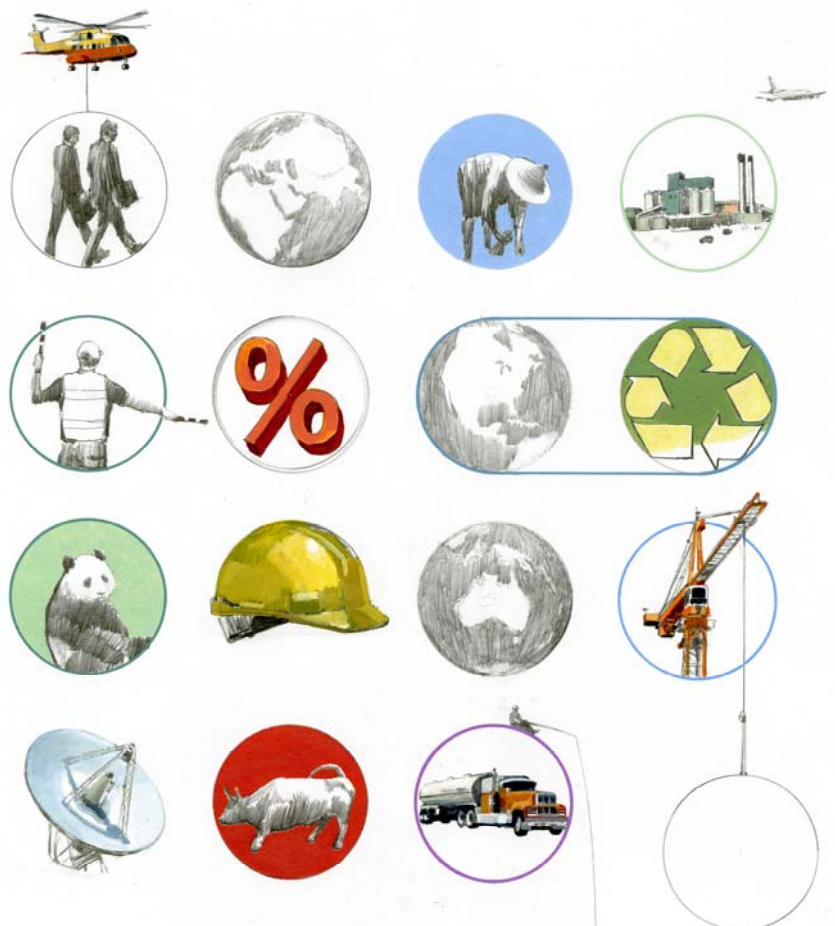


Doing business in Australia

July 2010



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Foreword

Grant Thornton International is one of the world's leading international organisations of independently owned and managed accounting and consulting firms providing assurance, tax and specialist advice to privately held businesses and public interest entities.

Member firms focus on helping businesses reach their commercial goals by providing practical, customised solutions and identifying and pursuing business opportunities domestically and internationally.

Member firms throughout the international organisation demonstrate thought leadership to the accountancy profession and business community.

Grant Thornton member firms operate in over 110 countries in more than 520 offices worldwide. They share a commitment to providing the same high quality service to their clients wherever they do business.

Experienced professionals combine invaluable local market knowledge with technically advanced systems to help businesses prosper in today's highly competitive international markets.

Australia is one of the most attractive business locations in the world and is a strategic location for multinational companies targeting market opportunities in the Asia Pacific region.

Australia welcomes foreign investment and is a relatively easy country in which to do business. Nevertheless, it is essential that prospective investors obtain advice concerning regulatory, legal and cultural issues arising from the conduct of business in Australia. If you require any further information, please do not hesitate to contact your nearest Grant Thornton office.

This guide has been prepared for the assistance of those interested in doing business in Australia. It does not cover the subject exhaustively but is intended to answer some of the important, broad questions that may arise. When specific problems occur in practice, it will often be necessary to refer to the laws and regulations of Australia and to obtain appropriate accounting and legal advice.

This guide contains only brief notes and includes legislation in force as of **July 2010**.

Grant Thornton in Australia

Grant Thornton Australia Ltd is one of Australia's leading accounting, tax and business advisory firms dedicated to serving the needs of privately held businesses and public interest entities.

As a member firm of Grant Thornton International we are able to combine the knowledge and experience of our local marketplace with the technologies, methodologies and specialist resources of a professional services organisation at the forefront of the global accounting profession.

Grant Thornton Australia has offices in Adelaide, Brisbane, Perth, Melbourne, and Sydney.

Our range of services includes:

- audit and assurance
- tax compliance and advice (including international tax)
- privately held business
- corporate finance
- recovery and reorganisation services
- business transformation
- wealth advisory services
- business risk services
- other specialist services such as litigation support, forensic accounting and motor dealer services

Country profile

Geography and demographics

Australia is the largest island in the world. Located in the Asia-Pacific rim, Australia covers an area of 7.6 million square kilometres and is similar in size to the United States of America. With a population of over 22 million, mainly situated on the east coast, Australia is a multicultural country with a large immigrant population, particularly in the major cities.

The vast area of Australia means there are two basic climates. The south is a temperate climate with summer from December to March and winter from June to August. The north is a tropical climate with a wet season from November to April and the dry season from May to October.

International airports are located in Sydney, Melbourne, Brisbane, Adelaide, Perth, Darwin, Townsville and Cairns. Canberra does not have an international airport, however it is only a 30-minute domestic flight from Sydney.

