



Grant Thornton

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2014

Doing business in Australia



Doing Business in Australia

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“It is critical to understand how to do business in another country. I trust this guide will assist.”

Les Corder
International Business Centre
Grant Thornton Australia



Foreword

Grant Thornton is one of the world's leading organisations of independent assurance, tax and advisory firms.

These firms help dynamic organisations unlock their potential for growth by providing meaningful, forward looking advice. Proactive teams, led by approachable partners in these firms, use insights, experience and instinct to understand complex issues for privately owned, publicly listed and public sector clients and help them to find solutions. More than 38,000 Grant Thornton people, across over 120 countries, are focused on making a difference to clients, colleagues and the communities in which we live and work.

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, Cairns, Melbourne, Perth and Sydney.

Our services include

Audit and assurance

Tax compliance and advice (including international tax)

Privately held business

Corporate finance

Recovery and reorganisation services

Operational advisory services

Wealth investment management

Business risk services

Other specialist services such as litigation support and forensic accounting and motor dealer services.

If you require any further information, please do not hesitate to contact your nearest Grant Thornton member firm.

This guide has been prepared to assist 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 at November 2014.

Country profile

Summary

Australia is one of the most attractive business locations in the world. It 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 further information, please do not hesitate to contact your nearest Grant Thornton office.

Geography and population

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 24 million, mainly situated on the east coast, Australia is a multicultural country with a large immigrant population, particularly in the major cities.

Australia consists of two basic climates. The southern states have a temperate climate with summer lasting from December to March and winter from June to August. The northern states have a tropical climate with a wet season from November to April and a dry season from May to October.

International airports are located in Adelaide, Brisbane, Cairns, Darwin, Melbourne, Perth, Sydney and Townsville. Canberra (the nation's capital) does not have an international airport; however it is only a one-hour domestic flight from Sydney.

Political and legal 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 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 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.

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

Language

English is the national language. However, due to Australia's multicultural population 21.5% of the population fluently speaks a language other than English at home.

Business hours/time zone

Normal business hours are a minimum of 9:00am to 5:00pm, Monday to Friday, although many businesses will operate from 8:00am to 6:00pm. Many retailers also operate on weekends and on one or more evening. Trading is permitted on all days, with the exception of Good Friday, Easter Sunday, Christmas Day, Boxing Day and before 1:00pm on ANZAC Day. However, certain businesses may ignore these restrictions. Banks are generally open from 9.30am to 4:00pm, Monday to Friday.

Public holidays

The National public holidays are New Year's Day, Australia Day, Good Friday, Easter Monday, ANZAC Day, Christmas Day and Boxing Day.

Economy

Australia has a relatively deregulated and open economy. Australia now ranks as the 12th largest economy in the world (measured by GDP) and the 3rd largest in the Asia Pacific region.

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 electronic equipment, manufacturing, motor vehicle and parts manufacturing, industrial machines and equipment manufacturing, chemical and product manufacturing, oil and gas extraction, electrical equipment, appliance manufacturing, and transport equipment.

Major exports include basic non-ferrous metal manufacturing, coal, grain, sheep, beef and dairy produce, metal ore, oil and gas extraction, motor vehicle and parts manufacturing, chemical product and industrial equipment manufacturing services.

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 3.2% per annum. This rate is a level that reflects a strong domestic economy. The forecast economic growth for 2014/15 is 2.5%, due to a declining resource sector.

While the country's fundamentals remain strong by world standards, it is worth noting that:

- Federal and State government budgets are in deficit. The fiscal outlook is for a Federal Budget deficit of \$18 billion for the 2013/14 financial year with the aim to return to surplus in 2016/17
- inflation rose to its highest in 16 years at 4.2% in 2008, however this has now dropped to 3.0%
- interest rates range from 5-7% for the business and household sectors

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

- the largest risk for the Australian economy is the current level of credit growth. Increasing house prices have resulted in record levels of borrowings and further rises in interest rates or house prices would impact on consumer spending and repayments
- over the past year, the Australian dollar has weakened against the American dollar. The weakening Australian dollar has made Australia's exports more attractive, but this has been partly offset weakened domestic
- exports are expected to drop to 6.5% of GDP from 7% but imports are likely to grow from 5% to 6% for 2013/14
- official cash rates are presently at 2.5% per annum.
- presently 10-year Commonwealth bond yields are at approximately 3.48% per annum..
- the short-term outlook for the world economy looks like it will be favourable to further growth in Australia. Long 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.

