



Level 18, City Centre,
55 Market Street, Sydney NSW 2000
T +61 2 9283 1666 F +61 2 9283 1866
E admin@esvgroup.com.au
www.esvgroup.com.au

Doing Business In Australia

*This booklet has been prepared
for the general information needs
of clients of ESV Chartered Accountants.*

November 2009

Index

Introduction	1
Government	2
Snapshot of Australia	3
Investing in Australia	4
Doing business in Australia	5
Financial reporting.....	7
Registrations	9
Intellectual property	10
Ceasing business	11
Employers	12
Migration	14
Taxation	15
Import and export controls.....	20
Main Regulatory Bodies	21
Contact Details.....	22



Introduction

Australia offers many attractions as a centre for investment and businesses. It has a highly skilled and multi-lingual workforce, has proven to be extremely stable from both political and economic perspectives. Its time zone fills in the void from close of business in the US to opening hours in Europe.

Australia is seen as a leader in the Pacific and is highly influential in Asia. It punches above its weight economically with free trade agreements signed with the USA, Thailand, Singapore, New Zealand, Chile and ASEAN. Further agreements are currently being negotiated with China, Japan, Korea, Malaysia, the Gulf Cooperation Council and a Trans-Pacific Partnership.

Australia was an early adopter of harmonised International Financial Reporting Standards and has a well regulated economy with high standards of corporate governance.

The government has pursued a program of encouraging investment through the tax system, cutting red tape and investing in infrastructure. Australia is a low cost centre and offers a real alternative to the Asian countries as a regional base for the Asia Pacific region.

Physical attributes such as the Sydney Opera House, the Great Barrier Reef, Uluru and Kakadu National Park are world renowned.

This guide was prepared to provide a useful insight for investors and businesses considering Australia as an investment centre. If you require more detailed information, you will find a list of ESV Chartered Accountants contacts at the back of this booklet who are experienced in international work and are happy to assist.



Government

Australia is a democratic monarchy although, in practical terms, the country is governed by three tiers of government:

- Federal – charged with matters of national interest such as defence, the economy, immigration, welfare and taxation. The Federal Government is based in the national capital, Canberra.
- State - there are six States and ten Territories. The States and two of the Territories are self governing.
- Local - are responsible for grass roots issues that occur in communities such as maintaining streets, amenities, parks, buildings and city matters. Local government funding comes from Federal and State governments as well as the collection of “rates” from applicable residents.

Queen Elizabeth II is the head of state and while she retains executive power through her Governor General, nationally, and Governors, in the States, effective power rests with the elected politicians.

The Federal Government is headed by a Prime Minister, the States and Territories by Premiers and Chief Ministers, respectively and local councils by Mayors.

On a federal and state level, political power is effectively dominated by three major political parties, the Australian Labor Party, traditionally aligned with the left and the Liberal and National Parties on the right.



Snapshot of Australia

Population <i>source: Australian Bureau of Statistics</i>	21,000,000
Currency	Australian dollar (AUD)
Official language	English
Time zones (varies Summer – Oct-Mar) - Perth - Adelaide - Sydney, Melbourne, Brisbane	GMT + 7 hrs GMT + 8 ½ hrs GMT + 9 hrs
Climate (Median temperatures Celsius) - Melbourne - Sydney - Brisbane	6° – 26° 6° – 28° 10° – 29°
Main export	Commodities (mining and agriculture)
Business hours Financial institutions	9:00am – 5:00pm 9:30am – 4:00pm
Financial year	1 July – 30 June
Religion	Freedom to worship however predominantly Christian



Investing in Australia

There are significant differences in the treatment of passive investment compared to doing business 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.

Tips when considering investing in Australian real estate

- ✓ Do you need FIRB approval?
- ✓ Have you budgeted for stamp duty in the acquisition price?
- ✓ Have you budgeted for land tax?
- ✓ Have you considered capital gains tax that may apply on disposal of the property?
- ✓ Have you considered the accessibility of finance and whether you are exposed to foreign exchange fluctuations?

Since December 2008, acquisitions of vacant land, residential real estate, accommodation facilities, shares or units in Australian urban land corporations or trust estates and direct investments by foreign governments or their agencies have been significantly relaxed. Since August 2009, acquisitions of businesses for under \$219,000,000 no longer require approval.

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. From 1 July 2008, distributions of income from Managed Investment Trusts with a relevant connection have also been subject to withholding tax in Australia. The withholding tax rate for residents of countries with an effective exchange of information agreement with Australia is 15%. This rate will reduce to 7.5% in the 2011 year.

