A GUIDE TO DOING BUSINESS IN AUSTRALIA

Providing a broad overview of issues relevant to undertaking business activities in Australia.

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

RSM

FOREWORD

Operating a business in a foreign land is always more difficult than operating at home. However, thanks to the digital age, ground-breaking free trade agreements, a more progressive regulatory environment, a highly competitive and efficient trading environment – plus a world-class professional services sector – doing business in Australia is becoming more achievable than ever.

At RSM Australia (RSM) we pledge to give business enterprises of all sizes the highest level of attention by our most experienced professionals. This is the RSM difference.

As one of Australia's largest nationally owned accounting firms, RSM can connect you with the accounting, tax, financial management, audit and business consulting skills of more than 38,300 professionals in over 120 countries through over 760 different office locations.

When you're looking beyond your national borders for new opportunities, we can connect you into our worldwide network of firms to ensure you always stay one step ahead. We will guide you through the challenges of working internationally, and pinpoint experts on the ground who know your sector and understand your business. Our firms understand local culture and traditions, and are experts in regional rules and regulations and have in-depth knowledge of the services and sectors in their country.

This publication, one of many titles in the RSM *Doing Business In* series provides you with a broad overview of issues relevant to undertaking business activities in Australia. It also introduces you to our Australian independent member firm, RSM Australia, whose experience and connections will help to ensure that your business can take advantage of every opportunity to operate successfully in Australia.

In Australia, we boast a national network of 29 offices which, combined with over 90 years' experience, has helped us develop an extensive understanding of Australian business trends and conditions.

RSM is a strong organisation with a bright future and I invite you explore how our team can facilitate you doing business in Australia and beyond, and look forward to seeing your business benefit from our experience.

Kim Hutchinson
National Chairman
RSM Australia

FOR FURTHER INFORMATION VISIT:
www.rsm.com.au

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INTRODUCTION

RSM is proud to release the twelfth edition of *Doing Business in Australia*.

This is one of many titles in the RSM International *Doing Business In* series which forms an integral part of RSM's commitment to helping businesses around the world understand the characteristics and workings of specific foreign markets.

Regularly updated, this publication is an insightful window into the formalities of doing business in Australia. It's designed as a general guide and since laws and business practices are subject to constant change and re-interpretation, specific advice should be obtained from appropriately qualified professional sources.

> Through RSM in Australia, we offer you access to the type of in-depth knowledge and understanding of local business customs, tax and regulatory matters that only lifelong residents can provide.

We are a full service national accounting firm delivering expert corporate financial and advisory accounting services to clients across diverse industry sectors. Our unique one-firm structure enables our clients to more readily connect to our extensive national and international networks, expertise and industry experience.

Our global network across 120 countries and 760 offices enables clients to enjoy access to world's best practice, insight and expertise.

RSM is sufficiently resourced and flexible enough to deploy staff nationally at a moment's notice.

Making headway

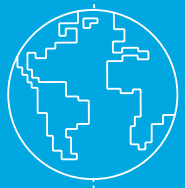
Despite the significant regulatory, political and ethnic differences between Australia and many of its trading partners, it's important to note that Australia is one of the world's most culturally diverse nations with 30 percent of the country's 24 million residents comprised of people who were born overseas[1].

Australia's rich ethnic mix makes for a dynamic, well educated, multilingual and outward looking workforce, and this provides a supportive nexus to foreign companies planning to do business locally.

What you take away from this document, depends on how advanced you are at successfully doing business in Australia. But whether you're at the beginning of the journey or further along, now is a good time to reassess the stage your business has reached, and review the opportunities that lie ahead. If you're only at the project stage, you'll almost certainly need project advice, corporate finance advice and assistance and advice with government grants and general business counselling.

Whether you're dipping your toes into the Australian market for the first time, acquiring a business or expanding an existing operation, RSM Australia's team of experts across accounting, tax, financial management, audit and business consulting can work alongside you every step of the way.

Regardless of what stage you're up to, you'll need practical tax advice on the structure, method of financing and the arrangements made with your head office. We often find that companies are at an earlier development stage within Australia than they fully appreciate. Our aim is to understand your business, and its needs, and actively help meet your objectives.



- We are the 6th largest global audit, tax and consulting network
- We have firms in 120 countries and are in each of the top 40 major business centres across the world
- We have combined staff of more than 38,300 in over 760 offices across the Americas, Europe, MENA, Africa and Asia Pacific

Visit rsm.global for a full list of RSM firms and contact details.

A global business perspective

The business world is evolving rapidly. Through advances in technology, communications and infrastructure, business barriers are disappearing and each day we become ever more global.

In this fast-paced environment, you need an adviser who thinks ahead and rapidly responds to your changing needs. At RSM, we build strong relationships based on a deep understanding of what matters most to our clients.

It is our strong, collaborative approach that differentiates us. We will strive to truly understand you, your strategies and your aspirations and endeavour to be considered the adviser of choice to your business. By sharing the ideas and insights of our most senior professionals, we bring our expert local and global knowledge and resources to your environment, so you feel understood and empowered to move forward with confidence. This is the power of being understood. This is the RSM experience.

Our clients range from growth-focused entrepreneurial businesses through to leading multinational organisations across many sectors who operate nationally and across borders.

In Australia, we boast a national network of 29 offices which, combined with over 90 years' experience, has helped us develop an extensive understanding of Australian business trends and conditions.

Globally, our client service philosophy is simple yet highly effective. We will seek to exceed your expectations. You will be served by a multidisciplinary team headed by a client service partner. The client service partner is empowered to commit and control all of the RSM resources necessary to satisfy your requirements.

International financial management and audit

Across the world, RSM helps international companies identify areas of risk and establish financial controls. We provide group and component audit services, as well as statutory or compliance audit.

We also help to establish financial reporting systems that provide executives with the information they need to manage distant operations. We work with our international clients to establish effective employee training programmes that equip financial management staff with world class capabilities. With heightened emphasis worldwide on corporate governance, it's essential that these matters are addressed as part of an overall risk management programme.

> We are able to provide independent audit services that meet the highest international standards. The methodology applied is consistent across all RSM members and provides a seamless service to international entities.

Tax Services

International tax

The term 'multinational' isn't just for large corporations anymore. Many different sized companies are going global in a big way and tax implications are serious. The ability of a company to profit from a worldwide market is often limited by the ever increasing complexity of tax rules in Australia and around the world. This reason alone means it's important you rely on a firm that can help you understand how your business and its cross border transactions will be affected by these tax laws.

We can provide assistance in a number of areas, to Australian businesses currently operating overseas or considering expanding their operations beyond Australia's borders and to foreign companies wishing to enter the local market.

With our suite of international tax solutions and ready access to tax professionals all across relevant jurisdictions, we can advise on:

- Inbound and outbound investment structures
- Cross-border structuring to maximise tax efficiencies
- Cross-border cash planning: profit repatriation, funding and currency issues
- Impact of tax treaties on business operations and business owners
- Financing, capital structures and thin capitalisation planning
- Withholding tax compliance and foreign tax offsets
- Transfer pricing reports, planning and consulting

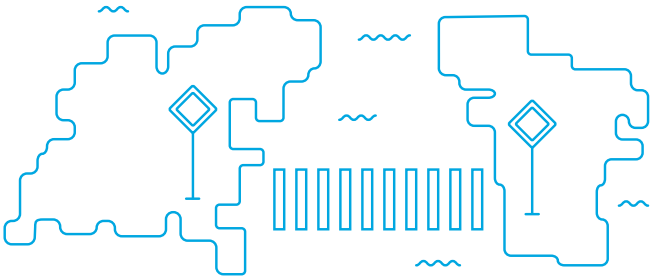
Australia is making plenty of noise on the international tax scene at the moment, and a number of significant tax changes are taking place and are likely to take place over the next few years. Against this background businesses that operate across borders should be particularly aware of Australia's increased disclosure requirements for international transactions. This, combined with the Australian Tax Office's (ATO) active audit and review programmes means effective business and tax planning is essential.

Transfer pricing

At RSM we have an integrated national and international network of transfer pricing specialists who can assist taxpayers in meeting their specific and unique transfer pricing requirements. Our expertise covers both industry specific and transaction based transfer pricing issues.

OECD and Base Erosion and Profit Shifting (BEPS)

RSM have been participating in the OECD discussion on BEPS through presentations to the OECD and submissions to the ongoing debate.



Indirect tax consulting

Indirect taxes, such as GST and customs duties, are transaction based taxes making them an almost daily issue for business – whether it's selling or importing goods, providing services or disposing of assets.

If not managed correctly, a business can become exposed to unexpected financial risks and tax penalties.

With our in-depth and up-to-date knowledge in the area of indirect taxes, we aim to identify both risks and opportunities when reviewing your indirect tax requirements.

Our range of indirect tax services include:

- Advice on local and international indirect tax implications – including GST/VAT and customs duty
- Structuring local and cross-border transactions to obtain indirect tax efficiencies
- Review and preparation of indirect tax returns including Business Activity Statements (BAS)
- Prudential reviews of indirect taxes affecting your business to identify areas of potential scrutiny by the ATO and opportunities for refunds of tax
- Assistance with obtaining Research & Development (R&D) tax concessions and registration with AusIndustry
- Training of your staff to improve the management of the day-to-day indirect tax compliance function

Research & Development (R&D) Tax Incentive

The R&D Tax Incentive is the federal government's primary support programme to provide financial assistance to companies that innovate. However, many companies continue to underestimate and under-claim on their R&D tax benefits because they are not appropriately advised on the broad application and real world intent of the R&D legislation.

Our extensive experience in the R&D area allows us to proactively identify opportunities for R&D claim maximisation through effective planning with regard to R&D activity and expenditure, as well as providing advice on the structures that will enable a company to gain maximum return on its R&D investment.

Our R&D industry experience and technical expertise enables us to prepare robust R&D claims, whilst still maintaining the integrity of your R&D claim within the scope of the existing R&D legislation and case law. We can assist clients to take full advantage of the R&D incentive.

We provide advice and assistance with all aspects of the R&D claim process:

- Educating clients on the R&D eligibility criteria, both technical and financial

- Running workshops and project interviews to gather appropriate information to assess, prepare and defend R&D tax claims
- Preparing appropriate R&D registration documentation
- Allocation of R&D costs
- Supporting clients with AusIndustry and ATO reviews and audits
- Advising and implementing R&D management practices

We understand the long term nature of innovation in business and our approach to R&D tax advisory is to establish a long term focus with clients and to maximise their R&D benefit while minimising the cost of compliance.

Transaction support
With any significant transaction involving an acquisition, disposal or merger, it is important that organisations manage the tax risks to avoid unpleasant surprises. Even more so in respect of cross-border transactions where the tax risks are not limited to a single jurisdiction. We take a proactive approach to transaction support commencing with proper tax planning and a rigorous review of the relevant tax issues. In the end, your business wants to enhance its value from the transaction – a view that we share.

Our commercial focus together with our international network of tax advisers can provide efficient transaction support services from the planning stage to completion including:

- Transaction structuring to maximise tax efficiencies including cross-border structuring
- Pre-acquisition tax due diligence reviews to identify potential tax exposures
- Vendor tax due diligence to prepare a company or business for disposal
- Identification of tax issues to be addressed in transaction documents such as tax warranties and liaising with lawyers
- Consideration of the impact tax consolidation may have to the transaction
- Advice on financing the transaction to manage the debt/equity mix and optimise cash flows

Tax management and special services

Income tax consulting
Our team has extensive experience in advising local and international organisations on Australia's income tax laws – advice which is designed not only to ensure compliance, but to identify opportunities and strategies to minimise tax liabilities.

We also understand that tax advice is not a 'one-size fits all' solution. We take an integrated approach that starts with understanding the company's business, its needs and the outcomes it wants to achieve. We then work towards these objectives and provide a tailored tax solution.

We specialise in the following income tax areas:

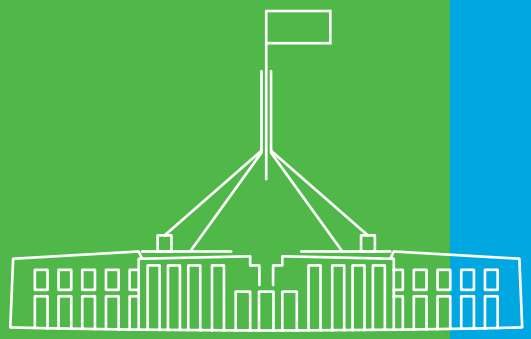
- Income tax and capital gains tax planning and implementation
- Tax consolidation regime involving the formation or acquisition of groups
- Debt/equity issues in financing a business including thin capitalisation and the tax treatment of returns
- The Taxation of Financial Arrangements (TOFA)
- Foreign exchange issues, together with TOFA
- Analysis of tax reform legislation and the planning required to ensure compliance
- Advice on the utilisation of tax losses
- Specific tax rules relevant to high net wealth individuals and large family groups such as trust loss measures and private company loans
- Part IVA and anti-avoidance
- Tax issues with regards to long-term construction contacts

Tax compliance
In today's corporate environment, there is more to tax than just structuring. Failure to comply with and manage tax obligations can result in unexpected penalties and additional tax. That's why we never understate the importance of these obligations and the deadlines that come with them.

International businesses on the other hand need more than just local compliance assistance – they require multijurisdictional assistance. Through the RSM network, we can manage these multinational compliance requirements in a coordinated manner.

We can assist with:

- Direct and indirect tax return preparation and review
- Periodic tax-effect computations for company accounts in accordance with IFRS (be they quarterly, half-yearly or yearly computations)
- Secondment of tax professionals to assist in-house finance divisions
- Co-ordination of global tax compliance requirements
- Revenue authority representation – audits, investigations, negotiations and settlements



Tax audit and risk management

A key aspect of corporate governance involves tax risk management. Companies have to be comfortable that their tax decisions do not fall foul of the tax law and are not subject to adverse scrutiny by the tax authorities.

We can help companies manage this exposure in a number of ways. In this regard, we can:

- Represent the business in a tax audit or review including negotiating with tax authorities to settle a dispute
- Prepare objections to unfavourable tax assessments
- Advise boards of directors on the risks associated with tax schemes to be entered into by the business
- Prepare reasonably arguable position papers to document the position taken in respect of the interpretation of a tax law
- Carry out prudential reviews or 'health checks' on various tax areas to identify any tax risks or exposures
- Apply for rulings from the ATO to provide certainty on tax outcomes

Employment tax solutions

Employment taxes can represent a significant impost on a business if not managed correctly. As employment taxes become more complex and new concessions and exemptions are introduced on a regular basis, a business may find itself in a situation where it is paying too much tax or not paying the right amount of tax.