Living standards and cost of living

The average cost of living in Australia is moderate to high compared to Western European standards and the standard of living is high. However, a slowdown in economic activity has meant a slowdown in demand. Further, home ownership is relatively high and a high demand for housing has meant inflated pricing in many areas of Australia.

Visa

With the exception of New Zealand citizens traveling on New Zealand passports, all foreign nationals must obtain a visa/Electronic Travel Authority (ETA) before traveling to Australia. The type of visa required will depend on their country of origin, the intended length and purpose of the stay.

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

Regulatory environment

Restrictions on foreign ownership

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 provides penalties for non-compliance. The FIRB Monetary Thresholds apply in either the US or non-US categories.

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

- vacant non-residential land
- residential real estate (some exceptions apply)
- shares/units in urban land corporations or trust estates; and
- direct investments by foreign governments or their agencies

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

- over A\$5 million for developed non-residential commercial real estate where the property is subject to heritage listing
- A\$54 million or more where the property is not subject to heritage listing; and
- over A\$248 million for an interest in an Australian business

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

- over A\$248 million for an interest in Australian business where the business operates in sensitive sectors as listed in the Australia-United States Free Trade Agreement (AUSFTA) or where the acquirer is controlled by the US government
- over A\$1,078 billion 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; and
 - 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 equipment or technology able to be used for military purposes
- development, manufacture or supply of encryption, security technology and communications systems
- the extraction of uranium or plutonium; and
- the operation of nuclear facilities

Generally speaking, the Australian government raises no objections to proposals above the notification thresholds where the relevant total assets/total investment is below A\$53 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 is 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.

Competition rules/consumer protection

There are controls in place to act against restrictive trade practices, such as anti-competition, consumer protection and resale price maintenance among others.

Import and export controls

Tariffs and anti-dumping measures exist, although Australia has recently entered into free trade agreements with:

- China
- United States of America
- Singapore; and
- Thailand.

Exchange control

There is no exchange control restriction 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 A\$10,000.

Government incentives

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

- develop export markets
- provide export credit insurance; and
- 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.

Finance

Currency

The national Australian currency is the Australian Dollar (AUD or A\$1), for which the exchange mechanism is based on the floating exchange rate.

Banking system

Australia's banking system is deregulated. 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 2-3% per annum.

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.

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; and
- futures markets

The primary Australian equity market is the Australian Securities Exchange (ASX), which has a public database of over 2,000 companies. The current domestic market capitalisation of companies listed on the ASX is around A\$1.5 trillion.

Entities seeking quotation on the ASX must comply with either a net tangible assets test, market capitalisation test or a 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), the half-year (if any) and a reviewed pro forma balance sheet; and

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 of financial markets that facilitate the issue and trading of debt and equity securities issued 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.

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.

Grant Thornton Australia works in conjunction with Grant Thornton UK to assist Australian companies with listings on the AIM Market and Main Markets of the London Stock Exchange, by providing advice on Nominated Adviser (Nomad) services, reporting accountant services, audit and taxation services.

Australian Securities Investments Commission (ASIC)

ASIC is an independent Australian government body that has regulated financial markets, securities, futures and corporations since January 1991. From 1998, ASIC became responsible for consumer protection in superannuation, insurance and deposit taking. Then in 2002 ASIC began overseeing market conduct and consumer protection issues on credit products and services.

ASIC's roles and responsibilities include:

Enforcing and regulating company and financial services laws to protect consumers, investors and creditors

Keeping the public informed of these matters through media releases and their annual report,

Upholding the law uniformly, effectively and quickly to promote confident and informed participation by investors and consumers in the financial system

Making information about companies and other bodies available to the public

Improving the performance of the financial system and the entities within it

Fiscal incentives

Tax incentives apply to:

Investment companies that provide equity capital for small to medium sized firms (total assets less than A\$50 million) and are registered as a Pooled Development Fund (PDF)

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

Companies incorporated in Australia, public trading trusts and partnerships of eligible companies that carry on eligible research and development expenditure are entitled to a 40% non-refundable or 45% refundable tax offset for their 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 (R&D) expenditure

Australian companies that incur expenditure on R&D activities may qualify for the R&D Tax Incentive. The core components of the program are:

A refundable 45% tax offset for eligible companies with an aggregated turnover of less than \$20 million per annum (grouping rules apply)

A non-refundable 40% tax offset for all other eligible companies

Legislation is before parliament which if enacted would reduce the available offset from 45% to 43.5% and from 40% to 38.5% respectively.