Language

English is the national language. The population is diverse, and 21% of the population now fluently speak a language other than English at home.

Visas

If you are not an Australian citizen you will need a visa/Electronic Travel Authority (ETA) to enter and spend time in Australia. The type of visa required will depend on your country of origin, the intended length and nature of your stay.

With the exception of New Zealand citizens traveling on New Zealand passports, all foreign nationals must obtain a visa or ETA before traveling to Australia.

For more detailed information on this topic you should visit the Australian Department of Immigration and Citizenship online: <http://www.immi.gov.au/media/fact-sheets/index.htm>

Political system

The Australian political system is very stable. It is a federal system of government within which there are four divisions: Commonwealth, state, territory and local government. 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 Northern Territory). Legislative power is vested in a parliamentary system of representatives elected to Commonwealth and State governments.

The Federal Parliament is divided into a “lower” house (House of Representatives) and an “upper” house (Senate). Its responsibilities include 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.

Legal system

The Australian legal system is developed from British Law. There is a system of courts 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 in their own court systems.

Law enforcement responsibilities are shared between the Federal and State police forces.

Privacy legislation regulates the manner in which private sector organisations can collect, use, keep, secure and disclose personal information. The two sets of regulations that have been issued are the Privacy (Private Sector) Regulations 2001 and the Privacy Regulations 2006.

Business hours

Normal business hours are at a minimum 9am to 5pm from Monday to Friday, although many businesses will operate from 8am to 6pm. Many retailers are also open on weekends and one or more evenings. Trading is permitted on all days, with the exception of Good Friday, Easter Sunday, Christmas Day and until 1pm on Anzac Day. Certain businesses may ignore those restrictions. Banks are generally open from 9.30am to 4.00pm Monday to Friday.

Economy

Australia has a relatively deregulated and open economy.

Major industries include property and business services, manufacturing, wholesale and retail trade, finance and insurance, construction, health and community services, transport and storage, mining, education, distribution, and agriculture.

Major imports include machinery and transport equipment, mineral fuels, lubricants, machinery, and chemicals

Major exports are derived from the mining, manufacturing, service and agricultural sectors.

Principal trading partners **include Japan, USA, China, South Korea, New Zealand and United Kingdom.**

Economic growth

Australia’s economic growth rate since 1990 has averaged 3.3% per annum. This is a level that reflects a strong domestic economy backed by a strong resources sector. Forecast economic growth for 2010-11 is 3.25%.

Australia has not been severely impacted by the global financial crisis and the fundamentals remain strong by world standards. It is worth noting that:

- in the previous year, Australian Bureau of Statistics estimates showed Australia grew by 2.75% in Real GDP
- federal and state government budgets are in deficit. The fiscal outlook is for a Federal Budget deficit of \$40.8 billion for the 2010/11 financial year with the aim to return to surplus in 2012/13
- inflation rose to it's highest in 16 years at 4.2% in 2008; however the rate currently stands at 2%
- interest rates are around 6-8% for the business and household sectors

Other factors to be considered due to their potential to impact Australia's economic landscape over the next 12 to 18 months are:

- probably the largest risk for the Australian economy is the level of credit growth. Increasing house prices has resulted in borrowings of record levels. Further rises in interest rates or house prices would impact on consumer spending and repayments
- over the past few years, the Australian dollar has strengthened against the American dollar. The strengthening Australian dollar has made Australia's exports less attractive, but this has been partly offset by strong global demand for commodities, especially from China
- exports are expected to grow to 5% of GDP from 1.5%, and imports set to increase from 5% to 9% for 2010/11
- official cash rates are presently 4.50% p.a. after recent rises by the Reserve Bank of Australia, largely driven by concern over the increased activity with the Australian economy, a strong demand for housing and the aim of returning to a stable level of activity
- presently 10-year Commonwealth bond yields are at approximately 5.1% pa
- the short-term outlook for the world economy looks like it will be favourable to further growth in Australia. Longer term forces, driven by the emergence of China and India, are having some significant effects on Australia's direction of trade, and on relative prices. This has given a significant boost to aggregate incomes and spending. At the same time, it has posed some challenges for manufacturers, although export-oriented manufacturers have managed to continue to grow their businesses in recent years

Employment levels

- the unemployment level is currently at 5.2%.
- unemployment expected to decrease to 5% with wage inflation to increase to 3.75% for 2010/11
- employment levels are at an all time high: participation rate is 65.5%

Living standards and cost of living

The average cost of living in Australia is moderate compared to Western Europe standards and the standard of living is high. With recent global events a slow down in economic activity meant a slow

down in demand. With activity beginning to increase again as well as increases in interest rates Australians are beginning to feel the effects of these changes through mortgage repayments. Home ownership is relatively high and a high demand for housing has meant inflated pricing in many areas of Australia.

Regulatory environment

Restrictions on foreign investment

The Foreign Investment Review Board (FIRB) approves most foreign investment in Australia unless the investment is judged to be contrary to the national interest. Foreign Acquisitions and Takeovers legislation applies to most examinable proposals and imposes penalties for non-compliance. The FIRB Monetary Thresholds apply in either the US and non-US categories.