Other income derived from sources in Australia, and not subject to withholding tax, is generally assessable and required to be declared in an annual income tax return.

Non-residents are generally not subject to tax on capital gains made from the disposal of Australian assets except for direct and indirect holdings of real estate and certain assets of permanent establishments.



Doing business in Australia

There are a number of issues to consider prior to commencing business in Australia: What structure will you use? What level of involvement will you adopt? Do you require licences or permissions? What registrations are required? Is the business exposed to unusual liabilities such as workers entitlements or consumer protection? Are there customs or etiquette that you should be aware of when doing business in Australia?

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

- Sole traders or practitioners – many professionals or people offering services that depend on their personal efforts trade in their own name. Although this provides a simple structure, the risk of exposing personal assets to business liabilities is a major disincentive. Sole traders and practitioners operating in Australia need to be registered with, as a minimum, an Australian Business Number.
- Partnerships – Two or more entities doing business together is a common structure for conducting business in Australia. Like a sole trader, there are few regulatory hurdles to forming a partnership. Like a sole trader, the individual partners are generally liable for the debts of the partnership on a joint and several basis. Written agreements between partners are not legally required however they are highly recommended. Partnerships operating in business in Australia require an Australian Business Number as a minimum.
- Joint ventures – are similar to a partnership but are distinguished by the fact that they share output rather than profits. Joint venturers can limit their exposure to liabilities incurred in the venture. Joint ventures are commonly used in the mining and property development industries. Compliance requirements and registrations depend on the specific situation.
- Trusts – are commonly used in Australia as a trading device. Trusts are effective in asset protection strategies and have characteristics which can offer tax advantages in certain situations. Typically, trusts are used in businesses in which the interests are closely held or for funding large property assets. Trusts carrying on business require an Australian Business Number as a minimum.
- Companies – whether Australian resident or representing the branch operations of a foreign company, companies represent the preferred vehicle for most significant trading operations. All Australian companies and foreign companies carrying on business in Australia through a permanent establishment are required to register with the Australian Securities and Investment Commission. They are also required to have an Australian Business Number.

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?
- ✓ Consider stamp duty and future transfers of shares – should you incorporate in a State which does not have duty on transfers of shares in private companies?
- ✓ What is the life of the venture and what is the exit strategy of the participants?



Establishing an Australian company

It is a relative simple affair to arrange for a company to be established in Australia. The minimum information required to establish a company in Australia is:

For a general purpose company with non-specific and broad ranging powers, you will require the following:

Information to be submitted in relation to directors and secretaries

- ✓ Full name
- ✓ Residential street address
- ✓ Date of birth
- ✓ Place of birth
- ✓ Director's / Secretary's consent to act

- A name which is not the same as another company or registered business name in the jurisdiction in which the company will be operating;
- A registered office for the service of notices;
- The address of the principal place of business;
- Details of directors and secretaries, with at least one of each who is normally resident in Australia (can be the same person);
- Details of shareholders (at least one), specifically, name, residential address, shares held and whether the shares were paid in cash or in specie.
- Payment of filing and professional fees in relation to the formation of the company.

Registering a Foreign Company

A foreign company that wishes to carry on business in Australia must be registered with the Australian Securities and Investment Commission. In order to register a company you will require the following:

- A company name that is available for use in Australia;
- A local agent to be responsible for the lodgement of documents and documents appointing the local agent either by power of attorney or a memorandum of appointment;
- A registered address and main business address in Australia;
- The date and place of incorporation of the foreign company;
- Details of directors;
- Applicable filing and professional fees.

Certified copies of the following documents will be required with your registration details:

- The company's current Certificate of Incorporation or Registration, or the equivalent document;
- The company's constitution (Memorandum and Articles of Association or its equivalent).

Additional documents may be required for any applicable taxation registrations.



Financial reporting

Generally, only companies and entities which raise funds from the public are required to report in Australia.

The reporting by most private companies is dictated by the size of the entity with large companies required to report and most small companies exempted from reporting. A company is defined as a large company if 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. Financial reports include a balance sheet, profit and loss statement and statement of cash flow and statement of changes in equity as well as any other reports required to be prepared by the law applicable in the company's place of origin.

Since September 2007, an arrangement of sharing information between ASIC and the New Zealand Companies Office ("NZCO") has meant that companies filing certain documents with the NZCO are exempted from filing similar information with ASIC.