The hands on approach in dealing with employment taxes to ensure the business has identified all tax savings and processes are in place to meet their employment tax obligations. RSM can provide the following assistance:

- Advice on PAYG–withholding, employer superannuation contribution, FBT, payroll tax and workcover implications for companies
- FBT, payroll tax and workcover prudential reviews or 'health checks' to identify tax savings and to minimise any exposure
- FBT and payroll tax return preparation and review
- Review and develop FBT and payroll tax policies and procedures for employers
- Contractors vs employees to ensure tax obligations are met
- Due diligence review of employment taxes
- Tax planning for redundancy and early retirement schemes
- Advising and assisting employers to implement employee share schemes

Expatriate tax solutions

RSM provides a comprehensive suite of services addressing taxation and payroll issues that arise with international transfer of employees – whether commencing an assignment outbound from Australia, or inbound to Australia or returning home after working or living overseas.

These services include:

- Planning for taxation consequences of an assignment or relocation in or out of Australia
- Remuneration planning to utilise fringe benefits which may be provided tax free or concessionally taxed
- Independent payroll services
- Advice for employers regarding tax obligations
  - PAYG-withholding
  - Employee superannuation contribution
  - Possible exemptions
  - Certificate of coverage
- Preparation of Australian income tax returns
- Temporary residents of Australia
  - Departing residents access to Australian superannuation
  - Medicare levy
    - Obligations to pay
    - Exemption application
- Development of expatriate policies, including tax equalisation

Corporate Finance

Mergers and Acquisitions (M&A)
Foreign companies often find the best way to enter the Australian market is through corporate activity and there is no compulsory pre-notification requirement for mergers or acquisitions in Australia.

RSM offers a flexible approach to deal management and has the experience and expertise to assist you identify and approach potential targets. With access to experts around the globe, we're able to offer you a tailored service that ensures you receive the necessary expert advice in structuring value accretive transactions.

A critical part of any transaction is the negotiation of the key commercial terms of the deal. We are able to take the lead in negotiating transactions on your behalf or assist you in this process from behind the scenes.

We set up and coordinate M&A work regionally, through RSM's Asia Pacific regional desk to provide international service teams with the right mix of talents.

We provide expert valuation services, and in some instances can assist in the search for the best acquisition candidates. In conjunction with our Tax Services division, we also provide technical and commercial advice on tax-efficient deal structures.

The member firms of RSM also provide other acquisition services, these include operational evaluations, transition planning, and post-acquisition audit and fixed asset reviews.

Transaction support and due diligence
The due diligence process provides a detailed review of a target business from a financial and commercial perspective, and adds value by focusing on key issues likely to affect the decision to proceed with an acquisition and those factors which affect the price.

We have developed a tailored due diligence methodology that enables us to provide you with a value-added service. We focus on key issues relating to your transaction, the target business and the impact of the acquisition on your business.

We work closely with your legal advisers to ensure that the purchase agreement includes the necessary protection that you require when buying a business.

The scope of our due diligence work is tailored for each engagement to ensure our work is focused on the identification and quantification of key issues that may impact on the target business, its marketplace and your consolidated business post acquisition.

Valuation and expert reports
Through our extensive experience of the valuation and independent expert report process, we've developed a tailored approach to valuations and expert reports.

Our methodology and clear reporting style provides clients with a detailed understanding of key issues and assumptions that underpin our valuations.

We have extensive experience undertaking valuations in relation to everything from merger and acquisitions, funding and refinancing and taxation, through to family law matters and employee share and option plans.

Financial model construction and review

Financial model construction
Financial models are an integral part of the business decision making process, enabling organisations to assess the financial implications of commercial decisions with confidence.

The construction of a robust financial model is the cornerstone of accurate, informed and timely commercial decision making and forecasting.

We have extensive experience of building financial models to assist you in the following areas:

- Mergers and acquisitions
- Investment decisions
- Budgeting and forecasting
- Major projects
- Commercial analysis

Our approach to financial modelling enables the identification of key value drivers and the assessment of key input variables. Clearly defined input variables provide users with flexibility which, together with clearly defined outputs, ensure that you are able to undertake 'what if' or sensitivity analysis with confidence.

Financial model review

Having your model reviewed by RSM provides assurance on the mathematical integrity of the forecasts and the reasonableness of the assumptions underpinning the forecasts.

Our approach to model reviews includes an assessment of assumptions and formulae that underpin the model together with a review of outputs and sensitivities. By reviewing the detail of the assumptions and formula, and undertaking a high level review of outputs, we are able to provide assurance on the flow of data from initial assumptions through to output schedules. In addition, we analyse key sensitivities to provide further assurance on the integrity of the model and to identify any potential funding issues or covenant breaches.

Business consulting solutions

RSM also supports international companies with consulting solutions.

We provide operational consulting services, including process improvement, profitability enhancement and quality certification. In the area of financial management, we undertake risk assessment and provide internal audit services on an outsourced basis.

We are experienced in high-profile and complex contested matters. We assist parties in international litigation with services such as investigative and forensic accounting, valuation and expert testimony.

Outsourced CFO services

One of the vital parts of helping foreign companies set up new business operations locally is helping them manage their accounting and finance function professionally and proactively, hence allowing management to focus on regular business operations.

Your firm can commission RSM to handle the external management of many financial processes that while necessary, don't directly add value to your business.

RSM's Outsourced CFO Services team provides an extensive suite of business office solutions. By outsourcing general ledger maintenance, company secretarial services, company set-up, management reporting and analysis, we free up your resources to focus on the successful operation of your core business.

Included within the extensive suite of outsourced services provided by RSM's Outsourced CFO Services team are, accounting and reporting systems, budgets and cash flow management, preparation of financial statements, bank reconciliation, billing and collection .

We also handle payroll and payroll tax compliance.

Our expertise and knowledge in this area mean you'll receive an outsourced CFO individually tailored to your business's requirements, while maintaining the highest professional standards.

By providing your business with essential management information, RSM's Outsourced CFO Services improves your ability to make informed and relevant decisions, allowing management to focus on building growth.

Some of the key establishment and compliance functions RSM provide to support your business, include:

- Business Activity Statements (BAS)
- Instalment Activity Statements (IAS)
- Income tax returns
- Employment registrations, payroll processing and payroll tax returns Workers' compensation
- Fringe Benefit Tax (FBT) Returns
- Financial statements in accordance with Australian Accounting Standards
- Lodgement and payment of federal and state taxes including income, goods and services, payroll, stamp duty, land tax and Workcover insurance
- Advising and assisting start-up companies to implement employee share schemes

Consulting Services

To help companies thrive in today's shifting business environment, RSM offers a complete range of end-to-end consulting services that support business transformation programmes.

Our consulting service line offerings include: Strategy, Business Process Improvement, Organisation Design, Change Management, Information and Communications Technology (ICT) Strategy, Finance and Performance Management, and Programme and Project Management.

Our areas of specialisation include: Process assessment, design and re-engineering (including Lean and Six Sigma), Voice of the customer analysis, co-design and behavioural economics, and Operating model assessment and design.

To help effect real change, we bring the right industry experience to your situation, enabling us to help you increase efficiency, reduce costs and improve your bottom line.

RSM helps organisations transform their business through change and the way people are empowered, managed, developed and directed. We bring tested methodologies, tools, techniques and experience to analyse your environment and design strategies that support your journey.

Fraud and Forensic Services

Fraud, bribery, corruption (and improper conduct) control through risk mitigation and fraud and security crisis management will minimise reputation harm and reduce loss. This applies to all organisations from SMEs to multinationals, and often involves a 'fit-for-purpose' or proportionate customised approach to suit your business needs.

With a total worldwide fraud loss of nearly $3.7trillion[2] increasing stakeholder interest, evidence that the presence of anti-fraud controls is associated with reduced fraud losses, and the continual focus on prudent government expenditure of public money, the time has never been better to 'get to know what you may not know'.

Forensic investigations and forensic accounting
Finding the facts with evidential integrity for informed decision making.

Fraud, bribery and corruption (and improper conduct) control
Risk mitigation minimises reputation harm and reduces loss.

- Planning, resourcing, implementation and management
- Prevention
- Detection
- Response

Forensic related training
Raising awareness and demonstrating the cultural tone of the organisation in effectively managing the risks of fraud, bribery and corruption.

Forensic IT
A key approach to investigating and mitigating fraud, bribery, corruption and improper conduct.

Compliance risk reviews
Helping clients with their awareness and understanding of the risk of non-compliance with relevant laws, industry codes and organisational standards.

Corporate security
Corporate security focus mitigates harm against people or damage to premises and business operations.

International business and market development

There are a number of important considerations for foreign companies when deciding on how to enter the Australian market.

For starters, foreign companies will typically choose between establishing a new company, registering as a foreign company or acquiring an existing business.

Whether you decide to establish a new business or acquire an existing one, there are myriad regulatory and tax considerations. Foreign companies may also need to establish their identity through a trade mark, online and/or physical presence.

Foreign companies can also find out what incentives and programmes are available at the state government level through the following websites:

National
http://governmentgrantsaustralia.org

Victoria
http://www.invest.vic.gov.au/how-we-can-help/planning/incentives-and-programs

Western Australia
http://www.dsd.wa.gov.au/invest-in-wa

New South Wales
http://www.industry.nsw.gov.au/invest-in-nsw

Tasmania
http://www.stategrowth.tas.gov.au/

Queensland
https://www.business.qld.gov.au/invest

South Australia
http://invest.sa.gov.au

RSM helps foreign and Australian companies with their international business and market development needs.

> We help companies develop their international strategic plans and foreign market entry strategies and we help companies select locations and sites.

AUSTRALIA: A GOOD PLACE TO DO BUSINESS

Opportunities

As Australia is uniquely placed to capitalise on the economic dynamism of the fast developing countries in the Asia Pacific region, it's hardly surprising that multinational companies view it as presenting the best business case for regional headquarters.

As these Asia Pacific countries modernise, and their living standards increase, Australian mineral, food resources and other services continue to be in high demand.

Involvement in and access to the Asian region assisted Australia in weathering the Global Financial Crisis better than many other nations. The economic forecast for the forthcoming year remains better for Australia than many other advanced countries.

Many multinationals are in the process of making investments in Australia, to tap into this international growth story. At the same time, Australia is vigorously developing export markets for its services sector to expand beyond commodity reports.

Demographics

The multicultural population of Australia is settled mainly along the coastal fringe of eastern Australia from North Queensland through New South Wales to Victoria, South Australia, in the north and south of the island of Tasmania, and the south west of Western Australia.

Australia has a population of 24 million with more than 64 percent[3] located in the capital cities. Medium and small towns outside major cities generally represent centres of rural communities, while most inland areas are relatively unpopulated.

> Australia has a high income per head of population and a degree of equality amongst incomes. Accordingly the demand for most goods and services is comparatively high despite the relatively small population base.

According to Australian Bureau of Statistics (ABS) figures around 30 percent[4] of Australians were born overseas, with Australia witnessing a dramatic growth in Asian migration over the past decade.

The latest Census in 2011 recorded 318 969 China-born people in Australia, an increase of 54.4 percent from the 2006 Census[5].

The 2011 distribution by state and territory showed New South Wales had the largest number with 156,034 followed by Victoria (93,896), Queensland (27,036) and Western Australia (16,693)[5].

Government
Australia has a stable British-style parliamentary democracy. Stability in the government system means that entrepreneurs and investors can count on consistent government attitudes and policies, and the security of their assets invested in Australia.

Resources
Australia has many untapped resources and abundant raw materials, for example, iron ore, coal, bauxite, uranium, lead, nickel, and gas. There are substantial rural and mining sectors, with a developed manufacturing base — including domestic durables, chemicals and textiles — and an expanding service sector, particularly in the areas of finance and tourism.

Australia as a country for investment
Raw material and processed goods are moved by a widespread network of rail, road, sea and air transport services. However, due to the size of the continent and the concentration of the population in capital cities, transportation costs between the capital cities tend to be high.

Australia has a highly developed communications system. Postal, telegraph and telephone communications are highly organised and overseas communications are rapid with telephone and the Internet.

Land mass
Australia is an island continent of approximately 7.69 million square kilometres — almost as great as that of the United States (excluding Alaska and Hawaii) or 32 times greater than the United Kingdom[6].

Climate
The island continent of Australia features a wide range of climatic zones, from the tropical regions of the north, through the arid expanses of the interior, to the temperate regions of the south. Australia is the world's second-driest continent (after Antarctica), with average (mean) annual rainfall below 600 millimetres (mm) per year over 80 percent of the continent, and below 300mm over 50 percent. Australia has a relatively lower humidity than its Asian neighbours in the Asia Pacific region[7].

Schooling
Education is compulsory from age six to between fifteen and seventeen years.

Primary and secondary schooling is provided by both government and non-government schools. Non-government schools charge fees. Tertiary education is provided via an extensive system of universities and colleges.

Currency
The unit of legal tender is the Australian dollar (100 cents to A$1).

The Australian dollar has been allowed to float and is freely convertible into the currency of other countries.

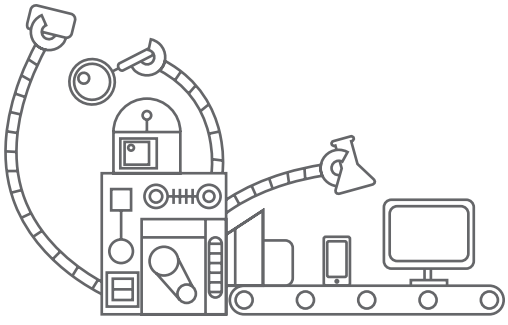
Population
Australia's population recently reached 24 million, with an active labour force of 11,903.1 million[8].

Opportunities

Table 1: Australia Economic Indicators[9]

Overview	Last	Reference	Previous	Range
GDP growth rate	0.6%	Dec/15	1.1	-2 : 4.4
Unemployment rate	6%	Jan/16	5.8	4 : 11.1
Inflation rate	1.7%	Dec/15	1.5	-1.3 : 23.9
Interest rate	2%	Apr/16	2	2 : 17.5
Balance of trade	-3410 AUD million	Feb/16	-3156	-4272 : 2225
Government debt to GDP	33.88%	Dec/14	30.9	9.7 : 33.88

Source: Trading Economics 6 April 2016



ENVIRONMENT

Government in Australia

Australia is an independent, self-governing nation and a member of the Commonwealth of Nations. It makes its own treaties, levies its own taxes and enacts its own laws.