All proposed acquisitions involving the following must be reported to the FIRB irrespective of the nationality of the investor:

- all vacant land
- all residential real estate
- all accommodation facilities, such as hotels, motels, hostels and serviced apartments
- all shares/units in urban land corporations or trust estates
- all direct investments by foreign governments or their agencies

For all other acquisitions involving non-US investors, the FIRB Monetary Thresholds are:

- over A\$10 million for proposals to establish new businesses
- over A\$5 million for developed non-residential commercial real estate where the property is subject to heritage listing
- over A\$50 million or more where the property is not subject to heritage listing
- over A\$231 million for an interest in an Australian business
- over A\$200 million for offshore takeovers

For all other acquisitions involving US investors, the FIRB Monetary Thresholds are:

- over A\$231 million for an interest in Australian business where the business operates in sensitive sectors as listed in the Australian-United States Free Trade Agreement (AUSFTA) or where the acquirer is controlled by the US government
- over A\$200 million for offshore takeovers involving AUSFTA sensitive sectors or where the acquirer is controlled by the US government
- over A\$1,004 million for all of the following:
 - an interest in an Australian business not operating in a sensitive sector under AUSFTA where the acquirer is not controlled by the US government
 - developed non-residential commercial real estate where the acquirer is not controlled by the US government

Sensitive sectors under the AUSFTA include:

- media
- telecommunications
- transport and transport infrastructure
- suppliers of training, human resources, military goods or equipment to the Australian military
- suppliers of technology or equipment able to be used for military purposes
- development or supply of encryption, security technology and communications systems
- the extraction of uranium or plutonium
- the operation of nuclear facilities

Generally speaking, the Government normally raises no objections to proposals above the notification thresholds where the relevant total assets/total investment is below A\$50 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 on developing 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 that they sell the property when they return home.

Competition rules/consumer protection

There are controls against restrictive trade practices. For example, anti-competition, consumer protection, and resale price maintenance.

Import and export controls

Tariffs and anti-dumping measures exist, although Australia has recently entered into free trade agreements with, amongst others, Singapore, the United States of America and Thailand.

Exchange control

There are no exchange controls or reporting requirements for the transfer of funds into or out of Australia. However, financial institutions report cash transactions in excess of A\$10,000.

Business incentives

Government incentives for business

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

- to develop export markets
- to introduce innovative replacements for rural export or import products
- to promote participation in tenders for international projects
- to provide export credit insurance
- to provide general consultancy and advisory services

Such incentives include taxable cash grants under the Export Market Development Grants Scheme (EDMG) 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.

Other financial incentives

In addition to the incentives for exporters noted above, there are various other incentives available to businesses including:

- grants for research and development projects in small to medium sized enterprises
- funding to encourage collaborative research and development between industry and research organisations
- funding where companies employ a graduate from a public sector research institution
- concessional loans to small companies that undertake early commercialisation of technical innovation in goods, systems and services
- an Innovation Investment Fund to help small, technology based companies access equity finance (venture capital)

Fiscal incentives

Tax incentives apply to:

- investment companies that provide equity capital for small to medium sized firms and are registered as a Pooled Development Fund (PDF)
- infrastructure borrowings by companies to be used in financing the construction of infrastructure facilities (being land transport, sea port, or electricity-generating facilities in Australia and used by the public for a charge) that such companies intend to own, use, or control for 25 years
- companies incorporated in Australia, public trading trusts and partnerships of eligible companies that carry on eligible research and development activities are entitled to a concessional tax deduction of 125% for the research and development expenditure (refer below for further details)
- expenditure on patents, copyrights and designs
- expenditure on environmental impact studies
- capital expenditure for the investment in approved Australian films
- expenditure incurred for environmental protection purposes
- capital expenditure incurred on the construction of new buildings used for the purpose of producing assessable income or for research and development purposes

Research and development expenditure

Australian companies that incur expenditure on, or related to, research and development (R&D) may qualify under section 73B of the Income Tax Assessment Act (ITAA) 1936 for a special deduction of up to 125% of the expenditure. Furthermore:

- an additional 50% deduction is available to certain companies that have increased their R&D expenditure over the previous three years
- a refundable tax offset (rebate) is available to certain companies as an alternative to claiming deductions for R&D expenditure

For the purposes of the ITAA, research and development activities are:

- 1 Systematic, investigative and experimental activities that involve innovation or high levels of technical risk, and are carried on for the purpose of either:
 - a Acquiring new knowledge (whether or not having a specific practical application)
 - b Creating new or improved materials, products, devices, processes or services (these are core activities)
- 2 Other activities that are carried on for a purpose directly related to the carrying on of the core activities referred to in (a).

To qualify for the deduction, a company (including a company in partnership, or syndicate member that was registered on or approved by 24 July 1996 or qualified under transitional arrangements) must be registered in relation to the income year with the Industry Research and Development Board (IR&D Board) under the Industry Research and Development Act (IRD Act). Applications to register must be made within ten months of the end of the income year and must be made annually.

R&D is deductible under section 73B at the 125% rate only if the “aggregate research and development amount” is greater than \$20,000. Where the R&D is undertaken by a partnership or syndicate, the expenditure is taken to be individually incurred proportionally by each partner, meaning that a partner’s share of expenditure will need to exceed \$20,000.

Where a company is unsuccessful in registering with the IR&D Board or fails to meet the \$20,000 expenditure threshold, the R&D expenditure may still qualify for a general income tax deduction where the R&D relates to the company’s business.