The minimum reporting requirements that the Australian Securities and Investment Commission requires of companies and disclosing entities are set out below. Further obligations may be imposed by various industry groups or authorities such as the Australian Stock Exchange Limited.

Most companies registered in Australia are proprietary companies also known as private companies. Proprietary companies must have no more than 50 non-employee members or shareholders.

Other company types are No Liability companies, typically used by miners, companies Limited by Guarantee (suitable for charities) and, of course public companies.

Australia currently has differential financial reporting requirements. If there are users who rely solely on the financial reports when making decisions about how to best employ their resources (eg should I invest?), then the entity is known as a reporting entity and is required to apply applicable accounting standards when preparing its general purpose financial statements. If users have the authority to call on further information, then the entity reporting is likely to be a non-reporting entity and not required to apply applicable accounting standards when preparing special purpose financial reports.

Auditors must be registered with the Australian Securities and Investment Commission. The application of auditing standards carries the force of law in Australia.

ESV has partners who are registered company auditors. Separately, ESV is registered with the Public Company Accounting Oversight Board and consequently can undertake audits of subsidiaries of entities subject to the SEC.

All companies, except small proprietary companies, have a prima facie obligation to file audited financial statements with the Australian Securities and Investment Commission. However, there are a number of exceptions which apply subject to certain conditions being met:

Registered foreign companies

Relief is provided in certain circumstances for NZ companies or by applying Class Order 02/1432.



Public company

Relief is provided under Class Order 98/1418 which requires cross guarantees from an Australian parent to be in place.

Large proprietary company

(A large company is one which meets at least two of the following three criteria: Gross turnover exceeds \$25M, net assets \$12.5M or the company employees the equivalent of at least 50 full time employees).

Relief from lodging financial reports is provided in certain circumstances for companies applying Class Order 02/1432.

Small proprietary company

Unless they are owned by a foreign corporate entity, small proprietary companies are not required to prepare financial reports unless either 5% of its shareholders or ASIC, require them to do so.

Relief from lodging financial reports for small proprietary companies owned by foreign corporate entities is available by meeting the conditions set out in Class Order 98/98



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). These numbers are issued by the Australian Securities and Investment Commission.

Companies carrying on business are generally required to register on the Australian Business Register (ABR). Registrations on the ABR are arranged through the Australian Taxation Office. Companies registered on the ABR are issued with an Australian Business Number or ABN.

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.

All companies must display their name in a conspicuous position and in legible characters at every office and place of business in Australia that is open and accessible to the public.

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 the name. In order to protect a business name, you can register it as a trademark (see Intellectual Property).



Intellectual property

A business name does not form part of a business' intellectual property. Registering a name for use does provide proprietary rights.

Intellectual property usually consists of creative processes or designs that differentiate a business or its products and processes. Frequently, this property requires the protection of devices such as trademarks and trade names, copyrights and patents.

Trademarks, copyrights and patents are administered by IP Australia. Information can found at www.ipaustralia.gov.au



Ceasing business

Foreign companies ceasing to trade in Australia must notify ASIC of their intention. Australian companies do not need to advise ASIC unless the company is being wound up.

Companies can be wound up voluntarily via a members voluntary liquidation. Creditors may also initiate winding up in the event of insolvency and ASIC can also wind up a company where it is in the public interest to do so.

Companies that experience financial difficulties do have remedies available to them under Australia's insolvency laws which may prevent a compulsory winding up. This is a complex area and we recommend that business experiencing such stress obtain advice as early as possible.

All entities that cease to trade are required to cancel their registration on the Australian Business Register by notifying the Australian Taxation Office.



Employers

Australia has a strong history in providing safe working conditions and rights to its workers. Employers have various obligations to employees and other workers which stem from a variety of sources – federal and state or territory laws, industrial awards and agreements, tribunal decisions and contracts of employment (whether they are written or verbal).

Some of the obligations as an employer include:

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

Some specific employer related issues are as follows:

Awards, Agreements & Contracts

Awards: Many jobs are covered by a federal or state industrial award. Awards outline the rights and obligations of employers and the legally binding minimum wage rates and employment conditions for employees.

Agreements: Some workers are covered by an Australian Workplace Agreement (AWA) which is an individual negotiated agreement between the worker and his or her employer. It sets out wages and conditions of employment and is used in place of an award.

Some workplaces are covered by a Certified Agreement (CA), which is a collective agreement made between an employer and a group of employees or unions. It sets out wages and conditions of employment and is used in place of an award.

Contracts: Written common law contracts of employment also set out wages and conditions for employees not covered by an award or agreement.

Employee leave & 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.



