority and enforcement of security interests in personal property.

Scope

The PPSA applies to security interests in personal property. A security interest is an interest that essentially secures payment or performance of an obligation in personal property. Personal property covers almost all forms of tangible and intangible property owned by any type of legal entity, other than real property. Examples include motor vehicles, household goods, business inventory, intellectual property and company shares.

Exclusions

Items not covered under the PPSA are real property (interest in land) and the items expressly excluded under statute. Examples of items that are expressly excluded include an interest arising from the legislation, a transfer of present or future remuneration (including wages, salary, commission, allowances or bonuses) payable to an individual as an employee or a contractor and a transfer of an interest or claim in, or under, a contract of annuity or policy of insurance.

Exchange controls

There are no exchange control restrictions on the transfer of funds into or out of Australia. However, under the Financial Transactions Reports Act 1988, financial institutions and other cash dealers are required to formally report cash transactions in excess of AUD10,000.

Additionally, Australian foreign exchange controls are implemented from time to time. Presently, controls are in place in relation to withholding taxes on remittances or dividends (to the extent they are unfranked) and interest payments and sanctions are administered by the Reserve Bank of Australia.

Money laundering regulation

The Anti-Money Laundering/ Counter-Terrorism Financing Act 2006 (AML/CTF Act) forms part of a legislative package which strengthens Australia's AML/CTF regulatory regime and brings it into line with international standards including standards set by the Financial Action Task Force (FATF).

The AML/CTF Act and the supporting AML/CTF Rules together implement a principles-based and risk-based approach to regulation. Reporting entities determine the way in which they meet their obligations based on their assessment of the risk of providing a designated service to a customer that may facilitate money laundering or terrorism financing.

Under the AML/CTF Act, AUSTRAC is Australia's AML/CTF regulator with supervisory, monitoring and enforcement functions. AUSTRAC is also Australia's specialist financial intelligence unit. The enforcement powers available to AUSTRAC include enforceable undertakings, remedial directions, civil penalties and criminal penalties. Civil penalties for body corporates must not exceed 100,000 penalty units and civil penalties for individuals must not exceed 20,000 penalty units.

Intellectual Property Rights

In Australia Intellectual Property Rights such as trademarks, copyrights, patents and designs are protected by law. While there is specific legislation for each Intellectual Property Right, alternative remedies are available in laws. For instance, common law for goods and services provides solutions for goods or services that are 'passed off' as those of another. Trade secrets and confidential information are also protected under certain circumstances.

IP Australia is the government agency that administers Intellectual Property Rights and legislation relating to patents, trademarks and plant breeder's rights.

Australia signed the Berne Convention for the Protection of Literary and Artistic Work which means that works created in other countries that are signatories of the convention are entitled to the same protection given by the government to Australian nationals. It is also a party to the Patent Co-operation Treaty for the international registration of patents.

Copyright

Copyright is automatically granted in Australia, irrespective of registration. Copyright can protect: books, films, music, sound recordings, newspapers, magazines and art work as well as originally created typographical arrangements, databases, media broadcasts, computer programs, compositions of other people's work such as academic journals or CD compilations. The Copyright Act does not require the 'work' to be of artistic or literary quality; the only requirement is for the work to be original.

Protection granted Copyright is covered by the Copyright Act 1968 and is automatically granted in Australia. It gives the owner exclusive rights to license others with regard to copying work, performing in public, broadcasting, publishing or making any adaptations of the original piece of work. The Copyright Act also recognises moral rights and digital rights such as Electronic Management Information and technological protection measures.

Although copyright laws differ from country to country, Australia is party to a number of international treaties and international works may also be subject to copyright protection.

Infringements Acts that infringe copyright include: copying, performing in public, broadcasting, publishing or making any adaptations of the original piece of work. It does not include protection against independent creation of a similar work.

Legal actions against copyright infringement can be complicated by the number of different types of copyright that can apply across a piece of work.

Duration Copyright is enforceable as follows:

- 70 years from the authors death or from the publication after the author's death
 - Films and sound recordings – 70 years from their publication
 - Broadcasts – 70 years from the year they were made
-

Patents

A patent is the right that is granted for any device, substance, method or process that is new, inventive and useful. In Australia there are two types of patents: standard and innovation patents. A standard patent protects an invention that is novel, involves an inventive step and can be made or used in an industry. Innovation patents were introduced to protect inventions that did not meet the inventive threshold required for standard patents. This type of patent requires an innovative step rather than an inventive one (an innovative step exists when the invention is different from what it is known before and the difference makes a substantial contribution to the working of the invention).

Protection granted In Australia, patents are granted under the Patents Act 1990. They are legally enforceable and give the owner exclusive rights to commercially exploit the invention for the life of the patent. The owner must apply for the patent in order to obtain protection and protection is provided within Australia only.

Infringements Acts that infringe patents include manufacturing and/or selling an invention in Australia without the owner's permission.

Duration Patents are enforceable as follows:

- Standard patents last up to 20 years
- Innovation patents last up to eight years
- Pharmaceutical patents last up to 25 years

In order to ensure the enforceability of patents, an annual maintenance fee must be paid.

Trade marks

A trade mark is used to distinguish the goods and services of one trader from another and can be granted for letters, numbers, words, phrases, sounds, smells, shapes, logos, picture and/or an aspect of packaging.

Protection granted In Australia trademarks are regulated by the Trade Marks Act 1995. Registered trademarks are legally enforceable and give the owner exclusive rights to commercially use, license and or sell the goods or services that are registered under the trademarked item.

While the trade mark does not need to be registered for its owner to have rights and enforce them, the enforcement process is simpler when trademarks are registered.

Infringements Acts that infringe trademarks include: using an identical or similar trademark for identical or similar goods and services to a registered trademark, creating a likelihood of confusion on the part of the public.

Duration 10 years (can be renewed in successive periods of 10 years).

Design

A design registration covers the features of a product's unique appearance including its shape, configuration pattern or ornamentation that are new and distinctive.

Protection granted In Australia registered designs are regulated by the Design Act 2003 which provides that a design cannot be registered unless it is both new and distinctive. A registered design gives the owner exclusive rights to commercially use or license the design of a product. The design cannot be registered if it has been published before the registration application is completed.

Infringements Acts of design infringement include making unauthorised copies of a product's unique appearance

Duration Five years - with the option to renew the registration for an additional five years.