The three primary categories of expenditure covered by research and development expenditure are:

- contracted expenditure
- salary expenditure
- other expenditure incurred directly in respect of R&D activities carried on by or on behalf of the company

The following types of expenditure are excluded from the definition of “research and development expenditure”, although they may still qualify for some R&D concessions:

- core technology expenditure
- interest expenditure
- feedstock expenditure
- expenditure incurred in the acquisition or construction of plant or pilot plant

The following activities are excluded from attracting any R&D concessions although may still qualify for an income tax deduction under other provisions:

- market research, marketing testing or market development or sales promotion
- quality control
- pre-production activities
- prospecting, exploring or drilling for minerals, petroleum or natural gas
- cosmetic or stylistic changes to existing commercial products, processes or production lines

- routine data collection unless the activities are part of the R&D process
- preparation for teaching
- commercial, legal, and administrative aspects of securing patents, copyrights, or licenses
- standardisation and standards compliance
- specialised routine medical care, such as pathology services
- researching involving arts, humanities or social sciences
- efficiency surveys and management studies
- duplication of existing commercial products or processes
- donations to research institutions

Activities carried on by way of the development of computer software are not taken to be systematic, investigative and experimental activities unless the computer software is developed for the purpose of sale, rent, licence, hire, or lease to two or more non-associates of the company.

Other incentives

There are also a number of employment related incentives including:

- workforce assistance programs are provided free of charge to both job seekers and employers through a network of numerous employment offices
- a range of tax-exempt rebates to employers and allowances to apprentices required to live away from home to take up or remain in various programs offered by the Commonwealth

A wage subsidy program that provides incentives to employers to employ longer term unemployed persons.

Finance

Currency and banking system

Australia's currency is the Australian Dollar (AUD or A\$1). The exchange mechanism is based on the floating exchange rate.

The banking system is deregulated. The central bank is the Reserve Bank of Australia. The Reserve Bank implements the Government's monetary policy with the aim of stabilising prices within a defined target inflation bracket, currently two to three per cent per annum.

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

Capital markets

Australia has a number of capital raising mechanisms through the utilisation of various capital markets such as:

- equity markets
- various hybrid security markets
- futures markets

The primary Australian equity market is the Australian Stock Exchange Limited (ASX), which has a public database of over 2,000 companies. The domestic market capitalisation of companies listed on the ASX is A\$1.65 trillion.

Entities seeking quotation on the ASX must comply with either a net tangible assets test, market capitalisation test, or the profit test and meet the following conditions:

- **number of shareholders** – spread of at least 500 public shareholders with a minimum holding of A\$2,000 each **or** 400 public shareholders with a minimum holding of A\$2,000 each and, in aggregate, no less than 25% held by unrelated parties
- **financial statements** – financial statements for the last three financial years (if any) plus the half-year (if any) plus reviewed pro forma balance sheet

- **disclosure document** – a prospectus or product disclosure statement (PDS) or, if the ASX consents, an information memorandum (IM) is required

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

Australian Securities and Investments Commission

The Australian Securities and Investments Commission (ASIC) enforce and regulate company and financial services laws to protect consumers, investors and creditors.

An independent Australian government body, ASIC has regulated financial markets, securities, futures and corporations since January 1991. From 1998, ASIC became responsible for consumer protection in superannuation, insurance, deposit taking and, from 2002, credit.

ASIC has the following roles and responsibilities:

- enforces and regulates company and financial services laws to protect consumers, investors and creditors
- keep the public informed of these matters through media releases and their annual report
- they are required to uphold the law uniformly, effectively and quickly promote confident and informed participation by investors and consumers in the financial system
- make information about companies and other bodies available to the public
- improve the performance of the financial system and the entities within it

Other capital markets

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

Australia also has two formal futures markets, The Australian Stock Exchange Derivatives and Sydney Futures Exchange Limited, which trade currency, interest rate contracts and options.

Alternative Investment Market (AIM)

The ASX is a designated member of the worldwide stock exchanges, which has been approved by the London Stock Exchange (LSE)'s AIM board for fast track and dual listing.

Business entities

Structure of business organisations

There are many business structures available in Australia such as:

- Sole trader
- Partnership
- Trust (discretionary, unit, or hybrid)
- Company
- Joint venture (incorporated or unincorporated).

Limited liability companies

There are essentially two main types of limited liability companies being:

- public companies (listed or unlisted)
- proprietary private companies.

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

A proprietary company is a company that is limited by shares or an unlimited company that has a share capital; has no more than 50 non-employee shareholders; and must not engage in any activity that would require the lodgement of a prospectus.

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

	Public	Private
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

Also required, common to both forms of company:

- at least one company secretary must be appointed and 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, making annual filings, etc
- audited accounts (where applicable) and an annual return must be filed and are available for public inspection

A listed public company must comply with listing requirements set down by the Australian Stock Exchange.

Foreign companies that do not carry on business in Australia may establish a presence through a representative or marketing office.

Most foreign companies must register a branch in Australia with the Australian Securities and Investment Commission (ASIC) and disclose certain financial information.

Subsidiaries – corporations

Establishing a corporation

To create a subsidiary in Australia, a foreign business can either incorporate a new company or purchase a shelf company, which is a company that has been recently incorporated and is purchased “off the shelf”.

Capital stock and shareholders

Private and public companies only require one shareholder as a minimum, with 50 shareholders a maximum for private companies while there is no limit on the number of shareholders for public companies.

Management and officers

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

Once a foreign company is registered, it is required to lodge a full set of financial accounts with ASIC on an annual basis, as well as lodging any documents required by law in the company’s place of origin.