The award or agreement covering employees will have information about their leave entitlements and explain the pay arrangement for public holidays.

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). However, the legislation provides exclusions with respect to certain aged employees, low income earners, employees in Australia on certain visa's etc.

Where payment of superannuation is required, payments must be made to a complying superannuation fund within 28 days following the end of the relevant quarter. The payment of superannuation is required to be made into a complying superannuation fund (an Australian Superannuation Fund).

Workers Compensation Insurance

Pursuant to State based legislation all employers must have a valid workers compensation policy to insure themselves against compensation claims for workplace injuries sustained by employees and certain contractors. The premiums for this type of insurance vary from industry to industry.

Workers compensation provides protection to workers and their employers in the event of a workplace-related injury or disease.

Workplace Ethics

In Australia national and local laws cover equal employment opportunity and anti-discrimination in the workplace. All employers are required by these laws to create a workplace free from discrimination and harassment.

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;
- a suitable working environment and facilities.

Employer Checklist

- ✓ Have you registered with the ATO for PAYG and FBT?
- ✓ Have you arranged for Workers Compensation Insurance?
- ✓ Are you required to register for payroll tax?
- ✓ Have you determined employee entitlements under Awards Agreements etc.
- ✓ Have you nominated a default superannuation fund?
- ✓ Have you obtained employee tax declarations and, where required, sighted visas?
- ✓ Have you established an OH&S Policy?

If you don't comply with these legal requirements you can be prosecuted and/or fined.

Immigration requirements

It is important to check a visitor's work rights to ensure that only people entitled to work in Australia are legally employed.

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.



Migration

There are a number of visa options available for people who wish to migrate permanently to Australia and who have the required skills and qualifications. Some common areas include:-

Employer Sponsored Workers: For people with recognised skills seeking to work in Australia after being sponsored by an Australian or overseas employer.

Professionals and other Skilled Migrants: This program is for people who are not sponsored by an employer but who have skills in particular occupations required in Australia.

Business People: For people to come to Australia for a business-related visit. Also for people to establish, manage or develop a new or existing business, or invest in Australia.

Special Activities: For people to participate in specific professional, cultural or social activities, or to receive medical treatment.

Visa Options – Business People

Business visits

For business people to visit Australia for business purposes, for example, to attend a conference or training session, to conduct business with an Australia-based organisation, to conduct business negotiations or for an exploratory business visit.

Business Development - Provisional

These visas, known as Business Skills visas, are for business people to establish a business in Australia, manage a new or existing business or invest in Australia. All except the Investor Retirement visa offer a pathway to permanent residence.

Business Development - Permanent

These visas are for people who have established the required level of business in Australia while holding a provisional visa. A direct permanent residence visa is also available for high-calibre business people.



Taxation

Australians are subject to various taxes, levies, duties and excises primarily via two levels of Government. The Commonwealth Government administers Income Tax, Goods & Services Tax, Fringe Benefits Tax, and various excises and duties.

Each State & Territory Government administers additional taxes such as payroll tax, land tax and stamp duty. Though there have been moves to harmonise State taxes, it is necessary to check the rates and rules for each state in which you operate.

Income Tax

The standard Australian financial year runs from 1 July to 30 June. Taxpayers other than individuals may apply for a substituted accounting period.

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

Businesses from countries with which Australia has signed tax treaties are taxed on profits derived from carrying on business through a permanent establishment in Australia. The term "permanent establishment" is defined in the treaties and captures many situations.

Assessable income may consist of ordinary income, being income according to ordinary concepts or statutory income. Statutory income is deemed to be income by legislation. An example of statutory income is capital gains.

Capital gains are taxed through the income tax systems. Capital gains are added to other assessable income and are calculated as consideration received on disposal of an asset less costs to acquire that asset. Where a CGT asset, owned by an individual or a trust is held for more than 12 months, is disposed of at a gain, the assessable amount is calculated by discounting the gain by 50% after any capital losses have been offset.

Generally, deductions are allowable if an outgoing is incurred in carrying on a business or deriving assessable income except for items of capital or of a private or domestic nature. Deductions may be available for capital items over a number of periods.

No tax is payable until a taxpayer has been assessed or an instalment amount can be calculated based on an earlier assessment.

The following sections highlight some of the income tax implications for various classes of taxpayers:-

Individuals

Individuals can be classified as residents or non-residents. In April 2006, a new sub-class called "temporary resident" was added. Australia has a progressive tax system, meaning that the rate of tax which is levied upon income increases as the level of income increases.