Conducting business in Australia

Business entities

Any foreign entity or individual wanting to do business in Australia will need to decide the form by which they want to operate. There are many business structures available in Australia including:

- Sole trader
- Partnership
- Trust (discretionary, fixed or hybrid)
- Limited liability companies
- Foreign company operating a branch in Australia
- Joint venture (incorporated or unincorporated)

Limited liability companies

There are essentially two main types of limited liability companies in Australia, those being:

- Public companies (listed or unlisted)
- Proprietary private companies

A proprietary private company is a company that is limited by shares or an unlimited company that has the following:

- A share capital
- No more than 50 non-employee shareholders
- Does not engage in any activity that would require the lodgement of a prospectus

The most common way to operate is through a company limited by shares.

The main features of public and proprietary (private) companies are as follows:

Requirements	Public	Proprietary
Minimum number of shareholders	1	1
Maximum number of shareholders	No limit	50
Minimum number of directors	3	1
Directors resident in Australia	2	1
Minimum number of resident secretaries	1	0

The following are also required under both forms of company:

- At least one director must be resident in Australia
- The directors must be natural persons over the age of 18
- The shareholders do not have to own shares beneficially
- Each company must appoint a public officer to meet the requirements of the tax authorities (usually the company secretary)
- There are regulations on keeping statutory records and making annual filings
- Audited accounts (where applicable) and an annual return must be filed and are available for public inspection

Formation

To incorporate a proprietary company, directors must choose a name that is available and acceptable for registration.

Once the name is chosen the company needs to complete an application form with the Australian Securities and Investment Commission (ASIC). This application must contain: the registered office and principal place of business, the share structure, the shareholders and the proposed directors and/or secretary.

Following incorporation, the company needs to apply for an Australian Business Number and a Tax File Number.

Changes to the following must be notified to ASIC within 28 days of the change:

- Company name
- Company details
- Company constitution
- Directors details
- Share structure or shareholder details

Further, a listed public company must comply with the listing requirements set down by the Australian Securities Exchange (ASX).

Capital stock and shareholders

Private companies are only required to have one shareholder as a minimum, with a maximum of 50 shareholders. There is no limit on the number of shareholders for public companies.

Management

A private company only requires one director who must be a resident of Australia. A public company must have at least three directors, two of which must be residents of Australia.

Filing requirements

The requirements for audits are set up under the Audit section on page 28.

Each company will have its own “review date”, where the company will be required to review its corporate secretarial details and declare that it is solvent. Companies also have to pay an “annual review fee” to ASIC within two months of this date, with the fee being AUD273 for proprietary companies and AUD1,267 for public companies².

Dissolution

A company is dissolved by a process known as a “members’ voluntary liquidation”, whereby the shareholders appoint a liquidator who takes control of the company and discharges its liabilities and distributes the surplus to shareholders.

Alternatively any company with assets of less than AUD1,000 and no outstanding liabilities may be deregistered with

ASIC. This process is simpler; however, care must be taken as protection for directors is limited.

Sole proprietorships

In order to establish a sole proprietorship an Australian Business Number (ABN) must be obtained from the Australian Business Register website. ABNs are required to be quoted when dealing with customers and suppliers.

Foreign company branches

To establish a foreign branch, it is necessary to register as a foreign company in Australia with ASIC. In order to do this a company must first ensure that their name is reserved in

Australia and approved, complete the relevant application form and lodge this with ASIC and pay a fee of AUD506³.

In addition, a registered office needs to be established in Australia and a local agent must be appointed. Once registered, the foreign company will be allocated an Australian Registered Body Number (ARBN).

Branches need to file the foreign company’s annual accounts and comply with any other applicable reporting requirements. The annual filing fees for foreign companies operating a branch in Australia is AUD1,260.

Local subsidiaries (wholly owned companies)

Foreign companies and individuals can acquire the share capital or the assets of an existing Australian Company. This process must adhere to Australia’s takeover legislation relating to share acquisitions as well as Australia’s foreign investment policy.

Partnerships

General partnerships

A general partnership is a relationship that exists between two or more parties carrying on a business with a view to profit from this business. Profits, losses and liabilities do not remain in the business but pass through to the partners themselves, where the income is taxed.

Limited partnerships

A limited partnership is one where at least one of the partners has limited liability. For tax purposes, limited partnerships are effectively treated as companies.

Formation

To establish a partnership, the founding partners should create a written partnership agreement detailing their intentions for the business and the method of operation. The partnership will also be required to apply for an ABN in order to trade with other entities.

Joint ventures

A joint venture occurs when two or more businesses operate together for a particular outcome, contributing their assets and expertise to produce a common output. It is a more temporary process, whereby profits are taxed in the original participating entities.

Trusts

A trust is a relationship that exists when property is held by a trustee for the benefit of certain beneficiaries. The trustee oversees the running of the trust, which must comply with the rules of the particular trust deed. The most common types of trust are discretionary, fixed or hybrid trusts. Discretionary trusts provide the trustee with flexibility with respect to the distribution of income and capital to the beneficiaries outlined in the trust deed. A fixed trust (commonly a unit trust) must distribute income and capital to the unit holders in fixed proportions to their holdings. A hybrid trust is a combination of the discretionary and unit trusts generally providing fixed entitlements to income but discretionary rights to capital.

Income that is retained in a trust is generally taxed at Australia’s highest individual marginal rate of tax.

² Current as at 01-07-2018

³ <https://asic.gov.au>

Tax System

Australian tax legislation is complex. It is strongly recommended that businesses seek professional advice before undertaking business transactions in Australia.