Each company will also have its own “review date”, where the company will be required to review its corporate secretarial details and declare that it is solvent. Companies will also have to pay an

“annual review fee” to ASIC within two months of this date, with the fee being A\$218 for proprietary companies and A\$1,000 for public companies.

Dissolution

A company is dissolved by a process known as “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 A\$1,000 and no further liabilities may be deregistered with the Australian Securities and Investments Commission. This process is simple, however care must be taken as protection for directors is limited.

Foreign company branches

Establishing a foreign company branch

To establish a foreign branch, it is necessary to register as a foreign company in Australia with the ASIC. A company must first ensure that their name is reserved in Australia and approved, complete the relevant application form and lodge this with ASIC which will incur a fee of A\$412.

Local subsidiaries (wholly owned companies)

Another alternative is to 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.

Sole proprietorships

Establishing a sole proprietorship

To establish a sole proprietorship it is only necessary to apply for an Australian Business Number (ABN). This number is required to be quoted when dealing with customers and suppliers. This number can be easily obtained from the Australian Business Register web site.

Partnerships

General partnerships

General partnerships are a relationship that exists between two or more parties carrying on a business in the view to profit. Profits, losses and liability 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 they are effectively treated as companies.

Establishing a partnership

To establish a partnership the 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 Australian Business Number (ABN) in order to trade with other entities.

Joint ventures

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

Trusts

A trust is a relationship that exists when property or income is held in trust by a trustee for the beneficiaries. The trustee oversees the running of the trust, which must follow the rules of the particular trust deed. The most common types of trust are discretionary, unit or hybrid trusts. Discretionary trusts allow the distribution of income to go to the trustee's choice of recipients, given the beneficiaries outlined in the trust deed. A unit trust must distribute income to the unit holders in fixed proportions to their holdings. A hybrid trust is a combination of the two above.

Income that is retained and taxed in a trust is taxed at Australia's highest marginal rate of tax.

Labour

Summary

Standard employment is Monday – Friday, 38 hours per week.

Employment is usually based either on an award/enterprise bargaining agreement. These are a set of minimum conditions and pay rates negotiated by unions or employees of a company respectively. The alternate is a contract between employer and employee.

Each State and Territory of Australia has legislation covering all aspects of the labour market. This legislation can differ across states.

Wages

In 2010 the minimum wage in Australia for adults is A\$15 per hour.

Social security

The Australian Federal Government provides a variety of social security benefits to citizens and permanent residents of Australia. These are funded through general taxation; there is no specific taxation to raise funds for these benefits.

Superannuation

All employers are legally obliged to make superannuation contributions on behalf of their employees. The current rate of contribution is set at 9% of payroll with intentions of increasing this to 12% progressively until 2019-20.

Fringe benefits

Non-cash benefits are subject to a Fringe Benefit Tax (FBT) **that is borne by employers, not employees**. Examples of benefits that are subject to FBT include the provision of private health care, the use of motor vehicles provided by the employer, subsidised meals and loans at concessional rates of interest.

Long service leave

Entitlements vary by state but all are around two months of paid long service leave which accrues after ten years of service. Further leave accrues at the same ratio every five years.

Holiday leave

Annual leave entitlements are determined by the award/enterprise bargaining agreement or the individual's contract. At a minimum, four weeks of paid annual leave is provided to employees per annum. Some awards also provide for an additional leave loading of 17.5% be paid on holiday pay.

Any unused leave is usually paid out when the employee leaves the company. Generally, most employees are entitled to 20 days annual leave per annum in addition to public holidays.

Personal leave

At a minimum, employees are entitled ten days 'personal leave' per year which can be taken for medical reasons, including to care for a sick family member. However awards/enterprise bargaining agreements may apply to increase the amount of personal leave or sick leave an employee is entitled to. While personal leave or sick leave can be accumulated it is not usually paid out when an individual ceases employment.

Parental leave

The Australian Fair Pay and Conditions Standard (the Standard) provides for a maximum of 52 weeks of unpaid parental leave, shared between both parents at the time of the birth of a child, or the adoption of a child under five years of age. Parental leave can be taken as maternity, paternity or adoption leave.

Parental leave provisions apply to all full-time, part-time and eligible casual employees with at least 12 months continuous service with their current employer.

As of 1 January 2011, the Australian Government has introduced a paid parental leave scheme. Eligible parents will be entitled to 18 weeks leave paid at the minimum wage, currently \$570 a week. The Scheme is to be funded by the Australian Federal Government.

Occupational health and safety and workers' compensation

There are strong occupational health and safety (OH&S) laws in each state. The basis of these is that all employees and visitors to an employers place of business are provided with a safe environment in which to conduct their employment.

There are significant penalties for both the employing entity and individuals if the occupational health and safety laws are contravened.

All employers are obliged to hold workers compensation insurance. The insurance covers all staff whilst they travel to and from work and whilst carrying out their duties at work.

Healthcare

There is a national healthcare system called Medicare. It is available to all residents and permanent citizens of the country. There are reciprocal agreements available for visitors from some countries. The full list of eligible countries can be found at:

http://www.medicareaustralia.gov.au/yourhealth/going_overseas/vtta.shtml

Private health cover is available from a number of Government and private enterprises. There are a number of different levels of private health insurance, which can be selected to suit the individual's preferences and requirements.