Australia is a federation in which powers and responsibilities, as described in the Constitution, are vested in the Commonwealth (Federal Parliament) with residual powers and responsibilities being vested in six state parliaments and the Northern Territory Parliament.

The Constitution of the Commonwealth of Australia empowers the Commonwealth to legislate on specific matters such as trade, customs and excise, defence, foreign affairs, immigration, social security, income and sales tax, currency, banking, communications, copyright, patents and trademarks.

State governments have the right to legislate on all matters which are not expressly stated in the Constitution to be under the control of the Commonwealth Government. Accordingly, the state parliaments have residual powers in respect of education, health, housing, transport, justice, etc.

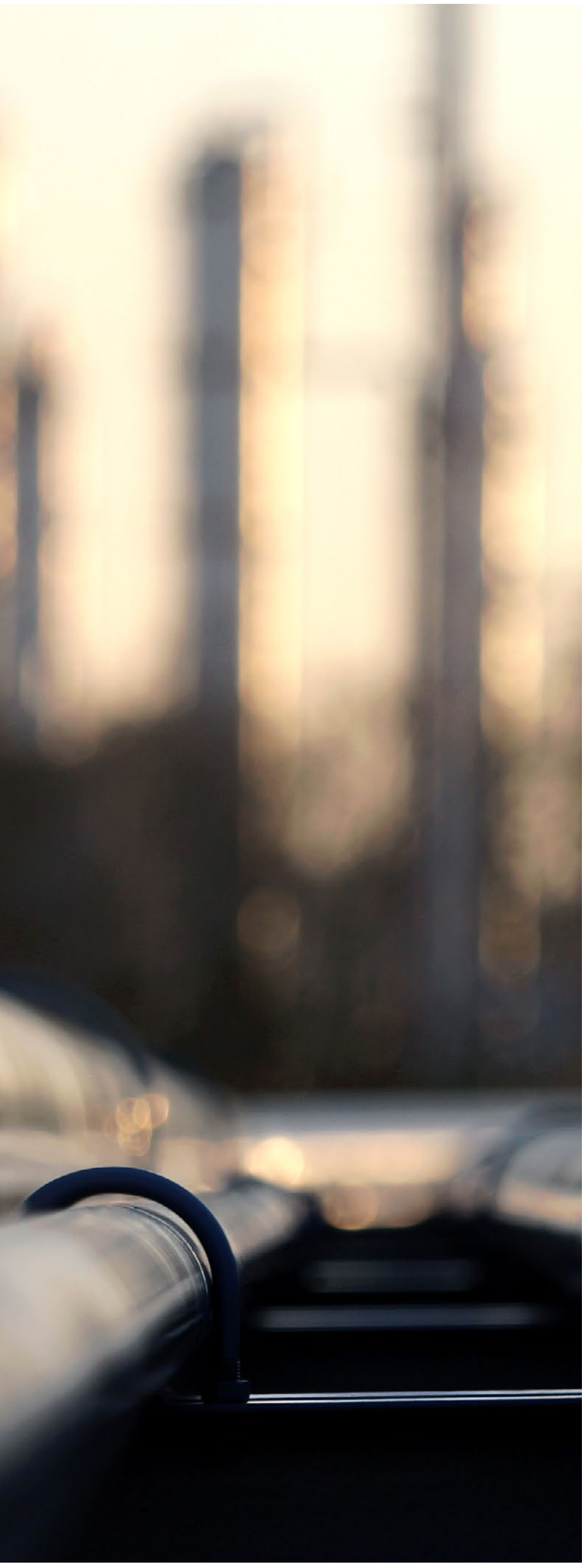
There tends to be a considerable overlap of the responsibilities of Commonwealth and state governments, and the activities of the Commonwealth Government have been subject to legal challenge, with the Commonwealth powers tending to prevail.

Another level of government is that of local or municipal councils. Each state is divided into shire, municipal or district councils. Their powers are defined in the state laws and their functions are mainly directed at road construction, building regulations, and some social services which are directed to the residents of that municipality.

The legal system has developed from British law. Much of the law is codified; however precedents from English common law are an important part of the legal system. A system of courts exists at both the Commonwealth and the state level, with the High Court being at the apex of the legal system.

Technology and Intellectual property rights

Australia provides a comprehensive legal framework for the protection of technology and intellectual property rights, not only for Australian creators, but for those of many other countries with which Australia has multilateral and bilateral treaty arrangements. This is achieved through legislation at a Commonwealth level, content which is influenced by Australia's entry into various international intellectual property treaties, for example, the Agreement on Trade-Related Aspects of Intellectual Property Rights.



Patents
The Patents Act 1990 (Cwlth) provides for the grant of two types of patent: a standard patent and an innovation patent.

A standard patent has a term of up to 20 years from the date of filing of the complete specification (provided renewal fees are paid). An innovation patent is designed to provide protection for incremental advances in technology that fall short of being truly 'new' inventions.

However, an innovation patent has a term of eight years, and can be quicker and cheaper to obtain. Accordingly, innovation patents can be useful where it is likely that technology will advance rapidly, quickly rendering existing patents otiose. Patent terms, other than in relation to standard patents for pharmaceutical substances, may not be extended. An application for a standard patent is subject to a full examination as a condition of grant. An application for an innovation patent is not subject to substantive examination prior to grant but will only be examined for compliance with formal requirements, and will then be registered. However, an innovation patent may not be enforced against an alleged infringer unless it has been substantively examined and certified.

An examination can therefore be requested (and paid for) at any time by the patentee, or by any third party (who might have concerns as to the validity and/or infringement), or directed by the Commissioner. Both standard and innovation patents may be challenged on various bases including lack of novelty, lack of inventive (or innovative) step, lack of utility and various other technical grounds. An alleged infringer is entitled to assert by way of defence to an infringement claim that a patent is invalid. Australia is a party to both the Paris Convention, under which a foreign applicant has a certain time period from the date of an original application in a member country within which to file in Australia an application fairly based upon the original, and the Patent Co-operation Treaty, under which a single application in a member country may be treated as an application in another member country.

The registration of patents in Australia is the responsibility of IP Australia, which is the Australian Government organisation responsible for the registration of patents, designs, trademarks and plant breeders' rights.

Designs
The Designs Act 2003 (Cwlth) creates a system for registration of designs with IP Australia. Under the legislation, a design is "the overall appearance of a product resulting from one or more visual features" and will be registrable if it is "new" and "distinctive", assessed against designs publicly used in Australia or published within or outside Australia. An application for registration will not initially be subject to substantive examination, but will be registered on compliance with formalities only. The registered design will only be examined upon request of any person, by order of a court, or at the initiative of the Registrar. It is a condition of infringement proceedings that a registered design has been examined and, if compliant with the requirements of novelty and distinctiveness, a certificate of examination issued.

The duration of the monopoly in the registered design is up to 10 years (consisting of an initial five year term plus the option to renew for a further five year term). As a party to the Paris Convention, Australia allows foreign applicants a six month period of grace from the date of an original application in a member country in which to file an application for the same design in Australia.

Trademarks
Australia's law of registered trademarks is governed by the Trade Marks Act 1995 (Cwlth). Under that Act, applications for registration may be made whether or not the subject mark has been used in respect of particular goods and/or services. Consistent with the obligations imposed by the Paris Convention, Australian legislation permits a period of grace within which an application by a foreign party may be filed in Australia for the same mark in respect of the same goods or services, while retaining the priority date of an earlier application in the convention country. Australia is also a party to the Madrid Protocol, under which a single application may be made in any member country for subsequent processing by the relevant body in other member countries nominated in the application.

Australia operates a system of classes for goods and services, in accordance with the Nice classification system.

Trademarks are registered for a period of 10 years, and may be renewed for further terms of 10 years each. Since the commencement of operation of the Act, there is no requirement for the registration of user licences in order to protect the registration of a trade mark. However, for use under a licence to be deemed use of the registered owner, a licence must meet certain criteria, including a requirement that reasonable control be exercised over the licensee by the registered owner. It is still possible to record any interest in a registered trade mark, and such recordable interests now include the interests of a mortgagee or a beneficiary under a trust, as well as that of a licensee. Apart from the statutory protection of registered trademarks, the general law in Australia also prohibits the passing off of one's goods or services as those of a competitor. A person is not permitted to suggest the use of the same or similar trade mark to that of a competitor, a connection between his or her goods or service and that of her or his competitor.

Copyright
Copyright in Australia is governed by the Copyright Act 1968 (Cwlth).

The types of material which may be subject to copyright are:

- Literary works (which include computer programs)
- Musical works (i.e. musical compositions)
- Artistic works (which include photographs, engineering drawings, plans, buildings and works of artistic craftsmanship, irrespective of whether the artistic content is regarded to be high)
- Dramatic works
- Cinematograph films, sound recordings, sound and television broadcasts and published editions

If the criteria for copyright subsistence exist, copyright arises automatically on creation without the need for registration or any other formality, including any form of copyright notice. Such criteria include the creation of the copyright material by a citizen, national or resident of, or first publication in Australia or one of the many countries with which Australia has multilateral or bilateral treaty arrangements.

Australia is a member of both the Berne Union and a party to the Universal Copyright Convention, as well as a number of other treaties for the protection of individual rights. Copyright in Australia lasts for the life of the human author plus 70 years, in the case of works, and (broadly speaking) 70 years from the date of publication in the case of subject matter other than works.

Confidential Information
Unlike some other countries, there is no property in information under Australian law. The relevant right is the right to have truly confidential information kept confidential. The protection of confidential information (which includes trade secrets) is governed by the general law, and not by statute. This means that in Australia there is no written code, such as the uniform statement of law adopted in many American states. The general law imposes duties upon a person who receives confidential information in circumstances where he or she knew, or should have known, that the information was confidential.

Movement of funds

The Reserve Bank of Australia (RBA) under the provisions of the Banking (Foreign Exchange) Regulations, administers control over foreign receipts and payments. Investments in Australia by governments, government agencies and foreign banks, including central banks, require RBA approval.

There are no specific rules or limitations imposed on transfer from Australia of profits, dividends, license fees, capital and the like belonging to foreign investors. However, remittances may be the subject of withholding tax and other income tax requirements concerning clearance certificates.

Financial transactions

The Financial Transaction Reports Act 1988 (Cwlth)[10] implements a scheme for the reporting of large physical cash transactions conducted through cash dealers and the reporting of transfers of physical currency to and from Australia. It also requires financial institutions to verify the identity of people opening and closing accounts with them. Reporting requirements extend to telegraphic transfers and other nonphysical cash transactions.

Currently, cash dealers are required to report all cash transactions (coins and notes) of A$10,000 or more to which they are a party to the Australian Transaction Reports and Analysis Centre (AUSTRAC). This requirement applies to financial institutions, securities dealers, futures dealers, bullion dealers, insurers, insurance intermediaries, and the trustees or managers of cash management trusts, property trusts or unit trusts.

Certain transactions between a financial institution and another person may qualify for exemption from the reporting requirements.

Reporting requirements are imposed on persons who transfer foreign currency (coins and notes) of A$10,000 or more out of Australia and on persons who transfer Australian or foreign currency (coins and notes) of A$10,000 or more into Australia.

Reporting exemptions apply as follows:

- Common carriers of passengers need not report currency in the possession of passengers
- Common carriers of goods need not report in respect of currency carried on behalf of another person unless the person has disclosed to the carrier that the goods include currency
- Banks need not report on currency transferred on behalf of the bank through the post or by a common carrier

A person (other than a bank) who receives Australian or foreign currency (coins and notes) of A$10,000 or more from outside Australia is required to report the receipt of those funds unless the transaction has already been reported by the transferor.

In addition, the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cwlth) requires businesses that provide certain financial or gambling services or those involved in bullion dealing, to:

- Identify their customers before providing services by checking identification
- Report certain transactions
- Report suspicious matters

While the federal government has announced its intention to extend the operation of the Act to those who provide 'professional services' (including real estate agents, accountants, and company directors), the implementation of these 'second tranche' reforms is still under consideration.

Debt funding
Interest withholding tax (IWT) is typically imposed on interest paid by an Australian resident as an expense of an Australian business to a non-resident lender that does not have a permanent establishment in Australia. It also applies to interest paid to such a non-resident lender by a non-resident borrower where it is an expense of an Australian branch of the non-resident borrower.

A flat rate of 10 percent applies on the gross amount of the interest paid. In most cases this rate is not affected by double taxation treaties but certain treaties provide exemptions for interest paid to foreign banks and financial institutions. Interest includes amounts in the nature of interest and amounts deemed to be interest.

The debt/equity tests also apply when classifying amounts payable. Also, a concessional IWT rate of five percent applies to foreign bank branches borrowing from their overseas head office.

However, if the beneficial owner of the interest (the lender) has a permanent establishment in Australia and the interest is effectively connected with the permanent establishment, the interest is taxable by assessment in Australia and is not subject to interest withholding tax.

An exemption is available for interest paid on certain publicly offered debentures, global bonds and debt interests. Thin capitalisation rules impose certain limitations on allowable deductions for interest and other debt expenses, based on acceptable levels of debt and equity (gearing).

The object is to prevent excessive reliance by Australian businesses on the taxation treatment of debt funding, relative to the treatment of equity funding.

The measures apply to foreign entities investing directly in Australia (through a branch), foreign controlled Australian entities, as well as Australian enterprises with controlled foreign investments.

Where applicable, the rules disallow debt deductions that an entity can claim against Australian assessable income where the entity's debt used to fund Australian assets exceeds the limit prescribed.

Foreign investment

The policy of the current Commonwealth Government is to encourage foreign investment that provides economic benefits to Australia and is consistent with the needs of the Australian community.

The aim is to weigh the net economic benefits to the Australian community of long term investment against the costs to the national interest of too high a level of foreign ownership and control.

The policy provides for certain proposals to be examined and includes restrictions on the introduction of foreign capital into such industries as media, broadcasting, residential housing, and real estate. In addition, there are industries which are closed to private enterprise whether those enterprises are Australian or overseas. Examples of such restricted industries include postal services.

Trading partners

Australia is a top ten destination for foreign investment. According to the UN Conference on Trade and Development (UNCTAD), Australia – with US$52 billion (4.2 percent globally) – was the eighth largest recipient of foreign direct investment inflows in 2014, well up on the pre-GFC average of US$22 billion.

Having amassed sizable war chests in recent years, global companies are seizing the opportunity to pick off cheap assets, and mergers are now being done at a pace unseen for at least a decade.