Foreign companies carrying out R&D activities in Australia through a Subsidiary or Permanent Establishment may also be eligible for the R&D Incentive provided certain conditions are met.

R&D activities are defined as either 'core' or 'supporting':

- 1 Core activities are experimental activities:
 - a Whose outcome cannot be known or determined in advance on the basis of current knowledge, information or experience, but rather can only be determined by applying a systematic progression of work that:
 - i Is based on principles of established science
 - ii Proceeds from hypothesis to experiment, observation and evaluation, and leads to logical conclusions
 - b That are conducted for the purpose of generating new knowledge.
- 2 Supporting activities are activities directly related to core R&D activities.

A company must be registered in the corresponding financial year with Innovation Australia. Registration applications must be made within 10 months after the end of the income year and must be made annually.

The three primary categories of R&D expenditure are:

- 1 Contracted expenditure
- 2 Salary expenditure
- 3 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 generally excluded from the R&D tax incentive:

- Core technology expenditure
- Building expenditure
- Interest expenditure



The following activities are generally excluded from attracting the R&D tax incentives but may still qualify for an income tax deduction under other provisions:

Market research, market testing or market development, or sales promotion (including consumer surveys)

Prospecting, exploring or drilling for minerals or petroleum for the purposes of one or more of the following:

- Discovering deposits
- Determining more precisely the location of deposits
- Determining the size or quality of deposits

Management studies or efficiency surveys

Research in social sciences, arts or humanities

Commercial, legal and administrative aspects of patenting, licensing or other activities

Activities associated with complying with statutory requirements or standards, including one or more of the following:

- Maintaining national standards
- Calibrating secondary standards
- Routine testing and analysis of materials, components, products, processes, soils, atmospheres and other things

Any activity related to the reproduction of a commercial product or process:

- By a physical examination of an existing system
- From plans, blueprints, detailed specifications or publicly available information

Developing, modifying or customising computer software for the dominant purpose of use by any of the following entities for their internal administration (including the internal administration of their business functions):

- The entity (the developer) for which the software is developed, modified or customised
- An entity connected with the developer
- An affiliate of the developer, or an entity of which the developer is an affiliate

Other sources of finance

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

Incentives for research and development projects in small to medium sized enterprises

Financial support for Victorian manufacturers seeking to acquire new manufacturing capital equipment which improves manufacturing productivity

Grants to assist automotive manufacturers to diversify their business

Environmental grants for manufacturers to invest in capital equipment to reduce their energy consumption and CO2 emissions

Environmental grants for companies to develop new energy efficient solutions

Discretionary funding provided by state governments to attract major investments

Sector specific grants for industries such as automotive, defence and textiles

Customs duty refund/relief available for incorrect customs entries, exporters and major projects

Grants to assist the tourism industry with new investments to attract more clientele

Funding to encourage collaborative research and development between industry and research organisations

Concessional loans or grants to small companies that undertake early commercialisation of technical innovation in goods, systems and services

An Innovation Investment Fund (IIF) to help small, technology-based companies access equity finance (venture capital)

Other incentives

A number of employment related incentives exist including:

Workforce assistance programs are provided free of charge to both job seekers and employers through a network of employment offices

A range of tax-exempt rebates for employers and allowances for apprentices who are required to live away from home to take part in various programs offered by the Commonwealth

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

Business entities

Structure of business organisations

There are many business structures available in Australia including:

- sole trader
- partnership
- trust (discretionary, unit or hybrid)
- company; and
- 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); and
- proprietary private companies

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

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

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

	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 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 and making annual filings; and
- audited accounts (where applicable) and an annual return must be filed and are available for public inspection

Further, a listed public company must comply with the listing requirements set down by the ASX.

Foreign companies that do not carry on business in Australia may establish a presence through a representative or marketing office. However, most foreign companies must register a branch in Australia with ASIC and disclose certain financial information.