Employment protection legislation

All employees are protected by legislation. The intention of the legislation is to ensure that all employees are treated fairly. The main issues covered are:

- entitlements to lump sum redundancy payments
- protection against all forms of unfair dismissal
- the establishment of appropriate grievance procedures.
- from 1 January 2010, ten minimum National Employment Standards (NES) were introduced. These standards cover aspects such as hours of work, redundancy, various forms of leave entitlement and fair work standards.

Unions

Around 22% of the fulltime workforce in Australia is unionised.

Personnel limitations - foreigners/nationals

A visa or permit to work in Australia is not required where a person is:

- an Australian citizen or a Australian Permanent Resident
- a New Zealand citizen, or a resident who holds a current New Zealand resident return visa

There are a number of different types of work visas available depending upon the length of time that a person wishes to stay. Generally a short-term business visa covers business trips of up to three months. This can either be applied for at the local Australian embassy or, alternatively, electronically. The electronic travel authority (ETA) is only available for citizens of some countries. The full list of eligible countries can be found on the Department of Immigration website: <http://www.immi.gov.au/>

If a longer-term visa is required one can either apply for themselves or be sponsored by a company. In any event, a person must:

- provide evidence of an offer of employment
- have sufficient funds for accommodation, maintenance and repatriation on termination of employment
- be of good health and of good character

Visitors may obtain work visas for up to four years from the date of arrival depending on the length of time stated in the offer of employment.

Employers in Australia who wish to recruit from overseas must provide evidence that there is no Australia citizen or resident available that is:

- suitably qualified by training and experience to do the job offered
- readily able to be trained to do the job

All employers wishing to employ foreign workers or students to work in Australia must comply with all relevant employment and labour law in force in Australia.

Financial reporting and audit

Summary

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

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 A\$25 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 A\$12.5 million
- the company and the entities it controls (if any) have fewer than 50 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. For example, if requested by ASIC.

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

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 is requested to do so by shareholders holding at least 5% of voting shares in the company
- it is requested by ASIC
- it is controlled by a foreign company (except where the foreign company lodges a financial report covering the Australian subsidiaries) or
- 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 be lodged with ASIC.

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.

Foreign companies operating in Australia

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

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 can be lodged in the foreign company’s place of origin. However, ASIC has the power to request information prepared under Australian Accounting Standards.

Tax

Summary

The tax legislation is complex – you are strongly recommended to seek professional taxation advice before undertaking business transactions in Australia. Both the Federal and State Governments levy direct and indirect taxes.

Main taxes

Federal

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

State

- Stamp duty
- Payroll tax
- Land tax

Income Tax

- the main classes of taxpayers are individuals and corporations
- an Australian resident (company or individual) pays income tax on income from worldwide sources, although some exemptions may apply to some foreign income
- non-resident taxpayers are only subject to Australian income tax on income derived from sources in Australia
- there are special rules for foreign sourced income and foreign tax offsets (formerly foreign tax credits)
- allowable tax losses may be carried forward indefinitely (subject to satisfying certain loss recoupment tests)
- there is specific anti-avoidance legislation as well as an overriding general anti-avoidance provision

Companies

A company is resident in Australia if either:

- it is incorporated in Australia; or
- if not incorporated in Australia, it carries on business in Australia and either its central management and control is in Australia, or it has resident shareholders controlling the voting power

Payments by private companies to shareholders and their associates may be assessed as dividends.

A subsidiary company takes its public or private company status from its parent.

The tax year runs to 30 June but substituted accounting periods may be allowed, particularly where associated with a non-resident parent company.

As part of Tax System changes, a consolidation regime was introduced for 100% Australian owned companies and trusts that have a single Australian head entity (which broadly must be a company, or entity taxed as a corporate entity). This came into effect on 1 July 2002.

Assessable income is generally computed on a derivation basis. In relation to foreign sourced income, the controlled foreign company (CFC) rules may apply to assess accumulated foreign income prior to its remittance to Australia. Please note that the CFC provisions are currently being reviewed, with a Consultation Paper being released by the Australian government on 16 July 2010.

Depreciation allowances on income producing property, plant and equipment (PP&E) are over the useful life of assets, which can be self-assessed or in accordance with tables published by the Australian Taxation Office (ATO).

Liability to tax

A liability to tax arises for residents in respect of all income regardless of source and for non-residents in respect of income derived from sources in Australia.

Tax rates

The company tax rate is 30%. An imputation system exists which allows a company to pay a fully or partially franked dividends (which includes the corporate tax paid by the company as an imputation credit). Rules exist in relation to the streaming of imputation credits to certain taxpayers.

Tax base (differences between book and tax cost base)

The treatment of assets for accounting and tax can differ and thus may result in different cost bases for assets and subsequently differences between book and tax depreciation and profits or losses on disposal. The tax legislation has detailed guidance on determining tax bases for various assets that may not align with accounting treatment.

Australian income tax consolidated group

An Australian income tax consolidated group consists of a single Australian head company (or trust taxed as a company) and all of its 100% owned subsidiaries (including certain trusts). A tax consolidated group will only lodge one annual income tax return which includes the taxable income of all the entities in the group.

Filing of tax returns

Companies file annual returns of their taxable income together with quarterly or monthly Business Activity Statements (BAS), in respect of which tax withholdings and instalments of income tax are payable.

Use of losses

Whilst losses can be carried forward indefinitely, an entity must satisfy general loss recoupment tests (including a continuity of ownership test or failing such, a test which ensures that the same business (or no new business) has been carried on by the loss making entity. Groups that do not form a tax consolidated group for Australian tax purposes cannot transfer losses.