2015 also saw China, for the first time, surpass US investors (A$17.5 billion) to become Australia's biggest source of approved foreign investment, having spent A$27.7 billion, around half (A$12.4 billion) of which was on Australian real estate.

However, tougher rules on foreign investment in residential property have since been introduced.

According to ABS data (excluding portfolio investment stocks), China is now Australia's fifth (equal with Singapore) largest investor with 4 percent of investment stock, behind the Netherlands (6 percent), Japan (10 percent), the UK (13 percent), and the US which alone accounts for virtually a quarter (24 percent).

Australia's recently-inked landmark Australia China Free Trade Agreement (CHAFTA) – following similar deals with South Korea and Japan – is expected to have far reaching implications for frequency and scale of direct investment from China.

The bilateral trade deal with China eliminates many tariffs on Australian exports and allows Chinese investors to make a single investment of A$950 million without review by regulators.

It's important to note that Sydney alone attracts 72 percent of total Chinese investment in Australia.

It's also important to note that foreign investment is by no means a one-way street, with Australian companies increasingly targeting assets within energy and power, consumer products, legal and healthcare sectors in an attempt to deliver better earnings amid more challenging domestic conditions.

The Foreign Investment Review Board (FIRB) advises the Commonwealth Government on foreign investment matters and reviews the acceptability or otherwise of applications for foreign investments.

Proposals by individual foreign interests to acquire shares in certain Australian companies that would result in an increase or alter the ownership of a substantial interest (i.e. 15 percent or more of the issued capital or voting power) must be notified, under the Foreign Acquisitions and Takeovers Act 1975[11] (Cwlth), to the FIRB.

Notification under the Act requires the Commonwealth Government to make a decision on the proposal within thirty days of the proposal being received. The Commonwealth Government may prohibit takeovers if the Federal Treasurer considers the takeover is not in the national interest.

New FIRB regulations, which came into force on 1 December 2015, mean FIRB approval will not be required for purchases below A$252 million – a figure that will increase with CPI. Purchasers from countries with which Australia has a trade agreement – the USA, New Zealand, Japan, Korea and Chile – have an even higher threshold of A$1.094 billion.

Another change is the relaxation of FIRB requirements on Australian funds which have foreign investors. Offshore investors with a holding of less than 5 percent in the fund are now excluded from the foreign control calculation.

Applications for foreign land purchases over the A$252 million threshold, but below A$1 billion will attract a flat fee of A$25,000[12].

Investment manager regime

The passing of the Tax Laws Amendment (Investment Manager Regime) Bill 2012[13] was implemented with the aim to increase clarity in the tax treatment of Collective Investment Vehicles (CIV). The bill inserts a new subdivision to the Income Tax Assessment Act 1997 (ITAA 97), which allows for a tax exemption for internationally managed funds.

Under the new tax treatment, gains on investment funds would no longer be assessable as income for the fund if they are linked to a permanent establishment in Australia which arises through the use a domestic based agent, manager or service provided. This amendment bill will encourage the use of Australian fund managers by foreign investment funds.

The amendment to the bill also clarifies rules in regard to determining source of income and residency as they apply to foreign investment funds, allowing for greater certainty in the Australian investment market.

Trade practices legislation

The Commonwealth, through its Competition and Consumer Act 2010[14] (the Act) prohibits anticompetitive trade practices by companies and provides for consumer protection. The Australian Competition and Consumer Commission (ACCC) is responsible for administering the Act.

Restrictive trade practices
The restrictive trade practices provisions of the Act are directed primarily at restrictive business behaviour and secondly at market structures that are inconsistent with free and fair competition.

Primary boycotts, price fixing agreements, certain abuses of monopoly power, and resale price maintenance are prohibited by the Act. Certain other types of conduct are also prohibited if such conduct substantially lessens competition.

Some mergers and takeovers are prohibited by the Act. The Act prohibits acquisitions of shares or assets of a corporation if, as a result of the acquisition, the acquiring corporation would be in a position to control or dominate a substantial market for goods or services in Australia, or where the acquisition would strengthen the existing control of the acquiring corporation or result in dominance of a market.

Some of the types of conduct described above, including mergers, which would normally be prohibited by the Act, may be approved by the ACCC on the grounds of public benefits.

Consumer credit protection
In response to economic events and a desire to create a national framework of consumer credit protection, the government has enacted the National Consumer Credit Protection Act 2009. The Act provides a comprehensive licensing system for all providers of consumer credit and enhanced regulatory powers for the ACCC. The Act also imposes responsible lending requirements on licensees to ensure the lending product is suitable and the consumer has the capacity to repay. Further additions are expected to strengthen the framework.

Price surveillance
The ACCC's primary surveillance role is to assess the validity of price increases falling within its jurisdictions i.e. all corporations.

In addition to the role of the ACCC, the various state governments can, and have, exercised price controls from time to time on certain products.

Importing and exporting

Imports into Australia are subject to a system of tariffs, i.e. customs duties. Such duties are levied by the Commonwealth Government through the Australian Customs Service[15]. The rates of duty vary depending upon the type of goods and the country of origin. Customs duties rates may be ad-valorem, specific, alternative, composite or dumping rates.

Certain imports into Australia are restricted and these restrictions take several forms, for example:

- Customs (Import Licensing) Regulations whereby quantities or the value of goods that may be imported are restricted
- Tariff quotas whereby quota holders are permitted to import goods up to an approval threshold with additional imports over the threshold being subject to penalty rates of duty
- Commerce (Trade Descriptions) Act 1905[16] (Cwlth) whereby goods bearing identical or similar trademarks to registered Australian trademarks may be classified as prohibited imports

- Commerce (Import) Regulations whereby goods are required to display markings of their composition and country of origin
- Customs (Prohibited Import) Regulations whereby goods may only be imported when government approval has been obtained

Exports in relation to primary products and minerals are subject to control and approval by the Commonwealth; however, few exports are subject to prohibition.

Free trade agreements

In an attempt to offer international investors a cost-effective and innovative place in which to do business, Australia has successfully established Free Trade Agreements (FTA) with many of its trading partners within the Asia Pacific region and beyond.

Included among more recently-inked free trade agreements are the Japan FTA, and the Trans Pacific Partnership Agreement (TPP) which has attempted to make mining and quarrying an area of focus by increasing the screening threshold, above which private foreign investments in the mining and energy sectors are considered by the Foreign Investment Review Board, from A$252 million to A$1.09 billion for all TPP counties (except uranium, plutonium extraction and nuclear facilities).

Then there's the Chinese Australia Free Trade Agreement (CHAFTA) which is expected to significantly boost China's share of foreign direct investment into Australia.

CHAFTA is regarded as the singularly most important free trade agreement for Australia since the United States Free Trade Agreement (AUSFTA) came into force on 1 January 2005.

For a full list of Australia's free trade agreements go to http://dfat.gov.au/trade/agreements/pages/trade-agreements.aspx.

The cost of doing business in Australia

The vast majority of foreign investment in Australia is concentrated in the eastern states, and the lion's share of that is confined to Australia's largest capital city Sydney, New South Wales.

Australia has long been regarded as one of the more expensive economies in the G20. Due in part to a more complex regulatory environment, higher labour, electricity and transportation charges, Australia's cost of living remains high relative to other developed economies. However, a number of ground-breaking trade agreements, accompanied by the reduction and progressive removal of trade tariffs, are helping to make Australia a more attractive place to do business.

Australia also has one of the lowest priced telecommunications sectors in the region, and an extremely competitive banking sector.

As a leading financial centre in the Asia Pacific region, Australia's key business centres include Sydney (New South Wales), Melbourne (Victoria), Brisbane (Queensland) and Perth (Western Australia).

Office space costs in Australia's business centres are becoming more expensive relative to major business centres, with Sydney now one of the top ten most expensive office space markets globally (Cushman and Wakefield's annual 'Office Space Across the World' global ranking[17].

Australia's corporate tax rate of 30 percent is very competitive when compared with other major economies, with higher company income tax rates applying in the United States, China, Japan, Germany, France and India.

There is also growing competition between Australian states to encourage favourable trading conditions to help foreign businesses (refer to section, 'International business and market development' on page 11).

Transportation

Due to the major distances between Australia's capital cities, remoteness from the European and American markets and the concentration of the population in the large capital cities, transportation presents its own unique set of challenges and opportunities.

Transportation is highly developed, and is centred around the industrial areas at major seaports which are linked by railway, road, coastal shipping and air.

Due to the distances separating the major population centres and raw materials, transport accounts for a significant proportion of manufacturing and distribution costs.

Road and rail
With over 75 percent of non-bulk domestic freight carried on Australia's roads, the strategic importance of major road arteries between major capital cities can't be overstated. Given the reliance on moving goods quickly between different cities, and the prohibitive costs of air freight across Australia's vast continent, state and federal governments have invested heavily in the nation's road infrastructure.

The largest amount of road freight transport occurs within New South Wales (33 percent), followed by Victoria (22 percent), Queensland (18 percent), Western Australia (15 percent) and South Australia (8 percent).

By comparison, rail dominates freight movements between Perth and the eastern states, and is expected to jump by two-thirds by 2030.

Ports
Australia trades with well over 200 countries and territories and is almost totally dependent on overseas shipping companies for transport of exports and imports[18].

There are regular overseas shipping services to the trade routes of Europe, east and west coast of North America, Japan, South East Asia and China.

Australia's maritime activity has grown strongly over the last 15 years, with bulk port throughput up more than 75 percent, while container trade has increased by over two thirds.

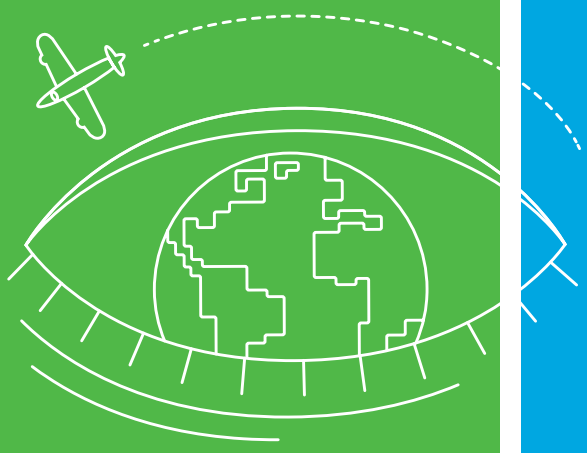
Australia's containerised international exports are expected to virtually double by 2030 due to strong demand from China and South East Asia.

Meantime, Australia's strong demand for consumer goods imports is expected to grow broadly in line with the economy, increasing freight imports. Larger volumes and the trend towards much larger bulk and container vessels continues to place significant pressure on ports, especially Australia's deep water ports.

In recent years there has been a growing trend towards privatisation of government (predominantly state owned) maritime assets. For example, in April 2013 the 99-year lease of Port Botany and Port Kembla raised A$5.07 billion, and mid-October 2015 the Northern Territory Government sold the Port of Darwin for A$506 million.

Given budgetary pressure now confronting both state and federal governments, the further sell-down of Australia's port and infrastructure assets is expected[19].

Air
Because of the vast internal distances, air transport to all cities is extensively used, and is both modern and efficient.



Labour

Australia's labour force is heavily concentrated in the six state capitals, over half being accounted for by the eastern states of New South Wales and Victoria.

The past two decades have seen a dramatic decline in trade union membership rates across Australia. This decline has occurred at a time of significant change in the industrial relations environment. In 1986, 46 percent of employees belonged to a trade union. By August 2014, Australian Bureau of Statistics data reveals that only 15 percent of all workers were union members, while union membership in the private sector had plummeted to only 11 percent.

Most unions are affiliated with the Australian Council of Trade Unions (ACTU) which acts as coordinator and voice of the labour movement.

The Commonwealth Government sponsors several employment, training/retraining, and incentives schemes which are aimed at assisting both the employer and employee. Such schemes include the integrated wage subsidy programmes, community employment programmes and new enterprise incentive schemes.

Industrial relations laws

The Fair Work Act 2009[21] governs Australia's workplace relations. Several bodies, including Fair Work Australia and the Fair Work Ombudsman administer this Act. Australia's system has a set of rules and obligations that apply to all entities and by law employers are required to comply.

The Fair Work Act 2009 also brought with it requirements for both good faith bargaining, and enterprise agreement content and approval.

Minimum obligations are set by Fair Work Australia and include:

- Minimum wages
- A maximum of 38 ordinary hours of work per week
- Four weeks paid annual leave
- Ten days paid sick leave/carer's leave
- One year unpaid parental leave
- Entitlement to paid public holidays and rules around work on public holidays
- All employees are entitled to receive a minimum period of notice of termination

In addition, the government provides 18 weeks paid parental leave at the minimum wage. This is available to all employees who gave birth after 1 July 2011, earn less than A$150,000 and have been in employment for 10 of the 13 months preceding the birth.

In Australia, there is no obligation to enter into a collective agreement. The Workplace Authority will check agreements against a Fairness Test to make sure employees get a fair deal.

If purchasing an Australian business that is covered by a certified agreement, employee arrangements continue to apply for 12 months until re-negotiated. Redundancy provisions contained in these agreements are preserved for 12 months.

Employees are also protected by unfair dismissal laws and legislation prohibiting sexual harassment and discrimination in the workplace.

Social security system

The Commonwealth Government, through Centrelink, administers a national income and welfare system. This system involves the payment of pensions, benefits and allowances and the provision of personal welfare, subsidy and rehabilitation programmes.

The legislation which principally provides for these payments and programmes is the Social Security Act 1991[22] (Cwlth) and includes pensions, benefits and allowances such as:

- Age, invalid and widow pensions
- Supporting parents benefits
- Unemployment and sickness benefits
- Family allowances and income supplements

Medical insurance

Compulsory basic hospital and medical cover is provided through the national Medicare scheme. Medicare[23] pays benefits on the services of doctors, optometrists and dentists.

Public hospitals are controlled by the state and territory governments and in return for special Commonwealth funding, these have agreed to provide free public hospital accommodation and treatment to all eligible for Medicare cover. The Medicare scheme is funded by a 2 percent levy on taxable income of individuals.

All Medicare benefits are based on a schedule fee. The Medicare benefit is 75 percent of the schedule fee for each service. Additional private insurance is available for those wishing to be treated in a private hospital or as a private patient in a public hospital. Private insurance is also available for various ancillary medical services.

Employment of foreign nationals

Applications for permanent and temporary residence are made to the Department of Immigration and Border Protection[24]. Generally, applicants are admitted on the basis of availability of their particular expertise in Australia.

