

DOING BUSINESS IN AUSTRALIA

INVESTING IN AUSTRALIA

There are few real restrictions to investment in Australia. Generally, acquisitions of real estate or businesses of strategic importance to Australia require approval from the Foreign Investment Review Board (the FIRB).

The FIRB examines proposals by foreign interests to undertake direct investment in Australia and makes recommendations to the Government in respect of those transactions.

There are no restrictions on the flow of funds except for cash. Transactions of AUD\$10,000 or more are reported but not restricted except where criminal activity is suspected.

Transfers of property may be subject to stamp duty. Stamp duty is a duty levied by the States. The rates vary from State to State but can add significantly to the acquisition of assets, particularly real estate.

Remittance of interest, dividends and royalties are subject to withholding tax. The rate of withholding is dependent on whether Australia has entered into a treaty with the investor's country of residence for the prevention of double taxation. A new withholding tax regime for distributions from managed investments trusts commenced 1 July 2009.

DOING BUSINESS IN AUSTRALIA

The structure you will adopt will depend on your business and your expectation of your involvement. The usual business structures used in Australia are:

- Sole traders or practitioners;
- Partnerships;
- Joint ventures;
- Trusts;
- Companies

Issues to consider business vehicles

- Do you need a permanent establishment in Australia or can you operate with minimal presence on Australia?
- Will you leave profits in Australia or will you be repatriating profits frequently?
- How will you fund the Australian business?
- What is the life of the venture and what is the exit strategy of the participants?

FINANCIAL REPORTING

The reporting of most private companies is dictated by the size of the entity. A company is defined as a large company if it satisfies any two of the following three tests:

- Its consolidated gross revenue is AUD\$25,000,000 or more;
- Its consolidated gross assets is AUD\$12,500,000 or more; and
- It employs the equivalent of 50 full-time employees or more.

Under the Corporations Act, a registered foreign company is required to lodge financial reports with ASIC, at least once every calendar year and at intervals of not more than 15 months.

Companies may require their financial reports to be audited (exclusions apply).

TAXATION

Companies & business taxes

The standard Australian financial year runs from 1 July to 30 June. Companies can apply to use substituted accounting periods.

Resident and non-resident companies are taxed at a flat rate of 30% on taxable income. There are no local income taxes. There are no disincentives to the retention of company profits (accumulated profits taxes).

Australia imposed taxes on capital gains although there are many exemptions available to non-residents.

Foreign income distributed to non-residents can pass through a company tax free and will not be subject to Australian tax in the hands of those non-residents.

Australia tax law has comprehensive anti-avoidance provisions including thin capitalisation provisions and transfer pricing.

Resident individuals

Resident taxpayers are subject to income tax based on their taxable income from all sources world-wide. Temporary residents and non-residents are taxed on taxable income from sources in Australia. Taxable income is determined by subtracting allowable deductions from assessable income.

Taxable income	2009 Tax on this income
1 – \$6,000	Nil
6,001 – \$35,000	15c for each \$1 over \$6,000
35,001 – \$80,000	\$4,350 plus 30c for each \$1 over \$35,000
80,001 – \$180,000	\$17,850 plus 38c for each \$1 over \$80,000
180,001 and over	\$55,850 plus 45c for each \$1 over \$180,000

Non Residents

Taxable income	2009 Tax on this income
\$0 – \$35,000	29c for each \$1
\$35,001 – \$80,000	\$10,150 plus 30c for each \$1 over \$35,000
\$80,001 – \$180,000	\$23,650 plus 38c for each \$1 over \$80,000
\$180,001 and over	\$61,650 plus 45c for each \$1 over \$150,000

Dividends, royalties, interest and distributions from managed investment trusts are subject to withholding tax at source. Accordingly, such amounts are not required to be included in the non-resident individual's income tax return as the withholding tax is a final tax.

Trusts & Partnerships

Apart from some widely held trusts and limited liability partnerships, which are taxed like companies, the taxable income of most trusts, and all partnerships, is taxed in the hands of the beneficiaries and partners.

Trusts are widely used in Australian because they offer asset protection, flexibility as well as capital gains tax and reporting advantages. We advise some caution for the use of trusts by non-residents particularly when the tax treatment is different in the jurisdiction where beneficiaries reside.

Income retains its nature as it flows through the trust so that, for example, interest derived by a trust is regarded as interest in the hands of the beneficiary to whom that interest is distributed.