Dividends

Intra-group dividends are ignored within tax consolidated groups.

Recipients of franked dividends receive a franking rebate or tax offset equal to the amount of the franking credit. Payment of a fully franked dividend to a non-resident will not be subject to Australian dividend withholding tax. Note, however, that the distribution to a non-resident of an unfranked dividend is usually subject to withholding tax (at the rate of 30%), subject to the reduction of withholding tax rates under an applicable double tax treaty. Where the dividend is sourced from foreign dividend income, the dividend from Australia may be free of Australian withholding tax.

Withholding taxes

A pay-as-you-go (PAYG) withholding system operates in respect of income tax withheld from salaries for individuals, company taxation and GST.

Most businesses are required to pay PAYG instalments quarterly, but the reporting periods differ, depending on whether the enterprise is a small, medium or large withholder. Large withholders are required to make more regular periodic payments.

Withholding tax (subject to treaty variations):

- dividends (i.e. unfranked) paid to non-residents - 30% withholding (15% for most treaty countries; 5% for non-portfolio investments from USA and UK)
- interest - paid to non residents - 10% withholding
- royalties - 30% withholding (reduced to 10% for most treaty countries)

Effect of treaties

Australia has a strong and developing double tax treaty network.

Thin capitalisation

The Australian thin capitalisation rules apply where:

- total debt deductions exceed A\$250,000, or
- the value of the entity's Australian assets are not greater than 90% of its total worldwide assets

- the Australian entity is either controlled by a foreign entity or controls foreign entities

The rules deny debt deductions if the adjusted average debt (which includes all debt, both foreign and domestic and whether owed to a related party or not) exceeds the entity's maximum allowable debt (determined as the greater of a safe harbour debt amount - very broadly, a debt to equity ratio of 3:1, or an arm's length debt amount). Where the adjusted average debt exceeds the maximum allowable debt, debt deductions will be denied in the ratio of the excess. The interest is a permanent disallowance.

Individuals

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, unless they have an ordinary place of abode outside Australia

Expatriate employees who become residents are subject to complex rules, which might affect assets located outside of Australia.

Tax rates

The tax rates, set annually in the Federal budget, are in graduated bands - the higher the income the higher the tax rate. The table below outlines personal tax rates:

2008/09 year

Resident taxpayers		Non-resident taxpayers	
Taxable income (A\$)	Tax payable (A\$)	Taxable income (A\$)	Tax payable (A\$)
\$0 - \$6,000	\$0	\$0 - \$34,000	29%
\$6,001 - \$34,000	15% of amount over \$6,000	\$34,001 - \$80,000	\$9,860 + 30% of amount over \$34,000
\$34,001 - \$80,000	\$4,200 + 30% of amount over \$34,000	\$80,001 - \$180,000	\$23,660 + 40% of amount over \$80,000
\$80,001 - \$180,000	\$18,000 + 40% of amount over \$80,000	\$180,001 and over	\$63,660 + 45% of amount over \$180,000
\$180,001 and over	\$58,000 + 45% of amount over \$180,000		

2009/10 year

Resident taxpayers		Non-resident taxpayers	
Taxable income (A\$)	Tax payable (A\$)	Taxable income (A\$)	Tax payable (A\$)
\$0 - \$6,000	\$0	\$0 - \$35,000	29%
\$6,001 - \$35,000	15% of amount over \$6,000	\$35,001 - \$80,000	\$10,150 + 30% of amount over \$35,000
\$35,001 - \$80,000	\$4,350 + 30% of amount over \$35,000	\$80,001 - \$180,000	\$23,650 + 38% of amount over \$80,000
\$80,001 - \$180,000	\$17,850 + 38% of amount over \$80,000	\$180,001 and over	\$61,650 + 45% of amount over \$180,000
\$180,001 and over	\$55,850 + 45% of amount over \$180,000		

2010/11 year

Resident taxpayers		Non-resident taxpayers	
Taxable income (A\$)	Tax payable (A\$)	Taxable income (A\$)	Tax payable (A\$)
\$0 - \$6,000	\$0	\$0 - \$37,000	29%
\$6,001 - \$37,000	15% of amount over \$6,000	\$37,001 - \$80,000	\$10,730 + 30% of amount over \$37,000
\$37,001 - \$80,000	\$4,650 + 30% of amount over \$37,000	\$80,001 - \$180,000	\$23,630 + 37% of amount over \$80,000
\$80,001 - \$180,000	\$17,550 + 37% of amount over \$80,000	\$180,001 and over	\$60,630 + 45% of amount over \$180,000
\$180,001 and over	\$54,550 + 45% of amount over \$180,000		

Rebates

Some of the rebates available include:

- maximum rebate of A\$1,655 for having a dependent spouse
- 20% of the excess of net medical expenses over A\$1,500
- 50% of eligible education expenses for children
- maximum low income earner's rebate of A\$750 (no rebate payable where income exceeds A\$48,750)

Medicare levy

Individuals are subject to a levy on taxable income to supplement the cost of Medicare, the national health insurance program. The levy is 1.5% with exemption for low income earners. An additional 1% levy surcharge may be imposed on certain high-income earners who are not covered by private health insurance.

Taxation of non-residents

As mentioned, non-resident taxpayers are only assessable on income derived from sources in Australia. Special rules also exist in relation to capital gains derived by non-residents from Australian sources (see over).