There are many forms of taxation in Australia, including:

Federal taxes

- Income tax (including capital gains)
- Fringe benefits tax
- Superannuation guarantee charge
- Withholding taxes
- Goods and services tax
- Customs and excise duties
- Petroleum resource rent tax

State taxes

- Stamp duty
- Payroll tax
- Land tax

Overview

- The main categories of taxpayers are individuals, companies and trusts
- A resident (company or individual) pays income tax on all income, irrelevant of its source, although some exemptions may apply to certain foreign incomes
- Non-residents are taxed on income derived from sources in Australia
- There are special rules for foreign source income and foreign tax credits
- Allowable losses may be carried forward indefinitely subject to the satisfaction of certain requirements for companies and trusts
- There are general and specific anti-avoidance provisions designed to prevent artificial, contrived or deceptive schemes aimed at tax avoidance

Corporate Income Tax (CIT)

Rates and scope

The general Australian CIT rate is 30 per cent. However, Australia has progressively since FY18 introduced a lower “Base Rate Entity” company tax rate subject to an 80% active income requirement and having less than a maximum turnover threshold as follows:

Income Year	Aggregated turnover threshold	Tax rate for base rate entities under the threshold	Tax rate for all other companies
2017-18	\$25m	27.5%	30.0%
2018-19 to 2019-20	\$50m	27.5%	30.0%
2020-21	\$50m	26.0%	30.0%
2021-22 and future years	\$50m	25.0%	30.0%

Australian tax resident companies are subject to CIT on their Australian-sourced and foreign-sourced income (i.e. worldwide income). A company is classified as an Australian resident if any of the following circumstances applies:

- It is incorporated in Australia;
- If not, it carries out business in Australia and has either its central management and control in Australia; or
- Its voting power is controlled by shareholders who are residents of Australia

Non-resident corporations that act through an Australian permanent establishment are subject to CIT on their Australian sourced income, at the CIT rate.

Non-resident corporations that do not operate through an Australian permanent establishment are taxed on Australian-sourced passive income (i.e. interest, dividends and royalties), by way of a final withholding tax. The withholding tax may be reduced if there is an applicable Double Tax Treaty. See Withholding Taxes below for further information.

Australia also imposes a complex controlled foreign entity regime for Australian tax residents with certain ownership interests in non-resident companies, trusts and partnerships to ensure, broadly, that passive income shifted offshore cannot be sheltered from Australian tax (temporarily or permanently).

Taxable income

The taxable income for an Australian company (or a non-resident carrying on business at or through an Australian permanent establishment) is calculated by deducting eligible deductions from assessable income. If deductions exceed assessable income, the taxpayer incurs a tax loss, which can generally be carried forward and claimed as a deduction against income in a future year. Additional rules affect the calculation and absorption of tax losses.

Assessable income is generally computed on a derivation basis and includes income from all sources and capital gains (see Capital Gains below for further information).

Expenses are deductible to the extent that they are incurred in gaining or producing assessable income, or necessarily incurred in carrying on a business. Expenses of a capital or private nature and expenses incurred when producing exempt income cannot be deducted. Similarly, entertainment expenses, penalties, and fines are generally not deductible.

Depreciation

The cost of acquiring plant and the cost of constructing buildings/capital works used in gaining or producing assessable income are allowable as tax depreciation and capital allowance deductions respectively. The tax depreciation or capital allowance rate is specifically prescribed under the tax laws for capital works and certain items of plant. If not prescribed by legislation, the depreciation rate can be determined based on useful life, which is either self-assessed or based on Australian Tax Office published guides. The Australian Government introduced temporary measures allowing mist businesses to full expense the cost of acquiring plant as a response to the covid-19 pandemic. These measures apply for plant acquired by and first used or installed ready for use by 30 June 2023.

Administration

The Australian tax year runs from 1 July to 30 June, but substituted accounting periods may be allowed, particularly when the company is associated with a non-resident parent company.

Companies must generally file their annual tax returns in compliance with the ATO lodgement and payment programme. The lodgement and payment due dates for companies can vary according to their size and whether the company was in a tax payable or refundable position in the prior year.

Late return lodgements and late tax payments may be subject to administrative penalties and General Interest Charges.

A Pay-As-You-Go (PAYG) withholding system operates to facilitate the withholding and payment of various taxes, including payment of company tax instalments and withholding of tax from employees salary. Reporting periods vary from monthly, quarterly or yearly depending predominantly on the size of the organisation.

Tax Consolidated Groups (TCG)

Australia has a tax consolidation regime, whereby a single Australian head company (or certain trusts taxed as companies) and all of its 100 per cent owned subsidiaries (including certain trusts) can elect to form a TCG. General benefits of forming a TCG include:

- Reduced compliance costs through the lodgement of one tax return
- Transfer of losses amongst members
- The ability to ignore all intra-group transactions for tax purposes

Thin capitalisation rules

Australia has a thin capitalisation regime intended to prevent multinational entities shifting profits out of Australia. This is achieved through the limitation of debt deductions available to an entity where the debt funding is above a certain limit.

The Australian thin capitalisation rules apply where:

- Total debt deductions exceed AUD2 million; and
- The Australian entity is either controlled by a foreign entity (inward investor) or controls foreign entities (outward investor)

Generally, the rules deny debt deductions if the adjusted average debt (which includes all debt owed to both foreign and domestic related and non-related parties) exceeds the entity's maximum allowable debt (determined very broadly as a debt-to-equity ratio of 1.5:1). However, the exact threshold will depend on the type of entity in question, that is, whether the entity is a financial or non-financial entity.

For Authorised Deposit-taking Institutions (ADIs), the debt limitation threshold is determined by reference to available capital, which should be equivalent to 6 per cent of the Australian Risk Weighted Assets.

Where the debt limitation levels are breached, debt deductions will be denied in the ratio of the excess. The interest disallowed is a permanent disallowance.

Losses

Whilst revenue and capital losses can be carried forward indefinitely, entity company must satisfy either the continuity of ownership test or failing this, the same business test. Groups that do not form a tax consolidated group for Australian tax purposes cannot transfer losses.

In addition there are complex rules for the carrying forward and utilising of losses incurred by trusts.

Temporary loss carry back measures

Primarily in response to the COVID-19 pandemic, the Australian Government introduced a temporary loss carry back regime for eligible corporate entities with less than \$5 billion turnover for losses made in the 2019–20 to 2021–23 income years to carry back to the 2018–19, 2019–20 and 2020–22 income years subject to restrictions based on the entity's income tax liabilities in the relevant income year and its franking account balance.

Dividends

A dividend imputation system exists to prevent the double taxation of company profits, whereby shareholders who receive a dividend may be entitled to a tax offset for the tax already paid by the company on the distributed income. Dividends paid by Australian resident companies are franked with an imputation credit and the amount of the tax credit 'imputed' to the shareholder is at the discretion of the company. There are anti-avoidance rules to prevent the beneficial streaming of imputation credits to certain taxpayers.