Partnerships

For tax purposes, the definition of a partnership has been expanded to bring taxpayers in receipt of income jointly as well as more formally established partnerships.

The partnership is required to prepare and lodge an income tax return. However, there is no tax liability at the partnership level.

OTHER FEDERAL TAXES

Goods & Services Tax ("GST")

The GST regime is a broad base consumption tax which was introduced to Australia on 1 July 2000. The rate of GST is 10%.

An enterprise is required to register for GST where its taxable supplies exceed, or are likely to exceed, \$75,000 per annum (\$150,000 for non profit organisations). An enterprise that is not likely to exceed these thresholds may voluntarily register.

Fringe Benefits Tax ("FBT")

FBT is a tax levied on employers on benefits provided to employees or their associates in relation to their employment. Benefits are defined very broadly and include such things as the provision of a car, loans, meals, entertainment or the payment of expenses.

The rate of fringe benefits tax is 46.5%.

Excise

Excise duty is a tax levied on certain types of goods produced or manufactured in Australia. The goods on which excise duty is imposed are called excisable goods. Excisable goods include alcohol, petroleum, tobacco and coal.

STATE & LOCAL GOVERNMENT TAXES

Stamp Duty

State and territory governments impose taxes on a range of paper and electronic transactions. These taxes are variable across state and territories, and can be called stamp duty, transfer duty or general duty.

Payroll Tax

Pay-roll tax is a state based tax which is levied upon an employer when their pay-roll exceeds a given threshold. Employers may be grouped for payroll tax purposes.

Land Tax

Land tax is an annual state government tax payable by the owner of land. Land tax is imposed in all states and the ACT, but not in the Northern Territory.

REGISTRATIONS

Company Numbers

Every Australian registered company will receive, upon registration, a unique nine digit identifying number known as the Australian Company Number (ACN). Foreign companies registered as carrying on a business in Australia receive a similar number known as an Australian Registered Body Number (ARBN).

Business Names

All business entities that trade in a name other than their own are required to register that business name in every State and Territory in which the name is being used. Registration of a business name does not convey ownership of that name.

Australian Business Numbers

Every enterprise operating in Australia must register on the Australian business register. Once registered, the enterprise is issued with an Australian business number (ABN). This number doubles as a GST registration number where applicable. It is separate from the Australian Company Number and Tax File Number.

Companies must display their ABN or, if they do not have an ABN, their ACN or ARBN, on all public documents and negotiable instruments issued by the company.

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EMPLOYERS

Some of the obligations as an employer include:

- Pay correct wages;
- Withhold and remit tax to the Australian Taxation Office as required;
- Ensure workers are properly insured with workers compensation insurance;
- Reimburse employees for properly authorised work-related expenses;
- Ensure a safe working environment;
- Make appropriate payment at least quarterly as required under the Superannuation Guarantee legislation.

Employee Leave and Holiday Entitlements

Most workers are paid for public holidays, except for contract workers and casual employees who are paid for hours worked. Other paid leave, for most workers except those mentioned above, should include annual or recreation leave, sick leave and long service leave.

Superannuation

Under Australian Income Tax Legislation employers are required to provide minimum superannuation support to their employees. The current rate is 9% of ordinary times earnings (gross salary).

Payments must be made to a complying superannuation fund within 28 days following the end of the relevant quarter.

Workers Compensation Insurance

All employers must have a valid workers compensation policy to insure themselves against compensation claims for workplace injuries sustained by employees and certain contractors.

Work Place Ethics

In Australia national and local laws cover equal employment opportunity and anti-discrimination in the workplace.

Occupational Health & Safety (OH&S)

Under OH&S legislation, employers are obliged to provide safe premises; safe machinery and substances; safe systems of work; information, instruction, training and supervision; and a suitable environment and facilities

IMMIGRATION REQUIREMENTS

All immigration to Australia is controlled by the federal government through the Department of Immigration and Citizenship (DIAC). There are numerous migrant work visas that have different selection criteria to qualify – it is necessary to seek information about the options from DIAC as facts and circumstances vary.

IMPORT & EXPORT CONTROL

Goods being imported into Australia are generally subject to duties and GST although goods, other than alcohol and tobacco, of a value under \$1,000 can enter without duty being imposed.

CONTACT US

For a complete "Doing Business in Australia" Guide or for further information please contact us on :

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