Special rules for inpatriates

For Capital Gains Tax (CGT) purposes, incoming residents are deemed to have purchased those 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.

Payment dates

Generally, income tax is due for payment 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 the latter.

This rule also applies to the payment of administrative penalties and to the General Interest Charge (GIC). GIC is levied where taxes are not paid by the relevant due dates.

Tax returns

The final date for lodgement of income tax returns is specified in the Commissioner's *Gazette* notice calling for the lodgement of returns. The due date for lodgement of returns for individuals is generally 31 October.

If returns are lodged via a tax agent, there are special extensions of time arrangements under the tax agent lodgement program with the Australian Taxation Office.

Dividends

Individual shareholders who receive franked dividends from Australian companies are entitled to the benefit of the imputation credits (being the tax paid by the company) that reduces or eliminates the tax payable by them on the dividend. Since 1 July 2001, individual shareholders are entitled to refunds where the franking rebate is greater than the tax payable.

Goods and services tax (GST)

A 10% goods and services tax (GST) is imposed on the supply of the vast majority of goods and services. The only exemptions from GST are goods and services that have been designated as either 'GST-free' or 'input taxed'. The exemptions are dependent on certain criteria being satisfied and can be summarised as follows:

GST-free	Input taxed
Exports of goods and some services	Financial supplies
Health and medical care	Supply of private residential premises for rent
Education and child care	Sale of residential property other than "new" properties
Basic food items	Food items sold by school canteens/cafeterias
Certain supplies by charities and religious bodies	Fundraising activities by charities
International transport and travel	Supplies of precious metals that aren't GST-free
Supplies of certain newly refined precious metals	
Sale of a business as a 'going concern'	
Sale of certain farmland	
A grant of Crown land	
Water, sewage and drainage supplies	
Care and goods for disabled people	

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 A\$75,000 or more.

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 and has not been incurred for private or domestic purposes. This input tax credit is offset against any GST on goods or services that the recipient supplies to its own customers.

Returns

GST on taxable supplies and input tax credits are accounted for in the Business Activity Statement that may be lodged monthly or quarterly. Monthly returns are compulsory in some situations, such as where annual turnover is A\$20m or more. Where the Australian annual turnover does not exceed \$2m, businesses are able to elect to account for GST on a cash basis.

Other taxes

Fringe benefits tax (FBT)

FBT is imposed on the value of non-cash and other eligible fringe benefits provided to an employee in respect of their employment. Payable by the employer, the benefits are exempt from income tax in the hands of the employee.

The FBT year runs from 1 April to the following 31 March and the rate of FBT for the year beginning 1 April 2010 is 46.5% although FBT is calculated on the 'gross-up' value of the benefits provided. Benefits are generally grossed-up by 2.0647, although this gross-up rate reduces to 1.8692 where the employer was unable to claim an input tax credit on the underlying benefit. FBT is an allowable deduction against the employer's assessable income.

Superannuation guarantee charge (SGC)

Employers are required to contribute 9% to a superannuation fund providing for the retirement of employees.

Under the Henry Review a recommendation to increase SGC to 12% is currently being implemented. The change would see the rate progressively increase for businesses over the period from 2012/13 to 2019/20.

Employers who provide less than that 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.

Stamp duty

Stamp duty is a State and Territory tax controlled by eight separate jurisdictions and imposed either at a fixed rate or in proportion to the value of the transaction.

Stamp duty is generally imposed on transfers of property, dealings in shares and unit trusts, rental and hiring of goods and mortgages. The position in each relevant State needs to be considered as Stamp duty is not imposed consistently across the States and each relies on its own local legislation.

Property taxes

Land tax is an annual tax assessed to certain owners of land in Australia. All States and Territories, with the exception of the Northern Territory, impose land tax.

It is broadly levied on the unimproved value of taxable land, subject to various thresholds and exemptions as provided under the legislation of each state. Land tax is not due on an individual's principal place of residence.

Gifts, death and inheritance

There are no direct taxes or duties on gifts, deaths or inheritances.

Capital gains tax

If a CGT asset acquired on or before 11.45am EST on 21 September 1999 was held for 12 months or more, the elements that comprised its cost base (or reduced cost base) were indexed by reference to the Consumer Price Index for the purposes of calculating the amount of capital gain that arose from the CGT event. The indexation of capital gains for inflation and an averaging calculation

system for individuals have been discontinued. Cost base indexation is frozen from 30 September 1999.

Individuals (and certain trusts) may now qualify for a 50% discount of the assessable capital gain derived from disposals of CGT assets where the asset is held for 12 months or more.

The below indicates what gains a certain taxpayers may pay capital gains tax on, and which exemptions may apply:

Australian residents	Taxable on worldwide capital gains.
Non-residents	Only taxable on gains made on ‘taxable Australian property’, which is primarily limited to direct and indirect property located in Australia and the assets used in the operation of an Australian permanent establishment or branch.
Exemptions	An individual’s principal place of residence. Assets acquired pre 20 September 1985. Certain small business assets.
Rollovers	There are a number of rollovers that allow the relevant capital gain to be disregarded. Gains on assets transferred within a tax consolidated group can also be disregarded.
Capital losses	Deductible against capital gains only. Can be transferred within a consolidated group only.
Rate	The net capital gain of a corporate taxpayer is taxed at the general corporate rate of 30%. For individuals, the net capital gain (after any discounts and capital losses) is added to their other taxable income and taxed at marginal rates.

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.

Reference should be made to the provisions of relevant treaties.

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