Intra-group dividends are ignored within tax consolidated groups.

See Withholding Taxes below for the impact of withholding taxes when dividends are distributed to non-residents.

Withholding Taxes

Interests, dividends and royalties paid to non-residents are subject to Australian withholding tax.

Withholding tax rates (subject to treaty variations) are as follows:

Dividends: a 30 per cent dividend withholding tax rate applies for unfranked dividends paid to non-residents. Double tax treaties may reduce the rate to 0%, 5% or 15% depending on the applicable Treaty and the nature of the non-resident shareholder. No dividend withholding tax will typically apply to fully franked dividends.

Interest: a 10 per cent interest withholding tax rate applies to non-residents. However, double tax treaties may reduce the rate or lower it to nil. There are exemptions available for certain publicly offered debentures, state and federal government bonds.

Royalties: a 30 per cent royalty withholding tax rate applies to royalties paid to non-residents; this rate is typically reduced to 10 per cent for most double tax treaty countries.

Managed Investment Trusts (MIT): distributions by a MIT to non-residents are generally subject to 30 per cent withholding tax. A reduced withholding tax rate of 15 per cent may apply to certain MITs (including a special type of MIT known as Attribution MITs or AMITs) where the non-resident's address or place of payment is in an 'information exchange country'. MIT that only holds newly constructed, energy-efficient commercial buildings may be eligible for a 10 per cent withholding tax rate. Proposed legislation in relation to the tax treatment of 'stapled structures' may impede certain MITs from achieving the concessional 15 per cent withholding tax rate on distributions to non-residents.

Transfer pricing

In Australia, related party transactions must be conducted under arm's length conditions. New transfer pricing rule were enacted, with retrospectivity, commencing for income years on or after 1 July 2013.

The new rules introduced a self-assessment regime which requires broader documentation and increases the probability of transfer-pricing adjustments, particularly for those companies with vast intra-group arrangements.

The new law has incorporated the OECD guidelines on transfer pricing and it is for the Public Officer that signs the income tax return to confirm that related-party transactions are in line with arm's-length conditions.

When the actual and arm's-length conditions are not aligned and a transfer-pricing benefit is received, the taxable income and losses must be adjusted.

Transfer-pricing adjustments with international related parties that are not appropriately documented can result in penalties of at least 25 per cent of the undocumented transaction.

Transfer pricing adjustments under the new rules can only be made within seven years of the original assessment – previously, no time limit existed.

Australia has also implemented the OECD's Country-by-Country reporting standards from 1 January 2016 for those companies with global consolidated revenue of AUD1 billion or more. Under these new standards, the ATO will receive the following information on companies operating in Australia:

- A Country-by-Country report that shows information on the global activities of a multinational, including the location of its income and taxes paid
- A master file containing an overview of the multinational's global business, its organisational structure, and its transfer pricing policies
- A local file that provides detail about the local taxpayer's inter-company transactions

Non-residents are only assessable on income and capital gains derived from sources within Australia.

Tax incentives

Research and development

Australian companies are encouraged to invest in research and development (R&D) activities via generous tax related benefits. This support is not targeted at a particular industry or sector and the benefits are aimed at encouraging more R&D to be undertaken in Australia.

Under the current R&D legislation, where eligible R&D expenditure of more than AUD20,000 is incurred in an income year on eligible R&D activities, companies may be entitled to the following:

- **Refundable R&D Tax Offset:** 43.5 per cent tax offset, if your company has an aggregated turnover of less than \$20 million. In some cases this could result in a cash refund. The difference between the tax offset rate and the corporate tax rate is 13.5% – so in effect the benefit is 13.5 cents in the \$1.
- **Non-refundable R&D Tax Offset:** 38.5 per cent tax offset, if your aggregated turnover is more than \$20 million. The non-refundable offset can be carried forward, with the net benefit being 8.5 cents in the dollar.

There are detailed tax laws which need to be considered when claiming R&D. Some immediate matters to be aware of are:

- The grouping rules mean that companies are connected via a 40% ownership/control test. This test is applied up the chain until it no longer applies. Understanding your shareholder base will be relevant
- Is the IP associated with the work done in Australia to be held in Australia or overseas?
- If you are doing R&D overseas and want to claim the costs, then there are some additional forms which need to be completed.

You should also consider the broader income tax implications over the life of the activities in Australia e.g. when you exit, as well as the R&D tax offset.

Upcoming changes to the R&D Tax Incentive

Instead of cutting \$1.8 billion from the R&D Tax Incentive, the Government has instead allocated another \$2 billion to the program. From 1 July 2021 the amount of the R&D tax offset is linked to a company's corporate tax.

- **Refundable R&D Tax Offset:** For companies with an aggregated turnover of less than \$20 million, the R&D tax offset is equal to the claimant's corporate tax rate plus 18.5 per cent, equating to a refundable R&D tax offset rate of 43.5 per cent.
- **Non-refundable R&D Tax Offset:** For companies with an aggregated turnover of more than \$20 million, the R&D premium is also tied to the companies R&D intensity (R&D expenses/Total expenses). The R&D premium is 8.5 per cent plus the corporate tax rate for an R&D intensity between 0-2 per cent and 16.5 per cent plus corporate tax rate for expenditure above the 2 per cent intensity.

For the financial year 2022, this results in the following:

Aggregated turnover	Corporate tax rate	Refundable R&D tax offset rate	Non-refundable R&D tax offset rate	
			For R&D expenditure less than 2% R&D intensity	For R&D expenditure above 2% R&D intensity
\$0 - \$20m	25%	4.5%	-	-
\$20m - \$50m	25%	-	33.5%	41.5%
>\$50m	30%	-	38.5%	46.5%

Other fiscal incentives

Tax incentives apply to the following:

- Infrastructure borrowings by companies to be used in financing the construction of infrastructure facilities including land transport, sea ports, or electricity-generating facilities that such companies intend to own, use or control for 25 years in Australia that are then used by the public for a charge
- Expenditure on patents, copyrights and designs
- Expenditure on environmental impact studies and expenditure incurred for environmental protection purposes
- Capital expenditure for the investment in approved Australian films
- Capital expenditure incurred on the construction of new buildings used for the purpose of producing assessable income or for research and development purposes
- From 1 July 2016 investors in qualifying early stage innovation companies (ESIC) are eligible for a 20% non-refundable carry forward tax offset capped at AUD200,000 of the amount paid for their qualifying investments and modified capital gains tax treatment. There are restrictions on the level of the investment where the investor is not a 'sophisticated investor' under the Corporations Act 2001.