Business visitors

Business people planning to enter Australia for a business visit are able to apply for either an Electronic Travel Authority (ETA) or eVisitor visa, depending on their country of passport. Once granted, the Business ETA and Business eVisitor visas provide the holder with permission to enter and remain in Australia for a period of up to three months from each entry.

Business ETA and e Visitor visa holders are only able to participate in business activities while in Australia, specifically: for attendance at business meetings or conferences (unpaid only), entering into or finalising contract negotiations, making general employment enquiries or for the purpose of an exploratory business visit.

Individuals who do not hold an eligible passport to access an ETA or eVisitor visa will need to apply for a Subclass 600 Visa under the Business Visitor Stream. These applications can be lodged online or as paper applications, and will be processed by the Australian High Commission or Embassy with responsibility for their country of residence/origin.

Business visitors who are required to undertake short term, highly specialised work will need to enter Australia as the holder of a subclass 400 visa.

Please refer to the Department of Immigration and Border Protection's website www.border.gov.au to determine the correct visa for your requirements.

Sponsoring staff to Australia

Companies operating in Australia, or companies operating in other countries wishing to establish an entity in Australia, are able to sponsor individuals to come to Australia on a Subclass 457 Temporary Work (Skilled) visa which allows for residence for up to four years for skilled applicants and their dependents.

Permanent visas are available for applicants who possess skills listed in Australia's skilled occupation list. These applicants do not require employer sponsorship.

Business visas are available to those who wish to conduct a short business trip, establish or manage a new or existing business, or to invest in Australia. Some states provide sponsorship to encourage nominated business activity, allowing concessional criteria on application. A direct permanent residence visa is also available for high calibre business people.

BUSINESS ORGANISATION

Operating structures
The selection of the appropriate legal structure to conduct business activities in Australia will vary depending upon the needs of each entrepreneur.

Business activities can be operated through any of the following structures:

- Sole proprietorship
- Partnership, joint venture
- Trust
- Company

No public disclosure of the financial statements of a sole proprietor, unincorporated partnership, joint venture, or trust is required.

If a business operates under a name other than the name of its owners, then the business name must be registered with the appropriate government department in each state.

Sole proprietorship
A sole proprietorship is a business owned by the individual which is conducted in the name of a proprietor or a registered business name. A sole proprietor has unlimited liability but is subject to fewer regulations than the more complex business organisations.

Partnerships and joint ventures
Partnerships and joint ventures (unincorporated) are entered into by a group of individuals or companies for a common business objective. The rights and obligations of partners are governed by the partnership agreement and by the Partnership Acts of the various states.

A joint venture can be described as an unincorporated contractual association between two or more individuals or other business organisations to undertake a specific business project. The relationship between the parties to the venture is governed by the joint venture agreement which is unique to the venture.

Trusts
A trust can be described as a fiduciary obligation imposed upon a person to hold property or income for a particular purpose or to carry on a business activity for the benefit of a particular person or persons. The terms and conditions of the trust are outlined in the trust deed.

It is generally regarded that the liability of the trustee for the debts and obligations of the business will not exceed the available assets of the trust.

Companies
The most common vehicle for the conduct of business in Australia is the limited liability company. A limited liability company is one where the personal liability of members is limited to the amount unpaid on their shares.

Limited liability companies fall into two categories, public companies and proprietary (or private) companies. Generally, a public company is one which raises capital from the public and includes all the companies listed on the Australian Securities Exchange (ASX). A proprietary company is prohibited from inviting the public to subscribe for shares, debentures or to deposit funds with the company.

Large versus small proprietary companies
Proprietary companies are classified as either 'large' or 'small'. In any financial year a 'large' proprietary company is one which satisfies any two of the following criteria:

- Revenue for the year of more than A$25 million
- Gross assets at year-end of A$12.5 million or more
- 50 or more employees at year end

'Small' proprietary companies which are controlled by foreign companies and all 'large' proprietary companies must normally prepare audited financial statements annually, whereas other 'small' proprietary companies do not unless required to do so by their shareholders or the Australian Securities and Investments Commission (ASIC).

'Small' proprietary companies must, however, maintain accounting records that would enable financial statements to be prepared if required to do so at a future date.

Other types of companies

- Companies limited by guarantee whereby each member guarantees to meet the liabilities of the company up to a nominated amount in the event of liquidation of the company
- Companies limited by guarantee whereby the liability of each member is limited to shares held and the guarantees given
- Unlimited companies whereby the liability of each member is unlimited
- No liability companies whereby members of mining companies are not liable for the unpaid amount of their shares as members can forfeit those shares.

Regulation of companies

Australia has a uniform scheme of companies legislation, the Corporations Act 2001 (Cwlth) (the Corporations Act), which regulates:

- Company take-overs
- Company financial reporting and the activities of companies and their directors, officers, and auditors

The Australian Securities and Investments Commission Act 2001 (Cwlth) provides for the administration of the Corporations Act by the ASIC.

Company registration

To form a company in Australia it is necessary to comply with the requirements of the Corporations Act. To set up a new company, a person must apply to ASIC for registration of the company. A company can choose any name unless it is identical to a name reserved or registered under the law for another body; or a name that is included in the National Business Names Register; or is unacceptable. Generally, company names will not be permitted to include the words 'bank' or 'trust'.

A company incorporated outside Australia must register as a foreign company if it intends to conduct business as a branch.

On registration, all companies are given a nine digit Australian Company Number (ACN). The ACN must be quoted on all company publications, cheques and official documents (invoices etc.). A registered foreign company will be given an Australian Registered Body Number (ARBN).

Australian business number (ABN)

A prerequisite for registration under the Goods and Services Tax (GST) system is the obtaining of an Australian Business Number or 'ABN'.

The ABN identifier will ultimately be the reference required to access and be recognised by all levels of government.

The ABN system is maintained by the Australian Taxation Office (ATO), and certain details are publicly available via the ABN Register.

As part of the Pay As You Go (PAYG) provisions for business transactions, when a supplier fails to quote an ABN the payer is required to withhold 49 percent of the amount due and remit this to the ATO. Credit for the withholding is available to the supplier on lodgement of their annual income tax return.

The Corporations Act 2001

The Corporations Act regulates the activities of companies in respect of matters such as:

- Registering a company
- Basic features of a company
- Prospectus, shares, debentures, prescribed interests
- Responsibilities of directors and other officers
- Members' rights and remedies
- Meetings
- Financial reports and audit
- Arrangements, reconstructions, receivers and managers, official management and winding up

Directors

A public company must have at least three directors and a proprietary company at least one director. In the case of a public company, at least two directors are to be persons ordinarily resident in Australia and for a proprietary company at least one director is to be a person who resides in Australia.

In addition to the responsibilities and obligations of the directors in relation to the accounts, the law imposes obligations on directors in relation to honesty, reasonable care and diligence and proper use of information and position.

Accounting

A company is required to keep accounting records correctly recorded which explain the transactions and the financial position of the company. Such accounting records are to enable the preparation of 'true and fair' accounts, and for such accounts to be conveniently and properly audited (where appropriate). In addition, companies are required to maintain various statutory registers.

The accounts are to be drawn up in accordance with the provisions of the Corporations Act which encompasses the provisions of the Act itself, applicable accounting standards and interpretations.

Accounting standards
Applicable accounting standards are those issued by the Australian Accounting Standards Board (AASB).

Such applicable accounting standards, subject to materiality, are to be complied with. Applicable accounting standards are legally enforceable for companies preparing financial reports under the Corporations Act. Compliance with Australian accounting standards ensures compliance with International Financial Reporting Standards (IFRS).

Annual general meetings
For a public company an annual general meeting is to be held once in each calendar year and within five months of the end of the financial year.

Accounts (balance sheet, income statement, cash flows statements and directors' declaration) and the directors' report (and where necessary an auditors' report) are to be prepared and distributed to members 21 days before the annual general meeting which those accounts must be laid before, or four months after year end, whichever is earlier.

A proprietary company does not need to hold an annual general meeting each year.

Financial statements
Financial statements of a public company must be lodged with ASIC within four months of the end of the financial year.

The directors' declaration includes a statement that in the directors' opinion there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

Audit
All public companies, large proprietary companies and foreign controlled small proprietary companies must have their financial statements audited by a registered company auditor.

The auditor must form an opinion as to whether the accounts give a true and fair view of the financial position and performance of the Company and comply with accounting standards. In addition, the directors' declaration is subject to audit.

Annual company statement
Each year the company must confirm key information regarding directors, shareholdings and the business generally. This information is provided by ASIC on an 'Annual Company Statement' which is sent to the registered address of the company on its anniversary date. Directors are also required to prepare a solvency resolution annually.

FINANCING

Australia offers a wide range of financing options including debt from sources such as the domestic and foreign banks and other financial institutions, to equity capital via the Australian Securities Exchange Ltd (ASX).

In keeping with the conservative nature of Australian banks, they typically focus on domestic assets as acceptable collateral for servicing loans.

Banking

Business in Australia is served by a comprehensive system of banks — both domestic and foreign. The Australian banking system is controlled by the Commonwealth Government through the Reserve Bank which is the central bank.

The banking system includes trading, savings and other banks. The banking system is dominated by the domestic trading banks due to restrictions placed on the establishment of foreign banks in the past. However, the banking system has been deregulated and some 48 foreign banks have obtained Australian banking licences[25] (a number of these are no longer active in the Australian market following the Global Financial Crisis).

The domestic banks have extensive networks of full service branches across the country as well as offices in the major cities throughout the world. The foreign banks and merchant banks tend to be subsidiaries of overseas banks.

The Australian banking system offers a wide range of banking services that are generally tailored to meet most companies requirements and include:

- Bridging finance
- Leasing
- Factoring
- Foreign exchange dealings
- Corporate financial services
- Securities underwriting and placement services

There are four major banks in Australia, including the Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia, National Australia Bank Limited and Westpac Banking Corporation, plus numerous investment banks and a number of regional banks.

Significant foreign banks with a presence in Australia include Citigroup and the Bank of China. Non-bank financial institutions also operate within the financial system in Australia; for example, credit unions, building societies, friendly societies and finance companies.

Together, these entities offer a full range of banking and financial services, including corporate finance, project finance, derivatives, asset and structured finance, property and construction finance and debt capital markets transactions.

AUSTRALIA OFFERS A WIDE RANGE OF FINANCING OPTIONS

Equity capital
The ASX, located in each state, offers excellent facilities for the public to deal in shares, debentures, units and futures.

Companies must meet the listing requirements of the ASX, which include minimum requirements for paid-up capital and shareholders, disclosure of information about the company to shareholders, and half-yearly profit reporting. The stock exchange is regulated by ASIC which ensures all listed entities meet their obligations.

The Australian Government has provided Chi-X Global with a second licence in Australia. Chi-X Australia has been operational since 2011 and provides an alternative exchange to the ASX.

Then there's the National Stock Exchange of Australia (NSX) which was set up in 2000 specifically to cater for the listing of small to medium enterprises[26].

The exchange is owned by NSX Limited which is listed on ASX. NSX lists about 70 securities and its market cap is about A$2 billion.

A company incorporated outside Australia may be accepted for listing if it is listed on a recognised overseas securities exchange and can meet minimum prescribed requirements regarding the number of Australian resident shareholders and shares.

Other sources
Other sources of finance include finance companies; general and life insurance companies; superannuation funds; credit unions and building societies; and the intercompany market.

TAXATION

The taxation system

The taxation system provides for revenue raising from the following taxes:

- Income tax (including capital gains) on companies and individuals
- Fringe benefits tax
- Indirect taxes

Income tax is at present levied only by the Commonwealth Government. No income tax is imposed by state governments or municipalities.

The Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997 (Cwlth) is the enabling legislation that contains the provisions for the taxing of income and capital gains.

Fringe benefits tax is levied by the Commonwealth Government on employers on the value of certain fringe benefits that have been provided to their employees or to associates of those employees.

Indirect taxes are levied by the Commonwealth, state governments, and local municipalities on various goods and transactions.

Income tax

Australian income tax is imposed on taxable income (i.e. assessable income less allowable deductions) of companies and individuals. Resident companies and individuals, together with entities where tax is payable by individuals (i.e. trusts) are required to lodge annual income tax returns.

The tax year ends on 30 June unless leave to adopt a substituted accounting period has been granted by the Australian Taxation Office (ATO).

Tax reform

Tax reform in Australia is a continuously evolving process. In May 2010, Treasury released the Henry Tax Review to provide a roadmap for tax reform in Australia. This was followed by a national tax summit in October 2011 to discuss the review and taxation in Australia in general.

Due to these continuous changes, when setting up or proposing to do business in Australia, we recommend readers seek specialist tax advice to ensure that the impact of these tax reform measures, including their transitional arrangements, are fully understood and taken into account.

Corporate taxation

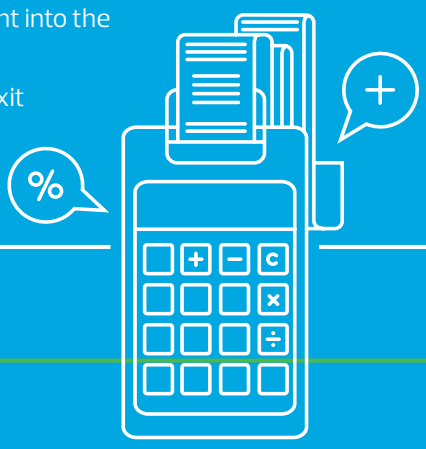
Generally, a company resident in Australia is subject to income tax on its worldwide taxable income. To calculate taxable income, deductions are allowed against assessable income for all ordinary business deductions (including depreciation) and any special incentive deductions (e.g. primary production incentives and research and development).

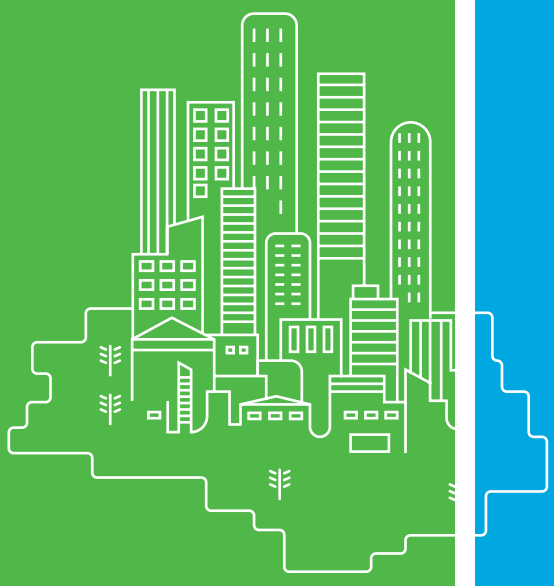
Assessable income includes business profits and other amounts in the nature of income. It also includes certain capital gains.