The following tables summarise the Australian income tax rates for resident and non resident individuals for the financial year ending 30 June, 2009:



Residents

Taxable income	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

The above rates do not include the Medicare levy of 1.5% which is a compulsory contribution to a national based health scheme.

Non Residents

Non-residents are subject to tax for every dollar of taxable income from Australian sources.

Taxable income	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 \$180,000

Non-residents are not required to pay the Medicare levy.

There are some classes of income, such as unfranked dividends and interest income, which is subject to Australia's withholding tax regime. These types of income 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.

Temporary residents

Temporary residents are individuals who are in Australia on a temporary visa and have never been Australian citizens or permanent residents and who are not married to Australian citizens or permanent residents. There is an exception for some New Zealanders who are entitled to Australian social security payments. Temporary residents can be either residents or non-residents.

Temporary residents are only taxed on Australian sourced income and employment income, including employee share schemes, which relates to Australian service.



Companies

Companies are taxed at a flat rate of 30% on every dollar of taxable income. Resident and non-resident companies are taxed at the same rate.

An imputation system applies to Australian companies, whereby companies can pass through credits for tax paid to their Australian shareholders.

The imputation system is primarily designed to prevent double taxation of company profits. However, in the case of non-resident corporates, significant leakage of tax can occur, giving rise to a high effective rate of tax on profits by the time profits are distributed.

Companies are subject to thin capitalisation rules which generally limit tax deductions for interest where the company's interest exceeds \$AUD250,000 and its debt to equity ratio exceeds a 3:1 ratio.

Trusts

Trusts are widely used in Australian business because they offer flexibility, capital gains tax and reporting advantages. Where the income of trust is distributed, the trust is not taxed and the beneficiary is taxed on the income in their own hands. Income retains its nature as it flows through the trust so for example interest derived by a trust is regarded as interest in the hands of the beneficiary to whom that interest is distributed.

Trusts classified as fixed, non-fixed or hybrid. A fixed trust gives its beneficiaries a fixed entitlement to income and capital.

A non fixed, or discretionary trust, is one in which the trustee has a discretion as to the payment of income and/or capital to the beneficiaries. A hybrid has characteristics of both fixed and non-fixed trusts.

The significance of the type of trust is in the different tax treatment of losses and passing through of tax credits. Discretionary and hybrid trusts, which offer the most flexibility, may be required to undertake certain restrictions in relation to whom they distribute if they intend to benefit from deductions from prior year losses.

In instances where no beneficiary is presently entitled to the income of the trust, the trustee bears the liability for the tax at a rate of 45%.

Great care needs to be taken when structuring with trusts. They offer many advantages but there are also many pitfalls.

Superannuation Funds

A superannuation fund is a special type of trust established to fund the retirement of its members. Tax advantages are available to funds whose trustees undertake to abide certain rules.

Complying superannuation funds are generally taxed at between nil and 15% on their earnings although a rate of 45% applies to certain non-arms length income.

Though offering many tax advantages, superannuation is a complex area and specialist advice should be sought in all circumstances. Superannuation funds are rarely suitable vehicles for use by non-residents.

Partnerships

For tax purposes, the definition of a partnership is expanded to include 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 on a reasonably pure flow through basis. There is no tax liability at the partnership level. The relevant portion of the taxable income or loss of a partnership is returned in the income tax return each of the partners and is then taxed in their hands. Like a trust, income retains its nature in the hands of the partners to that when derived by the partnership.

There is no capital gains tax in a partnership as each partner is deemed to own a "share" of each of the assets of the partnership. Accordingly, any gain, or loss, on the disposal of an asset is also shown at the partner level.

Other Federal Taxes

Goods and 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.

Registration entitles enterprises to an input tax credit for GST paid on business inputs. It also requires the enterprise to account for GST collected and remit the net amount due on a monthly, quarterly or annual basis depending on the size of the enterprise.

Activities are classified as subject to GST, input taxed or GST free. Most goods and services are subject to GST. Input taxed transactions are items such as financial supplies, residential rent and supplies of residential real estate, other than new residential properties. GST free supplies include health supplies and services, exports and unprocessed food. No credits are allowed for the GST paid on business inputs relating to input taxed transactions.

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%. Concessional treatment in respect of many benefits makes salary packaging a frequently used technique to structure remuneration packages.

Many benefits are available in respect of employees transferred internationally and we recommend that employers and the employees seek advice in relation to these benefits prior to drafting employment agreements.

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.