Tax Avoidance Measures for Large Multinationals

In addition to existing tough anti-avoidance measures to combat taxpayers entering into transactions for the sole or dominant purpose of obtaining tax benefits, in December 2015 new additional anti-avoidance measures were passed into law to address multinational tax avoidance by 'significant global entities' (broadly an entity that is part of a group with global revenue of AUD 1 billion or more). These rules apply from income years beginning 1 January 2016 and include:

- New transfer pricing documentation standards (see above for more information)
- Doubling of the maximum administrative penalties that can be applied to large companies that enter into tax avoidance and profit shifting schemes (applicable to income years commencing on or after 1 July 2015), and
- Targeted anti-avoidance rule aimed at multinationals that enter into arrangements that artificially avoid having a taxable presence in Australia.

Specifically, this measure ensures that profits from Australian sales are taxed in Australia from 1 January 2016 where the activities of an Australian associated entity support the making of those sales, and the profit from the Australian sales is booked overseas and is not attributable to a PE of the foreign entity in Australia. A principal purpose of entering into the arrangement must be to create a tax benefit.

Australia also introduced hybrid mismatch tax rules applying generally to cross border transactions occurring on or after 1 January 2019. These rules broadly follow the OECD hybrid mismatch and branch mismatch rules. These rules apply to transactions between related parties, control groups and under certain structured arrangements. They apply to "neutralise" the tax benefits from hybrid arrangements by cancelling deductions or including amounts in assessable income. These rules do not have a de minimis or materiality threshold.

Personal Income Tax (PIT)

Individuals liable to Australian Income Tax

In Australia, PIT is based on tax residency. The statutory definition of residence extends beyond simply residing in Australia and includes:

- Australian citizens, unless they have a permanent place of abode outside Australia
- Persons who have actually been in Australia for more than 183 days in a year, unless their usual place of abode is outside Australia

Non-residents are generally only assessable on income and capital gains derived from sources within Australia.

Expatriate employees who become residents are subject to complex rules, which might affect their assets located outside of Australia. Expatriate employees who are on an Australian temporary visa may be classed as temporary residents. Foreign income earned by temporary residents, excluding certain employment income, will not be subject to tax in Australia. Temporary residents are treated similarly to non-residents for Capital Gains Tax purposes in that they are only subject to tax in respect of taxable Australian property.

For Capital Gains Tax (CGT) purposes incoming residents are deemed to have purchased CGT assets that are not connected to Australia on the date of taking up residency at a cost base equal to their market value on that date. See Capital Gain Tax below for further information.

Tax rates 2020/21

Tax rates are set annually in the Federal Budget. They are set in graduated bands whereby the higher the income the higher the tax rate. The tables below outline current personal tax rates for 2020 - 2021:

Resident taxpayer		Non-resident tax payer	
Taxable income (AUD)	Tax Payable (AUD)	Taxable income (AUD)	Tax payable (AUD)
0 - 18,200	Nil	0 - 120,000	32.5% of amount
18,201 - 45,000	19% of amount over 18,200	120,001 - 180,000	39,000 + 37% of amount over 87,000
45,001 - 120,000	5,092 + 32.5% of amount over 45,000	>180,001	61,200 + 45% of amount over 180,000
120,001 - 180,000	29,467 + 37% of amount over 120,000		
>180,001	51,667 + 45% of amount over 180,000		

Medicare levy

Under the national health insurance program, individuals are subject to a levy on taxable income to supplement the cost of Medicare. The levy is equal to 2 per cent, with the exemption of low income earners. An additional surcharge, up to 1.5 per cent, may be imposed on certain high-income earners (and potentially their families) who are not covered by an appropriate level private hospital insurance.

Administration

The Australian tax year runs to 30 June, and individuals must generally file their annual return by 31 October. The payment of PIT is due 21 days after the due date for lodgement of a taxpayer's return or 21 days after a notice of assessment is given to the taxpayer, whichever is later.

If returns are lodged via a tax agent, there are special extensions of time granted under the tax agent lodgement program with the ATO.

Late return lodgements and late tax payments may be subject to administrative penalties and General Interest Charges.

Franked dividends

Individual shareholders who receive franked dividends from Australian companies are entitled to the benefit of a franking credit in order to reduce or eliminate the tax payable by shareholders on the dividends. Individual shareholders are entitled to refunds where the franking credit is greater than the individual's tax payable.

Other taxes

Goods and services tax (GST)

A 10 per cent GST is imposed on the supply of the vast majority of goods and services in Australia. The GST is a value-added tax (VAT) applied at each level in the supply chain and applies to most goods and services, with registered suppliers getting credits for GST on inputs acquired to make taxable or GST-free supplies.

Goods and services that have been designated as either “GST-free” or “input taxed” are not subject to GST, as summarised in the following table:

An entity is liable to pay GST when it is registered or required to be registered for GST purposes. An entity is required to be registered for GST if its annual turnover is AUD75,000 or more (AUD150,000 or more for not-for-profit organisations).

A recipient of goods or services which is a registered business entity will be able to claim a credit (known as “input tax credits”) for the amount of GST that it has paid, provided it holds a tax invoice from the supplier and that the expense does not relate to the making of an input taxed supply. This input tax credit is offset against any GST on goods or services that the recipient supplies to its own customers.

GST on taxable supplies and input tax credits are accounted for in the Business Activity Statement (BAS) that may be lodged monthly or quarterly. Monthly returns are compulsory in some situations, such as where the annual turnover is AUD20 million or more.

From 1 July 2017, GST was amended to apply to digital services and other intangibles delivered by non-residents, for use by Australian ‘consumers’. These same services when delivered to Australian businesses may not attract GST. Referred to as the ‘Netflix Tax’, the amendments were in response to a wave of digital services (like Netflix, Stan, Spotify etc.) being delivered by businesses-to-consumers (B2C) and not charging GST. Business-to-business (B2B) transactions are not included in these new rules to limit the friction when doing business in Australia.