The rate of Australian income tax on the taxable income of a company is currently 30 percent, or 28.5 percent for small businesses with aggregated annual turnover of less than A$2 million.

The tax consolidation regime enables wholly owned corporate groups to consolidate for income tax purposes. The main elements of the regime are:

- A consolidated group must consist of a head entity and subsidiary member(s) (subject to satisfying certain eligibility criteria)
- Once an election to consolidate has been made the election is irrevocable
- A consolidated group will be treated as a single entity, with the head entity lodging a single tax return
- Special rules govern the 'transfer' of losses and assets by the consolidated group members into the group (discussed in more detail under 'Tax losses' on page 34)
- Losses and franking account balances are generally able to be brought into the consolidated group by the entering entities
- Losses and franking balances remain with the group on an entity's exit





Trusts

A trust is not a separate taxable entity for Australian income tax purposes, but a trust income tax return must be lodged by the trustee.

A trust is a conduit for income on behalf of beneficiaries and as such any net income not distributed to a beneficiary is taxed in the hands of the trustee as though the trustee were an individual taxpayer. Beneficiaries are taxed on the income to which they are entitled.

Trust losses cannot be distributed to beneficiaries but are carried forward against future years trust income. Special provisions relate to the rate of tax payable by beneficiaries who are minors (under 18 years of age) and beneficiaries who are non-residents.

Partnerships

A partnership is not a separate taxable entity for Australian income tax purposes. The net income of a partnership is determined in a similar manner as the income of a company. The partners are assessable individually on their share of the partnership net income and are entitled to a deduction for their share of the net losses.

A partnership must file an annual income tax return to provide a basis for the determination of the share of each partner's net income or net loss for tax purposes.

Tax losses

A company, like other taxpayers, is entitled to carry forward tax losses incurred in one year for deduction against assessable income in any one of the next succeeding years provided it meets either the continuity of ownership test or the alternative same business test.

Under the consolidation rules companies must satisfy modified versions of either of these eligibility tests.

When an entity (the joining entity) becomes a member of a consolidated group (the joining time), its unused carry forward losses are transferred into the group provided that the above tests are satisfied at the relevant time. Where losses can be transferred into the group, these losses are deemed to have been made by the head company. In this regard, the head entity can, subject to passing the above tests, utilise these losses in calculating the consolidated group's taxable income. The rate at which these losses can be utilised in the consolidated group are subject to various roles.

Where an entity is not a member of a consolidated group, any unused losses for an income year cannot be transferred to another entity.

Personal income tax

Generally, an individual resident in Australia is subject to income tax on taxable income derived from all sources within and outside Australia. The taxable income, subject to tax, is calculated by aggregating all gross income, then excluding exempt income and deducting allowable deductions.

Gross income includes income from personal exertion (i.e. salary and wage or business income); interest; dividends; allowances; bonuses etc.

Exempt income is that specifically exempted by taxation legislation and includes certain government pensions and scholarships. In addition, capital gains provisions apply to profits on disposal of assets acquired on or after 20 September 1985.

Deductions allowed from gross income include expenditure incurred in producing assessable income, or which is necessarily incurred in the course of carrying on a business, plus certain statutory deductions set out in the Income Tax Assessment Acts.

The taxable income is initially subject to tax calculated by the application of the rates applicable for that year. The Australian tax year ends on 30 June and individual income tax rates for residents and foreign residents for the year ended 30 June 2016 are detailed in Tables 2 and 3 respectively.

Table 2: Resident individual income tax rates 2015–16[27]

Taxable income (AUD)	Tax on this income (AUD)
0 – $18,200	Nil
$18,201 – $37,000	19c for each $1 over $18,200
$37,001 – $80,000	$3,572 plus 32.5c for each $1 over $37,000
$80,001 – $180,000	$17,547 plus 37c for each $1 over $80,000
$180,001 and over	$54,547 plus 45c for each $1 over $180,000

The following rates for 2015–16 apply from 1 July 2015.

Table 3: Foreign-resident individual tax rates 2015–16

Taxable income (AUD)	Tax on this income (AUD)
0 – $80,000	32.5c for each $1
$80,001 – $180,000	$26,000 plus 37c for each $1 over $80,000
$180,001 and over	$63,000 plus 45c for each $1 over $180,000

Temporary Budget Repair Levy 1 July 2014 to 30 June 2017
In addition to the income tax rates the government has introduced a levy of 2 percent commencing from 1 July 2014, applicable for all individuals, both resident and foreign residents whose taxable income is A$180,000 or more.

A health care levy is imposed on the taxable income of a resident individual. For the 2015/16 financial year the Medicare levy is 2 percent of taxable income. The levy is collected in the same way as income tax. Subject to taxable income thresholds, an additional surcharge of up to 1.5 percent will apply to high income earners without adequate Australian registered private patient hospital insurance.

Individuals who qualify as a 'temporary resident' of Australia may be eligible for an exemption from the Medicare Levy and surcharge provided they did not come to Australia from a country where Australia has a reciprocal health care arrangement in place.

From the calculation of tax payable, taxpayers are allowed to obtain rebates/tax offsets which reduce the amount of income tax payable. These rebates/tax offsets include pensions, social security benefits, and zone rebates.

The ATO's procedures for processing returns relies on the self-assessment concept. Only a cursory view of the return is undertaken, but a more detailed review may be undertaken at a later date by way of an audit. Substantial penalties are imposed where reasonable care has not been exercised.

Generally salary and wages earned outside Australia by Australian residents are subject to tax in Australia. A tax offset is available for the foreign tax paid on that income.

Whilst residents of Australia are subject to taxation on their worldwide income, Australia has introduced a 'temporary resident' classification for persons currently working in Australia under select immigration visa categories. Temporary residents are only taxed on their employment income and any Australian sourced income.

Tax on capital gains

Liability for income tax on capital gains may be incurred where there is a disposal of assets that have been, or are deemed to have been, acquired after 19 September 1985.

Liability for tax is imposed at personal or company rates of taxation. For capital gains tax (CGT) events occurring after 21 September 1999, the discount method applies. Importantly, the CGT asset must have been held by the taxpayer, being an individual, trust or superannuation fund, for at least 12 months for the CGT discount method to be available otherwise the full capital gain is included in the taxpayer's assessable income. If the discount method is used, capital losses must first be offset against capital gains before applying the discount.

Residents of Australia are liable for CGT on assets wherever they are situated. There may be relief from double taxation if the gain is taxed in the country where it is sourced. The source of the capital gain for this purpose will be a question of fact to be determined in each case.

For CGT events that occur on or after 12 December 2006, a foreign resident will only be liable for CGT if the CGT event happens to a CGT asset that is 'taxable Australian property'. Taxable Australian property encompasses direct and certain indirect interest in Australian real property, certain mining, quarrying and prospecting rights and CGT assets used in carrying on a business through a branch permanent establishment. Other CGT assets may be treated as taxable Australian property in certain circumstances. For CGT events that occurred before 12 December 2006, foreign residents were only liable for CGT if the relevant CGT assets had the 'necessary connection with Australia'.

From 8 May 2012, foreign residents will not be able to access the CGT discount method for any assets acquired after this date. Foreign residents can apply the 50 percent CGT to capital gains accruing on assets acquired prior to 8 May 2012 provided they choose to market value the asset as at 8 May 2012. The CGT discount will not apply to that part of the capital gain accruing after 8 May 2012.

Calculating a cost base
There are detailed rules relating to the way a cost base is to be calculated. The amount of capital gain made after 21 September 1999 can be calculated as the difference between the cost and the sale proceeds. Where this method is used a discount of 50 percent for an individual or trust, or 33 percent for certain superannuation funds, may apply. No discount is allowed if the capital gain is made by a company.

The net capital gain to be included in assessable income is calculated after allowing for capital losses incurred in the current tax year and for capital losses carried forward. Capital losses can only be deducted from capital gains. If there are no such gains, then any such loss is carried forward.

Private equity investments
Where shares in an Australian company are purchased in a leveraged buyout by a foreign investor, the gain made on disposal may be assessable income and therefore not subject to the foreign investor exemption from CGT. This will be the case where the foreign investor is resident in a non-treaty country and circumstances indicate the shares were acquired for the purpose of profit making by sale in a commercial transaction.

Exemptions
Assets acquired before 20 September 1985 are generally exempt from the capital gains taxing provisions. Such assets include land and buildings, shares in companies, units in trusts, a share in a partnership, other personal assets and goodwill in relation to a business commenced before 20 September 1985.

From the viewpoint of the individual taxpayer, the most important exclusion from the capital gains taxing provisions is the main residence. This exemption is only fully available where the residence has been exclusively occupied as the main residence of the taxpayer since acquisition, or where such use has ceased temporarily and no other residence was acquired.

Where the residence has been rented or otherwise used to produce assessable income, including where part of the house is used for business purposes, a proportional exemption is normally available. The exemption is only available to individual taxpayers and cannot apply where the family home is owned by a trust or other entity.

Personal use assets are exempt from the capital gains taxing provisions unless the acquisition price of such assets exceeds A$10,000. However, listed personal use assets including jewellery, antiques and other collectibles are subject to the capital gains taxing provisions where the individual item cost is greater than A$500.

Sale of active assets
In certain circumstances a capital gain derived on or after 21 September 1999 from the sale of assets actively used in a small business (referred to as active assets) may be eligible for one or more of the following concessions, subject to satisfying the various conditions:

- If the active assets have been held by the taxpayer for at least 15 years, the capital gain is disregarded (i.e. it does not form part of the taxpayer's taxable income and therefore is not subject to tax)
- The capital gain may be reduced by 50 percent, which may be in addition to the general 50 percent discount outlined above, resulting in only 25 percent of the capital gain being taxed
- If the taxpayer elects for the proceeds to be used for their retirement the capital gain is disregarded (subject to limits). In this case the taxpayer may also benefit from concessional tax treatment under the tax rules for retirement payments
- The capital gain may be deferred by electing to rollover the capital gain into replacement business assets

Superannuation

Australia has a superannuation system designed to fund the pension and retirement needs of Australian residents. The system is a contribution based system funded by both employers and employees. It has a compulsory element

whereby employers are required by law to pay a proportion of the employee's salaries and wages into a superannuation fund, which can be accessed only when the employee retires or commences a 'transition to retirement' pension.

The system also encourages, but does not require, employees to contribute to superannuation most often by way of tax effective salary sacrifice arrangements.

An employer has an obligation to pay superannuation contributions on behalf of all eligible employees and is required to:

- Make the contributions into a complying Australian superannuation fund
- Allow an employee to nominate a superannuation fund of the employee's choice, including a self-managed superannuation fund
- Pay contributions by the cut-off date each quarter

The minimum superannuation amount the employer must pay is 9.5 percent of each eligible employee's earning base. Generally, employers have to pay superannuation contributions for employees if they:

- Are aged between 18 and 70
- Are paid A$450 (before tax) or more in a calendar month
- Work full-time, part-time or on a casual basis

Employers may also have to pay superannuation for any employees who are visiting Australia on a temporary visa, and employers should check carefully the superannuation requirements for any non-Australian employees. In some cases employer superannuation contributions may be required for payments to contractors who are engaged primarily for their labour.

The compulsory employer contribution increased to 9.5 percent from 1 July 2014 and will remain at this rate until 2021. From 2021 the superannuation guarantee percentage is scheduled to gradually increase by half a percentage point annually until it reaches 12 percent for the years starting on or after 1 July 2025.

Employee share schemes (ESS)

Employers may offer shares and rights as part of an employee's remuneration to allow alignment of employer and employee goals. The tax treatment varies depending on the timing of when the shares or rights were granted to the employee or an associate of the employee. The tax law changed on 1 July 2015. These latest changes are designed to enhance the participation of employees in ESS, and in particular support start-up businesses in Australia.

For share or rights granted to an employee (after 1 July 2009, but before 1 July 2015), at a discount to the market value may be taxable to the employee at time of the grant. The taxable value is the discount to current market value at the taxing point. A$1,000 tax exemption may apply where the employee has an adjusted taxable income of less than A$180,000. If there are conditions attached to the shares or rights which may risk the employee losing that interest, then the taxing point may be deferred until that risk eases. Generally this would mean that shares and rights are taxed when they vest to the employee.

As a result of the changes implemented last year, the taxing point for rights will generally be deferred until the rights are exercised, bringing this tax treatment in line with other countries. In addition, there will be special tax concessions available for start-up companies, deferring the taxing point of the interest until the shares are actually sold (provided the plan is implemented strictly in accordance with the new rules).

Dividend imputation system

Overview

Dividend imputation removes the double taxation of company dividends (i.e. income firstly being taxed at the company level and then in the hands of shareholders when received as a dividend).

Under the dividend imputation system, individual shareholders are subject to tax at their marginal rate of tax on dividend income, with an imputation credit being received where the dividend has borne company tax at the appropriate rate.

Such dividends are referred to as 'franked' dividends. Dividends paid from profits which have not borne company tax do not carry the imputation credit (referred to as unfranked dividends) and are taxed fully in the hands of shareholders. Following recent changes to the Corporations Law, dividends may now be paid out of reserves other than profits.

The issue of bonus shares is generally regarded as a payment of a dividend and is treated in the same way as other dividends. Excess imputation credits may be offset by individual shareholders against tax payable on income from other sources (e.g. salary and wages, investment income). From 1 July 2000 refunds of excess imputation credits are allowed for individuals and superannuation funds.