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 as a maximum. 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 also have to pay an “annual review fee” to ASIC within two months of this date, with the fee being A\$243 for propriety companies and A\$1,146 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 outstanding liabilities may be deregistered with ASIC. This process is more simple, however care must be taken as protection for directors is limited.

Sole proprietorships

Establishing a sole proprietorship

In order to establish a sole proprietorship an Australian Business Number (ABN) must be obtained. From the Australian Business Register web site. ABN's are required to be quoted when dealing with customers and suppliers.

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 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 which will incur a fee of A\$457.

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.

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 limited partnerships are effectively treated as companies.

Establishing a partnership

To establish a partnership 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 or income is held in a 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 discretionary and unit trusts

Labour

Summary

Standard employment is Monday to 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 2014 the minimum Australian wage for adults is A\$16.87 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 9.50% of payroll but this is set to progressively increase to 12% by 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 employers, subsidised meals and loans at concessional rates of interest.

Long service leave

Entitlements vary between different states but on average paid long service leave lasts for two months which accrues after ten years of service. Further leave accrues at the same ratio every five years.

Holiday pay

Annual leave entitlements are determined by the award/enterprise bargaining agreement or the individual's contract. At a minimum, four weeks (20 days) of paid annual leave is provided to employees per annum plus public holidays. Some awards also provide for an additional leave loading of 17.5% be paid on holiday pay. Any unused leave is generally paid out when the employee leaves the company.

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 that 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 National Employment Standards (NES) set out in the Fair Work Act 2009 provide for a maximum of 52 weeks of unpaid parental leave, shared between both parents for newborn children, 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 the 1 January 2011 the Australian Government has introduced a Paid Parental Leave (PPL) scheme. Eligible parents will be entitled to 18 weeks of leave paid at the national minimum wage, currently \$641.05 a week before tax. The Scheme is to be funded by the Australian Federal Government.

Occupational health and safety (OH&S) and workers' compensation

There are strong OH&S laws in each state in Australia. The basis of these laws is to provide all employees and visitors with a work safe environment.

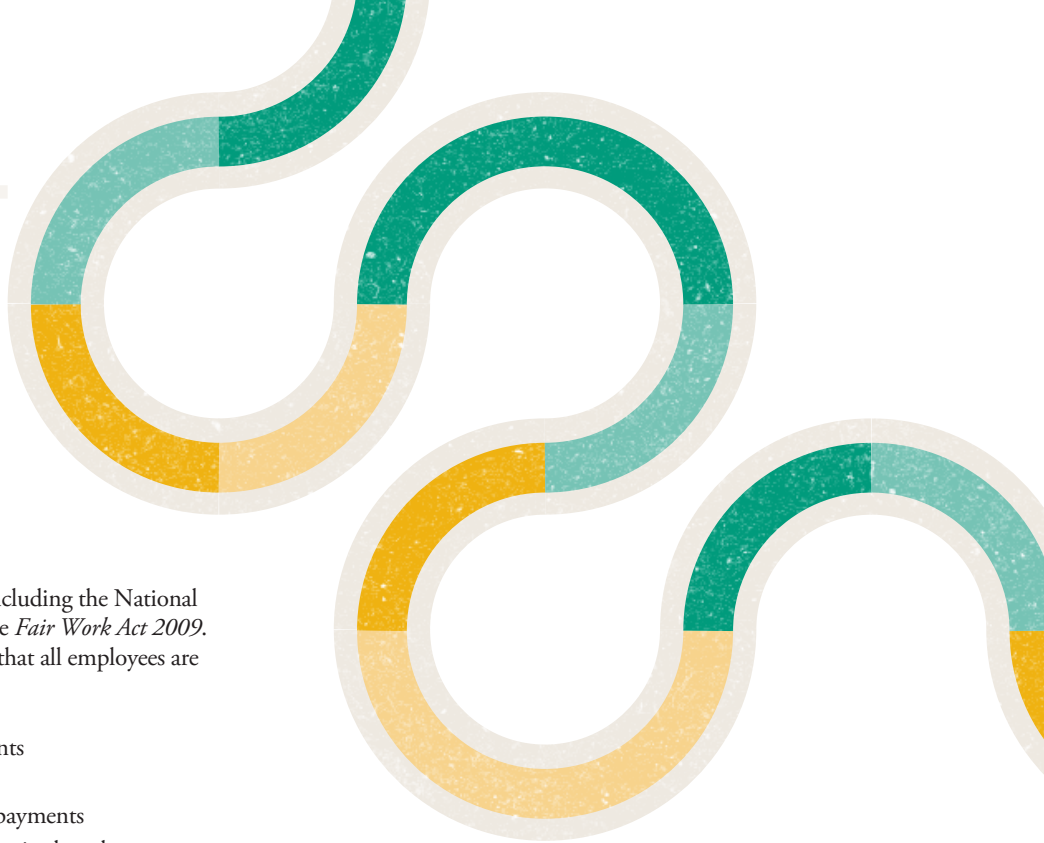
There are significant penalties for both the employing entity and individuals if the occupational health and safety laws are contravened.