As these overseas products now attract GST, vendors for these digital products are now required to register for GST. To streamline this process the ATO introduced ‘Simplified GST Registration’ which allows non-residents to elect to be ‘Limited Registration Entities’ (LRE) which allows non-residents to complete BASs quarterly with less administration than required under full registration. Simplified registration does have consequences, LREs are unable to claim GST credits and can not issue tax invoices.

Capital gains tax (CGT)

As a general rule, capital gains are calculated by identifying the capital proceeds from a taxable disposal (known as a CGT event) and deducting the cost base of the CGT asset.

CGT is not levied as a separate tax, but rather capital gains are included in the taxable income of a taxpayer and subject to income tax.

All assets acquired after 20 September 1985 are subject to CGT, unless specifically excluded. A CGT asset is broadly defined, and includes any kind of property, a legal or an equitable right.

The following table outlines various aspects of the CGT regime.

Australian Residents	Taxable on worldwide gains
Non-Residents	Subject to CGT on assets considered to be ‘taxable Australian property’, which includes: <ul style="list-style-type: none"> • Real property located in Australia; • Business assets of an Australian permanent establishment; and • Interests in entities (including foreign entities) where the value of the interest is principally attributed to • Australian real property, and the taxpayer and its associates own at least 10 per cent.
Exemptions	Common exemptions for individuals can include: <ul style="list-style-type: none"> • Gains on an individual’s main residence (Australian Tax Residents only from 1 July 2019 for properties acquired prior to 9 May 2017 and from 9 May 2017 for properties acquired on or after that date pending enactment of the legislation); • 50 per cent discount for assets held for more than 12 months (Australian Tax Residents only for assets acquired after 8 May 2012) Other Exemptions for entities include concessions for gains made on certain eligible small business assets. Gains on assets sold or transferred within a tax consolidated group can also be disregarded.
Rollovers	There are a number of rollovers that allow the relevant capital gain to be disregarded.
Capital losses	Capital losses are only deductible against capital gains. Utilisation of capital losses by companies is also dependent on the satisfaction of various ownership tests and/or maintaining the same business activities.
Rate	The net capital gain of a corporate taxpayer is taxed at the prevailing corporate tax rate. For individuals, the net capital gain (after any discounts and capital losses) is added to their other taxable income and taxed at the marginal rate.

Fringe benefits tax (FBT)

FBT is imposed on the value of non-cash and other benefits provided to an employee (including a former employee) in respect of employment. Payable by the employer, the benefits are exempt from income tax in the hands of the employee.

FBT is an allowable deduction against the employer's assessable income.

Payroll tax

Payroll tax must be remitted, and returns filed, in each state by an employer whose total annual Australian wages exceed a State specified exemption threshold. The term "wages" is widely defined and generally includes salaries, commissions, bonuses, allowances, fringe benefits and superannuation contributions. Payroll tax thresholds and rates vary across the relevant States.

Superannuation guarantee charge (SGC)

Employers are required to contribute a minimum of 9.5 per cent (10% from 1 July 2021) of an employee's ordinary time earnings into a superannuation fund. Employers who provide less than the prescribed level of superannuation support for their employees are liable to pay a superannuation guarantee charge based on the shortfall plus interest and an administration charge.

The definition of employee is extended in certain circumstances to include contractors.

Customs duty

Customs duty is imposed on many goods imported into Australia at a rate of five per cent. The purpose of this tax is to provide protection for domestic manufacturers and wholesalers. Certain exemptions apply for goods that are not subject to Australian competition.

Stamp duty

Stamp duty is a tax imposed by the eight State and Territory governments either at a fixed rate or in proportion to the value of the transaction or "dutiable" property. Stamp duty is generally imposed on direct and indirect transfers of interests in "land" (including shares in companies and units in unit trusts which hold land), mining and petroleum tenements, leases, things fixed to land, rights in relation to land or fixed infrastructure and in some jurisdictions, intangible business assets such as goodwill and intellectual property. Stamp duty rates differ among the jurisdictions, with the highest non-residential rate being 6.5% and the highest residential rate being 7%.

A form of stamp duty is also payable on insurance policies and motor vehicle registration.

Land tax

All States and Territories, with the exception of Northern Territory, impose land tax, which is an annual tax primarily assessed to the owner of land, but can be secondarily assessed in some circumstances (eg beneficiaries of trusts). The tax is broadly levied on the unimproved value of taxable land. Land tax is subject to various thresholds and exemptions as provided under the legislation of each jurisdiction, with the largest exemptions being for a principal place of residence, farmland and charities.

Foreign Surcharges

All States and Territories, with the exception of Northern Territory, impose a form of foreign surcharge either as an additional rate of stamp duty or an additional rate of land tax (or both). Foreign surcharges apply to individuals who are not Australian citizens, or who are foreign or foreign "controlled" entities, noting that "control" can be as small as 20% and there are special rules for discretionary trusts. There are some exceptions for New Zealand citizens who are in Australia and Australian permanent residents. Surcharges often more than double the stamp duty or land tax which is otherwise payable by Australian citizens.

Tax treaties

Australia has entered into a large number of double taxation agreements with other countries to avoid international double taxation and to prevent fiscal evasion. The agreements set out the source country tax limits applicable to various forms of income including unfranked dividends, interest and royalties.

Foreign Account Tax Compliance Act (FATCA)

In April 2014, the Australian government signed an IGA with the United States in relation to the implementation of FATCA.

Australia has since enacted legislation to give effect to the IGA requiring Australian financial institutions to collect information about their customers that are likely to be taxpayers in the United States, and report that information to the ATO. The Australian Commissioner of Taxation will then pass this information on to the US Internal Revenue Service (IRS).

Australia's obligations under the agreement apply to FATCA 'reportable accounts' maintained on or after 1 July 2014.

Labour

Australian employment conditions

Australia has a well-developed employment system, designed to provide flexibility and certainty to both employers and their employees. This system is subject to Australian, and state and territory government requirements.

The central elements of this system include a set of national standards of employment for all Australian employees, occupational health and safety regulations, and superannuation (pension) payments. The Fair Work Ombudsman (FWO) and The Fair Work Commission (FWC) are the two key organisations in Australia's workplace relations system.

Forms of employment

Workers can be employed in a number of different forms in Australia. Each provides different levels of flexibility and stability for employees and businesses, and will impact on the employment agreement and type of entitlements that may apply. Workers can be either an employee or contractor.