Imputation system

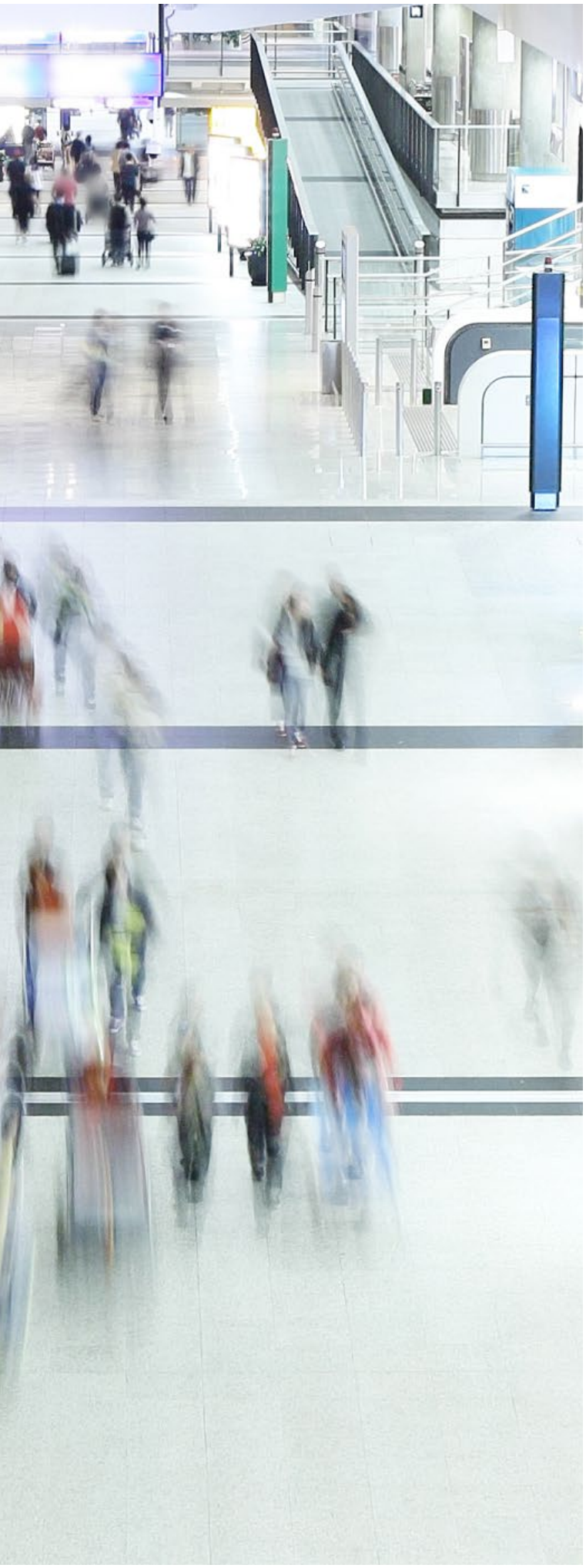
The imputation system provides the means by which Australian corporate tax entities are able to pass on to their members credit for income tax they have paid. The way in which they do this is by franking a distribution. Without the imputation system, income tax would be levied when income is earned by the entity and then again in the hands of the members when it is distributed to them.

In broad terms the mechanics of the imputation system are outlined as follows:

- Franking accounts (which record the availability of franking credits) are recorded on a tax-paid basis and use a rolling-balance account
- Companies are able to choose the extent to which they frank a dividend distribution
- Companies can align their franking period so that it coincides with their accounting period
- The extent to which a company may frank its dividend is controlled by the "benchmark" rule and allows for greater flexibility in allocating franking credits to frankable distributions
- A gross-up and credit approach applies in respect of corporate entities receiving franked distributions whereby they include their distributions together with franking credits in their assessable income and obtain a tax offset equal to the amount of franking credits. This tax offset can be used to reduce the entities' own income tax liabilities. Where the franking credit is greater than any tax payable, the excess tax offset is converted into a tax loss that is carried forward.

Non-resident shareholder

In general, unfranked dividends paid to non-resident shareholders are subject to a 15 percent or lower (treaty country) or 30 percent (non-treaty country) withholding tax, deducted at source by the dividend paying company. To the extent such dividends are franked, no dividend withholding tax liability arises nor does any other Australian income tax liability arise.



The Australian Government has negotiated updated double tax agreements (DTAs) with the United Kingdom and the United States, which includes reduced rates of withholding tax for non-resident shareholders, designed to encourage investment flows between the respective countries.

The updated UK and US DTAs prescribe that no withholding tax is payable on dividends paid by an Australian company to a UK or US shareholder if the shareholder is a company that directly holds more than 80 percent of the voting power of the Australian company.

For UK or US shareholders that hold at least 10 percent of the voting power in the Australian company, a 5 percent withholding tax rate applies. For all other situations, the withholding tax rate will remain at 15 percent.

The Investment Manager Regime allows indirect passive investment by non-resident shareholders through a fund manager to flow through and will not be subject to tax.

The federal government has recently signed a DTA with Singapore and updated the New Zealand DTA. It is also currently renegotiating a number of other DTAs and therefore advice should be sought in relation to the respective DTAs being considered.

International taxation

Overview

As a small open trading economy, still very dependent on inbound capital flows, but with increasing outbound investment due to local market saturation, a more entrepreneurial culture, and the swelling pool of superannuation savings, Australia's international tax 'settings' are capital friendly and broadly consistent with the international tax regimes of other developed nations.

Australia is a member of the OECD, and OECD's tax policy positions as set out in the OECD 'Model Tax Convention' (OECD MTC) are broadly those adopted by Australia in its international tax negotiations and in drafting domestic tax law.

Australia's international tax rules are found in both its domestic tax law, and in the 45 bilateral double tax agreements (DTAs) and various other international agreements to which Australia is party.

Australia taxes business profits which have an Australian source. Australian sourced capital gains are generally only taxed if they arise from Australian real property or the sale of assets used in an Australian business. As an integrity measure to support this policy position, Australia has recently introduced a specific withholding tax provision.

Australian sourced profits repatriated to foreign investors by way of dividends, interest or royalties are subject to withholding tax to be deducted by the Australian payer. These withholding taxes are a first and final tax – the foreign investor does not need to lodge an Australian tax return to report this income. The rates were trending downwards in line with OECD policy, but this has stopped over the last 10 years, following the GFC, and as a result of the same underlying forces that have driven the BEPS Project.

Australia has an active programme of renegotiating its existing DTAs, and also negotiating new DTAs as the economic need dictates.

Domestic tax law provisions which contribute to Australia's international tax settings

Australian outbound investment
Foreign (i.e. non Australian) sourced income, derived by an Australian company either directly, i.e. through a foreign branch, or permanent establishment (PE), or indirectly, i.e. through a foreign incorporated subsidiary, is generally not taxable in Australia. The foreign tax is the only level of tax payable on those business profits. As there is no Australian tax paid on these profits, there is no Australian Foreign Income Tax Offset available.

Subject to satisfying a participation exemption, an active business test and minimum ownership time limits, Australian tax is generally not payable on foreign sourced capital gains. Foreign sourced interest and royalty income is subject to Australian tax but with a Foreign Income Tax Offset available for any foreign withholding tax paid.

Australian inbound investment (via an Australian subsidiary or permanent establishment)
Australian sourced business profits are taxable at the Australian statutory company tax rate, which is currently 30 percent (small business rate is 28.5 percent).

Australian sourced capital gains are included in and taxed as part of a company's net taxable income, not taxed separately. Gains from the sale of direct Australian real property interests will be taxable. Gains from the indirect sale of Australian real property interests (e.g. sale of shares or interest in an entity owning Australian assets) will also be taxable, but only where, broadly, the Australian real property interests account for more than 50 percent of the underlying value of the sale entity.

Australia operates a full dividend imputation system. A fully franked dividend paid by an Australian company to a foreign shareholder is not subject to any dividend withholding tax (DWT). To the extent a dividend is not franked, it is subject to DWT at the lesser of the statutory rate (30 percent) or a lower applicable DTA rate. In some instances, with a participation exemption, the DWT can be as low as 5 percent, or in limited cases 0 percent.

Interest repatriation is subject to withholding at the lesser of the statutory rate (10 percent) or a lower applicable DTA rate. Australia's general DTA interest withholding tax (IWT) rate remains at 10 percent, although in several instances the rate is 0 percent where the interest is paid by an Australian borrower to a bank resident in the specific DTA partner jurisdiction. Interest payments made on widely distributed foreign debt raisings are not subject to Australian IWT.

Royalty repatriation is subject to withholding at the lesser of the statutory rate (30 percent) or a lower applicable DTA rate. Australia's standard DTA royalty withholding tax rate (RWT) is 15 percent, although lower rates have been negotiated. Australia also adopts the OECD position on the characterisation of payments for software and other intangibles, i.e. when is a payment a royalty and subject to withholding, and when is the payment not a royalty.

Where a foreign recipient derives interest and royalty income from Australian sources and also operates through an Australian PE, the withholding provisions may not apply, and instead the income may be taxed through the PE at the company tax of 30 percent.

Where Australian sourced business profits are derived by a foreign company resident in a country with which Australia does not have a DTA, the Australian domestic law governs the position. The concept of PE does not operate, and the specific activity exemptions within DTAs are not available to limit the taxable profits. Instead the normal concept of income derivation from Australian sources applies to gross income for all Australian based activities, with deductions allowed for business related expenditure.

General provisions

Controlled Foreign Companies (CFC) regime
Australia operates a strong and effective CFC regime for outbound investors.

Thin capitalisation provisions
Australia operates a 'thin cap' regime which limits interest (and related financial charges) under either a 'safe harbour' rule, or by an arm's length debt test. The safe harbour settings are currently 60:40 (or 1.5:1) of debt to equity. The arm's length debt test requires the usual benchmarking of comparable transactions. Excess interest expense is denied deduction in the current year and cannot be carried forward for deduction in future years.

Debt/equity characterisation
Australia applies a statutory 'bright line' test to characterise a financial arrangement as either a debt interest or an equity interest. The distinction is based on the commercial and economic substance of the arrangement rather than its legal form.

Restructuring protection

Australia's domestic tax law contains many 'roll over' relief provisions which permit tax free (tax deferred) corporate restructurings to occur, both within Australia and internationally.

Foreign Tax Credit (Foreign Income Tax Offset – FITO)

Where foreign sourced income is taxable in Australia, then any foreign withholding tax paid on repatriation of the net income can be claimed as a tax offset (credit). The offset is limited to the lesser of the foreign tax paid, and the Australian income tax that would have been payable on the net foreign sourced income. No offset is available where the foreign tax is paid on income which is not taxable in Australia.

A new withholding tax provision has been enacted and will have effect from 1 July 2016. Purchasers of taxable Australian real property will now, in certain circumstances, be required to pay 10 percent of a purchase price cost base to the Australian Taxation Office. This will not be a first and final tax, as is the case with other withholding taxes. The vendor will be required to lodge an Australian tax return and pay the appropriate amount of tax on the gain. The de minimis threshold is property valued at A$2 million, and there are other exceptions which are available in appropriate circumstances.

General anti-avoidance rule (GAAR)

Australia has a potent GAAR (Part IVA) which can be used against some forms of international tax abuse, provided there is an Australian 'tax benefit' (i.e. an amount of Australian tax avoided) and the 'sole or dominant purpose' test is satisfied. Australia has recently introduced a specific rule directed against the artificial avoidance of Australian PE status.

The Australian Taxation Office is very active in the field of international tax administration and policy formulation, particularly through the OECD and various other international tax groupings. Australia was heavily involved in the G20/OECD BEPS Project.

G20/OECD BEPS Project

The existing 90 year old international tax framework, designed to operate in the industrial age where physical presence in source country was a given, proved to be no longer 'fit for purpose' in the digital age, where information and communications technology systems and software allowed remote activity to undermine the requirement for physical presence. A foreign company could be deeply involved in the economic life of a source country, and could extract significant value, without having a taxable presence in the source country.

Further, differences between the domestic tax laws of countries allowed companies to navigate through the gaps, and to create the phenomenon of 'Stateless income', i.e. income which is taxed in no state. These shortcomings in the international tax framework are losing governments significant amounts of company tax; the estimated loss was in the range of US$100 billion to US$240 billion annually.

The political will of the G20 and the tax technical ability of the OECD, together with many more nation states and other Intergovernmental Organisations (IGO), took two years to develop a new digital age tax framework that should now be 'fit for purpose' in the digital economy.

All company international structures and business models need to be reviewed in the light of the BEPS Project, to determine whether they remain effective, or as effective, in a post-BEPS world. The BEPS changes are significant and complex and companies should undertake a high-level BEPS 'compliance check' which will indicate which areas of a group's international operations may be at risk from the BEPS changes, and where changes may be beneficial or indeed necessary.

The BEPS Project generated 13 Final Reports from the 15 Actions of the BEPS Action Plan. These 13 Final Reports can be classified into 3 groups, constituting three key 'pillars':

- Actions which will introduce **COHERENCE** in the domestic tax rules of sovereign states that affect cross-border activities (With greater coherence it should be more difficult, and eventually impossible, for double non-taxation to occur)
- Actions which will reinforce **SUBSTANCE** requirements in the existing international standards (The international rules are there, but they are not working as intended because of shortcomings, or form over substance approaches, or similar reasons)
- Actions which improve **TRANSPARENCY** as well as certainty (Much of the BEPS 'magic' has occurred because of, or has at least been facilitated by, information asymmetry. This has advantaged the private sector to date, but the Revenue Authorities have finally moved into the digital world, and are quickly levelling the playing field.)

Australia's domestic tax law is largely compliant with many of the BEPS recommendations. Australia has a strong and effective CFC regime. It currently has a robust thin cap regime.

Australia does not operate any abusive tax preference regimes, and the recommendations to stop hybrid mismatch arrangements are currently the subject of detailed consideration by the Board of Taxation. The Board will report back to government in due course, and it is expected that Australia will adopt and implement the Action 2 anti-hybrid recommendations.

Australia has introduced its own domestic response to the artificial avoidance of PE status (see below) and has already adopted as its DTA negotiating positions the various changes proposed to stop treaty abuse, and other problems with double tax treaties.

Australia already exchanges tax information with many other Revenue Authorities and is well placed to comply with the new Automatic Exchange of Information standard mandated by the G20. Domestic law is in the process of enactment to give effect to the OECD's new standard – the Common Reporting Standard (CRS). Separately the ATO has been managing the exchange of information with the Internal Revenue Service (IRS) under the US FATCA standard.

Australia has indicated it will adopt the recommendations to make Mutual Agreement Procedures (MAP) more effective, i.e. negotiations between two or more national Revenue Authorities to seek a solution to avoid instances of double taxation. Currently, MAPs are very expensive, and there is no need to reach a conclusion favourable to a taxpayer.

Australia has indicated it will submit to binding arbitration in MAP proceedings.

Australia has already introduced domestic tax law changes to give effect to the new transfer pricing documentation changes (see below) and Australia is likely to be an early signatory of the Multilateral Instrument (MLI). Its negotiating position is likely to be one where it will adopt all the OECD recommendations (other than the global interest rate expense cap for thin cap purposes).

The MLI is the means by which the world's 3,000 + existing DTAs can be quickly brought up to the post-BEPS standard. There is a working group of nations guiding the actual mechanics, and this is expected to see the MLI ready for signature by the end of 2016. This would suggest that countries could be signing during early 2017 with the relevant DTAs then upgrading from later in 2017, or perhaps 2018. The upgrading of existing DTAs will occur on a DTA by DTA basis. It will take both signatories to agree which BEPS upgrade items they will accept in the exiting DTA.