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

Australia has a national healthcare system called Medicare, which 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.humanservices.gov.au/customer/enablers/medicare/reciprocal-health-care-agreements/participating-rhca-countries>

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 an individual's preferences and requirements.



Employment protection legislation

All employees are protected by legislation including the National Employment Standards (NES) set out in the *Fair Work Act 2009*. The intention of the legislation is to ensure that all employees are treated fairly. The main issues covered are:

- hours of work
- requests for flexible working arrangements
- various forms of leave entitlement
- entitlements to lump sum redundancy payments
- protection against all forms of unfair dismissal; and
- the establishment of appropriate grievance procedures

Unions

Around 20% of the fulltime workforce in Australia is unionised.

Personnel limitations - foreigners/nationals

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

- an Australian citizen or a Australian Permanent Resident; or
- 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 either event, a person must:

- provide evidence of an offer of employment
- have sufficient funds for accommodation, maintenance and repatriation on termination of employment; and
- 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 Australian citizen or resident available that is:

- suitably qualified by training and experience to do the job offered; or
- 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.

Unemployment levels

The unemployment level in Australia is currently at 6.1% in August 2014 with wage inflation at 2.6% for 2014/15.

Financial reporting and audit

Summary

The reporting requirements for proprietary (private) companies differ between small 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 such as if they are requested by ASIC.

Relief from audits is available for 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 has resolved to apply for relief under Class Order 98/0098 and filed a Form 384 within the prescribed time limit
- 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 parent company (which must be an Australian company or a registered foreign company) lodges a consolidated 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 then be lodged with ASIC. In certain limited cases, relief from audit may be available for large proprietary companies.

Listed companies and other Public Interest Entities

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

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 at a cost of A\$457.

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 A\$1,139. 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.

Tax

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

Main taxes

Federal	State
Income tax (including capital gains)	Stamp duty
Fringe benefits tax	Payroll tax
Superannuation guarantee charge	Land tax
Withholding taxes	
Goods and services tax	
Customs and excise duties	
Petroleum resource rent tax	
Minerals resource rent tax	

Income Tax

- the main classes of taxpayers are individuals and corporations
- a resident (company or individual) pays income tax on all income whatever 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 sourced income and foreign tax credits
- allowable losses may be carried forward indefinitely subject to tests for companies
- 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
- it is not incorporated in Australia, but 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 to shareholders: Payments by private companies to shareholders and their associates may be assessed as dividends.

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

Tax year: The tax year runs to 30 June but substituted accounting periods may be allowed in certain circumstances, particularly when the company is associated with a non-resident parent company.

Consolidated regime: Australia has a consolidation regime that treats 100% owned Australian companies and trusts, which elect to consolidate, as a single Australian entity.

Assessable income: Assessable income is generally computed on a derivation basis. In relation to foreign sourced income, Controlled Foreign Company (CFC) rules may apply to assess accumulated foreign income prior to its remittance to Australia.

Depreciation allowances: Depreciation allowances are applied over the useful life of plant and equipment according to tables published by Australian Taxation Office (ATO).

Liability to tax

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

Tax rates

The company tax rate in Australia is currently 30%. An imputation system exists which allows a company to pay a fully or partially franked dividends (including the corporate tax paid by the company as an imputation credit). There are rules that exist in relation to the streaming of imputation credits for certain taxpayers.

Tax base (differences between book and taxable profits)

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

Australian income tax consolidated groups

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 only needs to lodge one annual income tax return which includes the taxable income of all the entities within the group.

Filing of tax returns

Companies file annual returns of their income, as well as quarterly or monthly Business Activity Statements (BAS) in respect of tax withholdings and income tax instalments payable.