Employers should consider which forms of employment best suit the needs of the business and its employees when deciding on which basis to recruit employees.

Typical employment standards

All employees in Australia are entitled by law to the terms and conditions defined by national employment standards. Certain entitlements apply to casual employees.

These standards cover entitlements such as weekly working hours, requests for flexible working arrangements, leave and related entitlements, and termination and redundancy payments.

Australian occupational health and safety

Employers in Australia are required to maintain a safe workplace and meet Australian occupational health and safety requirements. These requirements also ensure employers are appropriately represented in the case of a workplace incident.

In addition to Australian Government legislation, state and territory laws govern occupational health and safety. A workplace authority in each state or territory provides advice on business' obligations and the relevant policy.

Workers' compensation system

Employers in Australia are required to maintain a safe workplace and to maintain workers' compensation insurance in the event of a workplace incident. This system is administered by the Australian Government.

In addition to Australian Government legislation, state and territory laws govern workers' compensation. A workplace authority in each state or territory provides advice on business' obligations and the relevant policy.

Australian Superannuation (Retirement Pension)

Superannuation is money set aside over the employee's lifetime to provide for their retirement. Under Australian law, most employees are entitled to have superannuation payments made on their behalf by their employer. These payments are in addition to wages.

The Superannuation Guarantee law requires that all eligible employees receive a minimum superannuation payment per quarter, payable by their employer into the individual's nominated superannuation account in a complying superannuation fund.



Audit

Accounting standards

Australia has a “reporting entity” concept, which underpins the financial reporting requirements. A reporting entity must apply all Australian Accounting Standards. Companies that are non-reporting entities must adhere to certain Australian Accounting Standards, in accordance with the requirements of Chapter 2M of the Corporations Act 2001.

Australia adopted International Financial Reporting Standards (IFRS) on 1 January 2005.

The Financial Reporting Council’s (FRC) directive to the Australian Accounting Standards Board (AASB) has resulted in the adoption of IFRS through the Australian equivalents of International Financial Reporting Standards (AIFRS). This ensures greater transparency and understanding of financial reports between nations.

Accounting records

Small proprietary companies

A small proprietary company does not have to prepare an annual financial report or have it audited in accordance with the Corporations Act 2001, unless:

- It has resolved to apply for relief under ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204 (previously Class Order 98/98) and filed a Form 384 within the prescribed time limit
- It is requested to do so by shareholders holding at least five per cent of voting shares in the company
- It is requested to do so by ASIC
- It is controlled by a foreign company except where the parent company (which must be an Australian company or a registered foreign company) lodges a consolidated financial report covering the Australian subsidiaries
- It is a disclosing entity

Large proprietary companies

A large proprietary company must prepare a financial report and have it audited. The audited report must then be lodged with ASIC.

Foreign companies operating in Australia

When a foreign company has a presence in Australia, it must register with ASIC as a registered foreign company at a cost of AUD488⁴.

These registered foreign companies must lodge a statement of financial performance, statement of financial position and a statement of cash flows with ASIC on an annual basis. This incurs an annual filing fee of AUD1,224. This can be lodged in the foreign company’s place of origin. However, ASIC has the power to request information be prepared under Australian Accounting Standards.

Audit requirements

The reporting requirements for proprietary (private) companies differ between small and large proprietary companies.

For financial years commencing on or after 1 July 2019, a small proprietary company is a company that satisfies at least two of the following tests:

- The consolidated gross operating revenue for the financial year of the company and the entities it controls (if any) is less than AUD50 million
- The value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than AUD25 million
- The company and the entities it controls (if any) have fewer than 100 employees at the end of the financial year

Large proprietary companies must prepare and lodge audited financial statements with ASIC. Small companies are only required to do this in certain circumstances such as if they are requested by ASIC.

Relief from audit is available for large and small proprietary companies that are controlled by a foreign company, subject to meeting certain conditions.

All listed and public interest entities are subject to audit and filing requirements. This includes holders of financial service licences.

⁴ Current as at 04-07-2018

Trade

Foreign Direct Investment

The Foreign Investment Review Board (FIRB) approves most foreign investment in Australia unless the investment is judged to be contrary to national interest. Foreign acquisitions and takeovers legislation applies to most examinable proposals and provides penalties for non-compliance.

Proposed acquisitions above thresholds or involving certain types of assets must be reported to the FIRB irrespective of the value or nationality of the investor.

Generally speaking, the Australian Government raises no objections to proposals above the notification thresholds where the relevant total assets/total investment is below AUD53 million.

Investment is restricted in some categories of real estate, banking, civil aviation, airports, shipping and telecommunications. Non-residents are generally only able to acquire residential property where the property is new or in cases of vacant land being sold with a non-resident who intends to develop the land. Sales of 'off the plan' residential property are usually permitted where no more than half of the development is purchased by non-residents. Temporary residents can acquire existing residential property on the proviso they sell the property when they return home.

Government incentives

Financial incentives are available to exporters, or potential exporters to:

- Develop export markets
- Provide export credit insurance
- Provide general consultancy and advisory services

Such incentives include taxable cash grants under the Export Market Development Grants (EDMG) scheme to Australian residents who seek out and develop overseas export markets for their goods, specified services, industrial property rights and/ or know-how.

The Export Finance and Insurance Corporation (EFIC) offers a wide range of insurance, guarantee and finance facilities to Australian exporters that are not generally available to commercial enterprises.

Austrade is a government agency that provides investment services to Australian companies, international buyers and investors. Services it provides to international investors include:

- Provides information on the country's investment environment and opportunities
- Assists international companies to source goods and services from Australia
- Identifies investment projects and alliance possibilities
- Assists with investment approval process
- Supports feasibility studies

Imports

Import and export controls

Tariffs, anti-dumping measures, import licensing and quarantine restrictions may apply. Over the last few years Australia has entered into a number of regional and bilateral free trade agreements. In addition, to implementing an evolving trade facilitation program called the Australian Trusted Trader program. Which is designed to reduce the red tap often associated with cross-border trade which helps to improve the follow of goods into Australia.

Generally speaking, the Australian Government raises no objections to proposals above the notification thresholds where the relevant total assets/total investment is below AUD53 million.