You have to be registered with the Tax Office before you can be licensed to:

- produce, store, deal in or manufacture excisable goods;
- move excisable goods underbond (that is, excisable goods on which duty has not been paid);
- lodge returns and claims.



Once you have registered for excise, you are registered for all excise activities.

If you wish to undertake an excise activity, then you need to apply for the licence relating to that activity.

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.

Taxable transactions include:

- motor vehicle registration and transfer;
- insurance policies;
- leases and mortgages;
- hire purchase agreements;
- transfers of property (such as businesses, real estate or shares).

Pay-roll 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.

If an employer has employees in a number of jurisdictions, then the tax-free threshold is apportioned between the jurisdictions.

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.

Each state and territory is responsible for administering its own land tax laws.

The amount of land tax you pay is calculated on the basis of the combined unimproved value of taxable property you own. Rural land and the principal place of residence of individuals is generally exempt from land tax.



Import and export controls

As an island, Australia has remained free from many of the pests and diseases that affect the rest of the world. The Australian Customs Service is charged with managing security and integrity of Australia's borders. The Customs Service works closely with other bodies such as the Australian Federal Police, the Australian Quarantine and Inspection Service, the Department of Immigration and Citizenship and the Department of Defence to detect and deter the unlawful movement of goods and people across Australia's borders.

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

Foreign exchange

There are few restrictions to moving funds in and out of Australia except for movements of cash. Movements of cash in excess of AUD \$10,000 must be reported under the Financial Transaction Reports Act. These transaction reports are aimed at detecting crime including money laundering, tax evasion and funding illegal organisations.



Main Regulatory Bodies

The main government bodies that business will interact with in their business dealings in Australia are:

Federal Government

The **Australian Taxation Office** www.ato.gov.au administers and collects income taxes, fringe benefits tax, goods and services tax as well as various levies and charges. Australia has made many changes to improve its attractiveness to foreign investors. However, the laws remain complex and we recommend that use a registered tax agent with competence in international tax. ESV is a registered tax agent and partners provide advice to a significant number of foreign investors.

The **Australian Securities and Investment Commission** (ASIC) www.asic.gov.au oversees the administration of the Corporations Act 2001 (the Act) and associated legislation and regulations including registration and deregistration of companies, audits, governance and fundraising.

Companies must advise ASIC of changes to information available to the public. The reporting time varies between 14 days and 1 month depending on the disclosure.

The **Australian Prudential and Review Board** www.apra.gov.au is the prudential regulator of banks, insurance companies and superannuation funds, credit unions, building societies and friendly societies.

The **Foreign Investment Review Board** www.firb.gov.au examines proposals by foreign interests to undertake direct investment in Australia and makes recommendations to the Government under its foreign investment policy. Typically, this involves real estate and investment in key sectors and industries.

The **Australian Competition and Consumer Commission** (ACCC) www.firb.gov.au is a statutory authority responsible for ensuring compliance with competition, access and consumer protection laws.

Department of Immigration and Citizenship www.immi.gov.au services those who want to visit, work, study or live in Australia. Employers must work with the department when sponsoring skilled people to work in Australia.

State Government

Various **Offices of State Revenue** administer payroll taxes, land taxes and stamp duties. These offices also oversee the registration of business names for entities operating in the jurisdiction. There has been significant effort in recent years to align these taxes and duties and cut the costs of compliance of dealing in multiple jurisdictions.



Contact Details

ESV Chartered Accountants
Level 18, 55 Market Street
SYDNEY NSW 2000

www.esvgroup.com.au
Phone: 612 9283 1666
Fax: 612 9283 1866

Kurt Baker
Partner
Phone: +612 9283-1666
Email: kurtb@esvgroup.com.au

Weston Ryan
Partner
Phone: +612 9283-1666
Email: westonr@esvgroup.com.au

Chris Kirkwood
Partner
Phone: +612 9283-1666
Email: chrisk@esvgroup.com.au

DISCLAIMER: The material presented in this document is general commentary. The facts of each particular situation may vary, as may legislative and judicial interpretation of the applicable laws and regulations commented upon. The comments and information herein do not constitute a legal or professional service. Advice should be sought from ESV Chartered Accountants and other relevant professional advisors before acting upon any of the topics mentioned.

Australia vW0708 © This material is copyright ESV Chartered Accountants and may not be reproduced, in whole or part, without our written consent.

ESV Chartered Accountants is a member of The International Accounting Group (TIAG). TIAG is a worldwide network of independent, quality accounting firms.

Liability limited by a scheme approved under Professional Standards Legislation.

247v2