Use of losses

Whilst losses can be carried forward indefinitely, an entity must satisfy the 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.

Carry-back tax losses provisions - took effect on 1 July 2012 to allow income tax losses to be offset against prior year taxable income for a maximum of two years, and claim a tax refund for the offset amount. Carried back tax losses are limited to a maximum of \$1million. For the 2012/13 income year, there is a transitional arrangement of carrying back to a maximum of one year. The loss carry-back tax offset has been repealed from 30 September 2014.

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. However, the distribution to a non-resident of an unfranked dividend is usually subject to withholding tax at a rate of 30%, subject to the reduction of withholding tax rates under applicable double tax treaties. Where the dividend is sourced from a foreign dividend income, the dividend from Australia may be free of the Australian withholding tax.

Withholding taxes

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

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 than small withholders.

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

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

Thin capitalisation

The Australian thin capitalisation rules apply where:

- total debt deductions exceed A\$250,000; and
- 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 owed to both foreign and domestic related and non-related parties) exceeds the entity's maximum allowable debt (determined as the greater of a safe harbour debt amount that is, 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 disallowed is a permanent disallowance.

However, changes to the thin capitalisation regime were announced in the 2013 Federal Budget as follows:

- a reduction to the safe harbour debt limit for general entities from 75% to 60%er cent of adjusted Australian assets (from 3:1 to 1.5:1 on a debt to equity basis); and
- an increase in the de minimis threshold for debt deductions from A\$250,000 to A\$2million.
- These changes apply to income years commencing on or after 1 July 2014.

Individuals

The statutory definition of residence extends beyond simply residing in Australia to include:

- Persons who reside in Australia;
- Persons who have a domicile in Australian, unless they have a permanent place of abode outside Australia; and
- Persons who have actually been in Australia for more than 183 days, unless they have an ordinary place of abode outside Australia

Expatriates

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.

Tax rates

Tax rates set annually in the Federal budget, are set in graduated bands whereby the higher the income the higher the tax rate. The tables below outline current personal tax rates:

2014/15

Resident taxpayers		Non-resident taxpayers	
Taxable income (A\$)	Tax payable (A\$)	Taxable income (A\$)	Tax payable (A\$)
\$0 - 18,200	Nil	\$0 - \$80,000	32.5% of amount
\$18,201 - 37,000	19% of amount over \$18,200	\$80,001 - \$180,000	\$26,000 + 37% of amount over \$80,000
\$37,001 - 80,000	\$3,572 + 32.5% of amount over \$37,000	> \$180,000	\$63,000 + 45% of amount over \$180,000
\$80,001 - 180,000	\$17,547 + 37% of amount over \$80,000		
> \$180,000	\$54,547 + 45% of amount over \$180,000		

2013/14

Resident taxpayers		Non-resident taxpayers	
Taxable income (A\$)	Tax payable (A\$)	Taxable income (A\$)	Tax payable (A\$)
\$0 - \$18,200	Ni	\$0 - \$80,000	32.5% of amount
\$18,201 - \$37,000	19% of amount over \$18,200	\$80,001 - \$180,000	\$26,000 + 37% of amount over \$80,000
\$37,001 - \$80,000	\$3,572 + 32.5% of amount over \$37,000	> \$180,000	\$63,000 + 45% of amount over \$180,000
\$80,001 - \$180,000	\$17,547 + 37% of amount over \$80,000		
> \$180,000	\$54,547 + 45% of amount over \$180,000		

2012/13

Resident taxpayers		Non-resident taxpayers	
Taxable income (A\$)	Tax payable (A\$)	Taxable income (A\$)	Tax payable (A\$)
\$0 - \$18,200	Ni	\$0 - \$80,000	32.5% of amount
\$18,201 - \$37,000	19% of amount over \$18,200	\$80,001 - \$180,000	\$26,000 + 37% of amount over \$80,000
\$37,001 - \$80,000	\$3,572 + 32.5% of amount over \$37,000	> \$180,000	\$63,000 + 45% of amount over \$180,000
\$80,001 - \$180,000	\$17,547 + 37% of amount over \$80,000		
> \$180,000	\$54,547 + 45% of amount over \$180,000		

Rebates

There are a number of personal income tax rebates including:

- a SchoolKids Bonus, whereby from 1 January 2015 a payment of \$422 for every primary school child and \$842 for every high school child will be paid bi-annually in January and July. However, legislation has passed to end this rebate. The last instalment will be paid in July 2016.
- a low income tax rebate of \$445 for low income earners, which phases out regressively so that no rebate is payable when income exceeds \$66,667
- a net medical expenses rebate being 20% or 10% of the excess of net medical expenses pursuant to certain thresholds as set out in the table below:

Singles		Families	
Income	Rebate amount	Income	Rebate amount
< \$88,000	20% of amount over \$2,162	\$ Couples (no children) < \$176,000	20% of amount over \$2,162
> \$88,000	10% of amount over \$5,100	Couples (with children) < \$176,000 + \$1,500 for every child	20% of amount over \$2,162
		Couples (no children) > \$176,000	10% of amount over \$5,100
		Couples (with children) < \$176,000 + \$1,500 for every child	10% of amount over \$5,100

Medicare levy

Under the national health insurance program individuals are subject to a levy on taxable income to supplement the cost of Medicare. From 1 July 2014, the levy is equal to 2.0% with the exemption of low income earners. Up to an additional 1.5% surcharge may be imposed on certain high-income earners who are not covered by private health insurance.

Taxation of non-residents

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

Special rules for in-patriates

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.

Payment dates

Income tax is generally 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 later.

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

Tax returns

The final due date for lodgement of income tax returns is specified in the Commissioner's *Gazette* notice calling for the lodgement of returns. For individuals this 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 ATO.

Franked dividends

Individual shareholders who receive franked dividends from Australian companies are entitled to the benefit of a franking rebate equal to the imputed credit in order to reduce or eliminate the tax payable by shareholders on the dividends. 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% GST is imposed on the supply of the vast majority of goods and services in Australia. The only exemptions from GST are goods and services that have been designated as either “GST-free” or “input taxed”, as summarised in the following table:

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
International transport and travel	Fundraising activities by charities
Certain supplies by charities and religious bodies	Supplies of precious metals that are not GST-free
Supplies of certain newly refined precious metals	
Sale of a ‘going concern’	
Sale of certain farmland	
A grant of Crown land	
Water, sewage and drainage supplies	
Care 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\$150,000 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.

Returns

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 \$20 million or more.

Other taxes

Fringe benefits tax (FBT)

FBT is imposed on the value of non-cash and other benefits provided to an employee in respect of 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. The current FBT rate for the year ended 31 March 2013 is 46.5% although FBT is calculated on the “grossed-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 is unable to claim an input tax credit on the underlying benefit. 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. For example, in New South Wales these are \$750,000 and 5.45% respectively for 2014/15.

Superannuation guarantee charge (SGC)

From 1 July 2014, employers are required to contribute 9.50% to a superannuation fund. 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 the 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, renting and hiring of goods and mortgages.

Property taxes

All States and Territories, with the exception of the Northern Territory, impose land tax, which is an annual tax assessed to the owner of land. The tax is broadly levied on the unimproved value of taxable land, subject to various thresholds and exemptions as provided under the legislation of each state.

Gifts, death and inheritance

In Australia there are no direct taxes or duties on gifts, deaths or inheritances provided in the form of cash.

Capital gains tax (CGT)

All assets acquired since 20 September 1985 are subject to CGT unless specifically excluded. The most common situations that attract CGT involve the sales of assets such as real estate or shares. CGT also applies to intangible assets like business goodwill. Personal assets including a person’s main place of residence, car and most personal use assets are exempt from CGT.

Individuals may qualify for a 50% discount in the assessable capital gain derived from disposals of assets held for 12 months or more. Since 8 May 2012, non-resident individuals are not entitled to the 50% discount.

Australian residents	Taxable on worldwide gains
Non-residents	Only gains made on “taxable Australian property”, which is primarily limited to direct and indirect real property located in Australia and the assets of Australian permanent establishments or branches.
Exemptions	Exemptions include an individual’s main residence, assets acquired pre 20 September 1985 and certain small business assets.
Rollovers	There are a number of rollovers that allow the relevant capital gain to be disregarded. Gains on assets sold within a tax consolidated group can also be disregarded.
Capital losses	Capital losses are deductible against capital gains only and can only be transferred within a consolidated group.
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 the marginal rate.

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.

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