Finance

Capital markets

Australia has a number of capital raising mechanisms that can be accessed through the utilisation of various capital markets including:

- Equity markets
- Hybrid security markets
- Futures markets

The primary Australian equity market is the Australian Securities Exchange (ASX), which has a public database of over 2,200 companies. The current domestic market capitalisation of companies listed on the ASX is around AUD1.5 trillion.

Entities seeking quotation on the ASX must comply with either a net tangible assets test (>\$4m), market capitalisation test (>\$15m) or a profit test (>\$1m total last 3 years and >\$500k last 12 months) and meet the following conditions:

- Number of shareholders: spread of at least 300 non-affiliated shareholders with a minimum holding of AUD2,000 each and in aggregate no less than 20 per cent held by unrelated parties
- Financial statements: financial statements for the last three financial years (if any), the half-year (if any) and a reviewed pro forma balance sheet
- Disclosure document: a prospectus or product disclosure statement (PDS) or, if the ASX consents, an information memorandum (IM)

Companies listed on the ASX are regulated by the ASX Listing Rules and the Corporations Act 2001.

Other capital markets

Australia has a domestic capital market comprising financial markets that facilitate the issue and trading of debt and equity securities by resident companies in Australia. The domestic capital markets include a commercial paper market and a medium-term, fixed margin corporate debt market for a variety of instruments including bonds, or other financial instruments issued by companies, central and local Government utilities and state-owned enterprises.

Australia also has a formal futures market on the ASX that trades currency, interest rate contracts and options.

Banking system

Australia has a highly developed banking system with major Australian and international banks being well represented throughout the country. Banks offer cheque, direct transfer, internet, telephone and point of sale (EFTPOS) banking services.

ASIC has responsibility for market integrity and consumer protection as well as the regulation of investment banks and finance companies.

The Reserve Bank of Australia implements the Government's monetary policy with the aim of stabilising prices within a defined target inflation bracket that currently sits at two to three per cent per annum.

Insurance industry

The Australian insurance industry provides a diverse range of insurance to individuals and businesses ranging from property through to health and life insurance. The Australian Prudential Regulation Authority (APRA) is the prudential regulator of the industry, with licenses to write most classes of insurance being issued by APRA. The insurance industry is also regulated by ASIC; its role is to ensure insurers operate efficiently, honestly and fairly.

This industry plays a fundamental role in the Australian economy, alleviating the public pressures from the shifting of financial claims from the private sector.

Investment management industry

Australia's investment management industry is one of the fastest growing in the world, fuelled by the compulsory superannuation guarantee charge. The principal regulator is Australia Securities and Investment Commission (ASIC), who is responsible for registration, licencing and compliance within Australia's financial sector.

Recognising the strategic importance of financial services, a number of reforms have been implemented to position Australia as a major financial services centre within the Asia Pacific region. Participants in the industry include Commonwealth/Colonial Group, Macquarie Bank Group and BT Financial Group.

Infrastructure

Australia's buoyant economy, growing population and increasing freight volumes are creating high demand for new infrastructure and opening up major opportunities for international investment. Infrastructure is important for Australia because of its size, the geographical dispersion of its population and production centres, and its remoteness from other markets.

Infrastructure development is a priority for the Australian Government, which welcomes foreign investment. The country's strong economic credentials, transparent business environment and substantial pipeline of projects provide the ideal conditions for companies to finance, construct, own and operate major infrastructure assets.

The Government has committed AUD50 billion for a capital program to upgrade the country's transport network between 2013/14 and 2019/20 onwards. Contributions from state and territory governments and the private sector will bring the total value of infrastructure investment to AUD125 billion.

Infrastructure represents a significant sector in the Australian economy, with over AUD9.3 billion of capital expenditure relating to infrastructure projects in the 2014/2015 financial year.

In some cases, the cost of using the service provided by an infrastructure asset is borne by the users of the service and not by the taxpayer.

Key stakeholders in the industry include Federal Government, State Governments, private sector, Infrastructure Australia and the Regional Infrastructure Fund.

The private sector has played a critical role in helping develop, construct and fund Australia's major infrastructure. The private sector's contribution to the country's infrastructure has grown from 15 per cent in 1990 to 50 per cent in 2012. As Australia looks to build new infrastructure, renew ageing facilities and privatise assets, international firms can choose from a wide range of investment opportunities and partnership and investment structures.

Public Private Partnerships

The Australian government has a 25-year history of embracing Public Private Partnerships (PPPs). PPPs first gained popularity in Australia during the late 1990s, and since then the number and size of PPP transactions have experienced strong growth.

Essentially, PPPs are a procurement method and form of transaction involving private sector delivery of assets and

services to the public sector. PPPs involve a contract between a public sector authority and a private party, in which the private party provides a public service and assumes substantial financial, technical and operational risk in the project.

PPPs entail a number of benefits for the economy as a whole, including:

- Reducing initial capital cost for government and providing capacity to accelerate infrastructure delivery
- Enabling outsourcing of maintenance and asset management to ensure facilities stay in near new condition
- Enabling optimal risk transfer to the party best able to manage particular risks (eg risk analysis process)
- Encouraging innovation and continuous improvement from the private sector participants in delivery of assets and services
- Creating "value for money" propositions for both end users as well as the Government

The year 2020 continued to be a busy period for infrastructure in Australia, with many PPPs in the tender process, several reaching financial close and more reaching completion of construction. Transport sector leads the PPP market in the country in both number of projects and investment volumes. Social & Health and Water & Waste share the remaining part of the market.

Furthermore, in respond to the covid-19 pandemic, various Australian governments have announced infrastructure stimulus programmes in the transition from its respond to the health crisis and into the next stages of economic recovery.

Privatisations

Australia has a strong track record of opening up public assets for privatisation. Since the 1990s, Australian governments have selectively divested existing infrastructure assets to "recycle capital" for new infrastructure projects or to reduce Government debt. The next infrastructure boom will be dominated not by brownfield or greenfield development but by asset disposal programs. The bulk of disposals will be the privatisation of state- owned assets.

Asset sales have included seaports and airports, electricity transmission and distribution, gas pipelines, water, rail and telecommunications. Recent privatisations include Hobart Airport, Port of Brisbane, Queensland Rail, the Sydney Desalination Plant, Port Botany, Port Kembla and Port of Newcastle. A 2012 study by Infrastructure Australia identified up to AUD219 billion in publicly owned assets that could potentially be privatised.



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