Although this MLI process will take some time, it will be a much quicker process than waiting for the 3,000 + DTAs to be renegotiated via a 'normal' review timetable.

Transfer pricing

Australia introduced a new transfer pricing code for the 2014-15 income year and beyond (limited, but retrospective provisions were also introduced to attack particular cases). The old provisions were considered outdated, and no longer in line with OECD guidance.

The new rules are the most modern in the world, and are in full alignment with OECD practice; in fact the OECD guidance is incorporated into Australia's transfer pricing law by direct statutory reference. This means that the changes to the OECDs Transfer Pricing Guidelines (TPG) will easily be incorporated into Australia's transfer pricing law. Actions 8-10 of the BEPS Project have made significant changes to the way many aspects of transfer pricing law and practice operate. It is clear now that economic substance will override and legal

form is no longer paramount. These changes will have significant implications for many aspects of related party transactions, but in particular for planning, migrating and calculating the return from intellectual property assets.

The arm's length standard remains the core concept. The focus in the new rules is now on 'arm's length conditions' rather than on 'price' which had been the core of the now superseded rules.

The transfer pricing rules now read like an anti-avoidance provision: where the actual conditions are not in alignment with the arm's length conditions, and there is an avoidance of Australian tax, there will be a 'transfer pricing benefit' which will attract very heavy penalties.

The new rules make clear that the transfer pricing provisions will override the thin capitalisation rules when reviewing the arm's length nature of a loan arrangement. Just because the interest charged falls within the thin cap safe harbour, this does not mean there cannot be an adjustment under the transfer pricing provisions.

Controversially, the new transfer pricing rules are said to provide the ATO with powers to reconstruct 'actual' transactions if the ATO believes unrelated parties acting at arm's length would not have entered into those transactions, or in the form that was actually put into operation. It has even been said that the Australian rules go beyond the OECD position – which is to approach reconstructions very carefully. The ATO disputes this is the case, and it will take future court cases to determine which view is correct. Suffice to say, the ATO has very powerful legislation at its disposal and the uncertainty of the breadth of the legislative provision should result in international tax planning being approached with much greater respect.

The new rules have also introduced the requirement for 'contemporaneous documentation' to support the arm's length nature of the international related party transactions. It is not an offence to not prepare documentation, but the absence of contemporaneous documentation precludes any penalty protection. In order to be able to claim penalty protection for having adopted transfer prices that were 'reasonably arguable', the documentation must be prepared and 'held' no later than the time of lodging the tax return to which the documentation relates.

The ATO's primary intelligence gathering tool for transfer pricing purposes continues to be the International Dealings Schedule (IDS). This is a part of the Australian company tax return, to be lodged by Australian subsidiaries, or foreign companies carrying on business in Australia through a PE. It is required when the total dollar value of international related party dealings exceeds A$2 million.

The ATO will be expecting to receive significantly more information about related party transactions of Australian taxpayers as the automatic exchange of information standard becomes operative.

Further, for very large multinational groups (those called Significant Global Entities – see below) it will be necessary for Australian group members to lodge, in electronically exchangeable format, the new transfer pricing documentation that has been recommended under the BEPS Action 13 Report. This new documentation comprises:

- A master file
- A local country file
- A country by country report (CbCR)

Multinational Anti-Avoidance Law (MAAL) and Significant Global Entities (SGE)

BEPS Action 7 made certain recommended changes to the definition of 'permanent establishment'. For many years, the PE boundary has arguably been eroded and these recommended changes were meant to re-establish the boundary and return taxing rights to source countries. Australia has indicated that the changes in the Action 7 Report have already been incorporated into Australia's DTA negotiating positions. However, Australia is one of two countries which have moved unilaterally against artificial PE avoidance by introducing a special domestic rule (the other country is the UK, which introduced the Diverted Profits Tax).

Australia has introduced a new provision within Part IVA (Australia's GAAR), which is somewhat ponderously called the 'Multinational Anti-Avoidance Law', referred to as the MAAL.

Where a foreign company operating from outside Australia invoices for the sale of goods or services to Australian customers, and the income is treated as not subject to Australian tax, and there is within Australia an associate or an unrelated but commercially dependent party which is involved in the sales process, then the foreign company will be deemed to have an Australian PE (by virtue of the sales activities of the Australian resident parties) and some part of the profit will be attributed to and taxed in the deemed Australian PE.

This new law applies from 1 January 2016 and the ATO is aggressively pursuing its application. The purpose test for the MAAL is lower than the level set for the domestic GAAR. The standard is usually set at the 'sole or dominant purpose' level. But the test for the MAAL is the lower standard of 'the principal or a principal purpose', which is in line with the test proposed under BEPS Action 6 to stop tax treaty abuse.

The MAAL will only apply to very large Multinational Corporations (MNC) groups and their members. A new concept has been legislated – that of a 'Significant Global Entity'. This includes a parent company and all controlled entities in a global group, where the annual global income of the entire group exceeds A$1 billion.

An SGE is subject to the MAAL and is also required to lodge the new transfer pricing documentation mentioned above (the master file, the local county file and country by country report) in electronically exchangeable format.

An SGE is also subject to double penalties for any transfer pricing adjustments.

SGEs and Australian corporate reporting

Where an SGE operates in Australia, it may do so through an Australian incorporated subsidiary, or it may do so through an Australian PE/branch of a special purpose group subsidiary incorporated outside Australia. In either case, it is possible for the company not to lodge financial statements with ASIC.

STRONG COLLABORATIVE RELATIONSHIPS BASED ON A GENUINE UNDERSTANDING

If a subsidiary of an SGE currently does not lodge general purpose financial statements directly with ASIC, then the law changes will require it to do so; the financial statements will be lodged with the ATO at the same time the company's Australian tax return is lodged, and the ATO will exchange the financial statements with ASIC, and ASIC will then upload them to its publicly accessible database.

Collections by instalment

The 'Pay As You Go' (PAYG) collection system is a single integrated system for reporting and paying withholding amounts and tax on business and investment income. The system brings income tax instalments and withholding tax obligations together in one system.

PAYG withholdings
Where a PAYG withholding is required, the withholding needs to be remitted to the ATO, generally 21 days after the month end. More frequent remittance may be required for withholdings from salary and wages. The frequency is set by the total yearly withholding and can be weekly, monthly or quarterly. The PAYG system also deals with the withholding of interest, dividends and royalties.

PAYG instalments
Businesses (companies or individuals) registered for GST (see 'Goods and Services Tax' on page 47), or individual investment income earners are required to pay tax instalments towards their income tax liability (generally within 21 days of the end of each quarter).

Legislation proposals have been enacted to phase in over three years monthly remittance of PAYG instalments for companies. Companies with turnover of A$1 billion or more were required to pay monthly instalments from 1 January 2014. Companies with turnover of A$100 million or more were required to pay monthly instalments from 1 January 2015 and companies with turnover of A$20 million or more have been required to pay monthly instalments since 1 January 2016.

The amount of instalment to be paid is generally calculated by multiplying the instalment income (generally assessable income excluding any salary and wages) for the quarter by the instalment rate as advised by the ATO.

The rate is calculated by dividing the last known year tax assessed by instalment income. Taxpayers may choose their own instalment rate, subject to penalty for under estimation.

Taxpayers required to pay an instalment must notify the ATO of the instalment income for a period, even if the amount of the payment is nil.

Individuals who are not registered for GST (or are not partners of a partnership so registered) may choose (subject to satisfying eligibility conditions) to pay their instalments based on their previous year's tax liability. Instalments paid are credited against the income tax liability for the year of income.

Fringe benefits tax

Fringe benefits tax (FBT) is imposed by the Commonwealth Government on all employers and applies to the value of fringe benefits provided to employees or their associates. Self-employed persons are not liable for FBT.

Assessed annually with the year of tax ended 31 March, FBT is a deductible expense to the employer. From 1 April 2015, the FBT rate increased from 47 percent to 49 percent.

The increase in the rate is due to the introduction of the Temporary Budget Repair Levy imposed on individuals for the 2015, 2016 and 2017 financial years, and will fall back to 47 percent once the Temporary Budget Repair Levy ceases from 1 April 2017.

Employers are required to self-assess their liability for FBT and to pay in three quarterly instalments, with the balance remitted with an annual fringe benefits tax return by 21 May. Instalments paid each quarter are generally equal to one quarter of the FBT liability of the previous year.

A fringe benefit arises when the benefit is provided to an employee (or associate) in respect of the employment of the employee.

FBT applies to fringe benefits and is not limited to those specifically identified in the Fringe Benefits Tax Assessment Act 1986 (Cwlth). Briefly, the types of benefits specified in the FBT Act and for which a specific basis of valuing the fringe benefit applies are as follows.

Motor vehicles
The availability of an employer provided motor vehicle for the private use of an employee (or associate).

Interest free or low interest loan
The taxable value of an interest free, or low interest loan, provided to an employee being equal to the difference between interest accruing at a prescribed interest rate and interest accruing at the actual interest rate (if less).

The deferral of a requirement to repay a debt will be treated as a loan. If an employer allows the release of employee debts there will be a taxable fringe benefit to the amount of the debt released.

Expenditure payments
Where an employer pays for expenditure incurred by an employee — by either making the payment direct to the payee or reimbursing the employee — the taxable value will be the amount paid by the employer reduced by the amount of employee contributions and any business proportion of the expenditure.

Accommodation
The provision of accommodation to an employee or their associate as part of their employment may be subject to FBT. The tax concessions which were available for employees who qualified as living away from their normal home largely ceased on 1 October 2012. Employees who own a home in Australia, which they live away from, may be eligible to receive accommodation for a period of up to 12 months provided certain criteria is met.

Accommodation provided by certain employers (e.g. public hospitals) to employees working in a 'remote area' may be exempt from FBT. In addition, there are special concessions for employees working on a fly-in fly-out or drive-in drive-out basis.

Living away from home allowance
A living away from home allowance is treated as a fringe benefit. As outlined above, under limited circumstances it may be possible where the employee qualifies as living away from their normal home, to provide an allowance to cover the cost of food and accommodation for a 12 month period without any exposure to FBT.

The employee (or their partner) must own a home in Australia for this to apply, it cannot be rented out as it must be available for the employee at all times during the 12 month period.

Special rules apply to employees who are working on a fly-in fly-out or drive-in drive-out basis.

Air travel
Benefits provided to employees in the form of free or discounted air travel.

Entertainment
Entertainment provided to an employee by an employer or their associate will give rise to an FBT liability.

Employer provided goods and services
Goods provided to an employee identical to goods sold by the employer to manufacturers, wholesalers or retailers.

The taxable value is the lowest price charged by the employer, less any reduction. Where the goods or services provided to an employee are identical to goods normally sold by retail, the taxable value is 75 percent of the lowest price charged to the public, less any reduction.

Where the goods or services provided to an employee are not normally provided by the employer to customers, the taxable value will be the cost to the employer less any reduction.

An exemption for the first A$1,000 in value in respect of certain property benefits is available, provided the cost of the benefit is not charged to the employee's remuneration under a salary sacrifice arrangement.

Proposed reforms will remove the concessional valuation rules and A$1,000 exemption.

Business travel
Employees undertaking overseas travel for business reasons are required to maintain a detailed travel diary under the FBT Act.

Extended domestic travel, exclusively for business purposes does not require completion of a travel diary where an approved declaration signed by the employee is provided. FBT is payable on any private portion of such travel for which the employer has paid the costs.

Goods and services tax

A goods and services tax (GST) is a 10 percent tax on most goods and services sold in Australia. It is collected by registered businesses at each step in the supply chain.

Overview
The GST is a multi-stage tax collected at all stages of production and distribution in the supply of both goods and services, but will effectively only apply to the 'value-added' component of goods and services.

The GST is designed to ensure that no part of this tax represents a cost to business by allowing an input tax credit for the GST paid on purchases of materials, plant, equipment and services, to be offset against the GST charged to customers.

The GST applies to capital items, trading stock, tangible and intangible property, as well as profit and loss items. It applies only to the value-added component of goods and services — consequently avoiding the cumulative effect (or cascade effect) of other taxes, such as wholesale sales tax.

Only registered persons are entitled to claim an input tax credit for the tax paid on their purchases from other registered suppliers against any GST paid to them when they sell goods and services to their customers. Effectively therefore, sales from one business to another are tax-free.

GST is imposed on the taxable supply of all goods and services (including real property). Certain transactions are GST-free and others are input taxed.

Enterprises involved in making supplies of goods and services will also pay GST on the things they acquire. Generally, these enterprises will be entitled to claim an input tax credit of the GST paid in the purchase price of the things acquired.

Rate
The rate of GST is 10 percent.

An 'enterprise'
An enterprise is defined as:

- An activity, or a series of activities, in the form of a business
- A concern in the nature of trade on a regular or continuous basis in the form of a lease, license or grant of an interest in property by a charitable or religious institution, or by the Commonwealth or a state or territory government

It does not include activities performed as an employee or as a private recreational pursuit or hobby.

Sales of goods or property by private individuals will not be taxable unless they are made as part of a business conducted by those individuals which is registered for GST purposes or is required to be registered.

Any form of entity can conduct an enterprise, for example a natural person, a company or a trust.

A supply will be a taxable supply if it is connected with Australia, for example:

- Goods delivered or made available in Australia to the recipient of the supply
- Goods removed from or brought into Australia
- Real property in Australia
- Anything else, e.g. services done in Australia or supplied through an enterprise carried on in Australia

Registration
Registration is compulsory if the level of taxable supplies (i.e. the supply of goods or services for a fee, whether in case or in kind, that is carried on continuously or regularly, whether or not for profit) exceed A$75,000 per year.

For non-profit clubs, societies and associations registration is optional until their sales (including proceeds from commercial activities and membership fees, but excluding donations) exceed A$150,000 per year.

Application for registration must be made within 21 days after becoming required to be registered. Unregistered persons are not required to charge GST on their supplies and they cannot claim any input tax credit on their purchases.

Imports
Goods imported into Australia will be subject to GST at the time of importation, regardless of whether or not the person who imports the goods is registered for GST purposes. Registered entities may be entitled to participate in the GST deferral scheme which effectively defers payment of the GST until the lodgement due date of the next GST return (referred to as a Business Activity Statement).

GST is payable at 10 percent on the sum of:

- The customs value of the goods
- The amount paid, or payable, to transport the goods to Australia and insure them during that transportation (to the extent not included above)
- Any customs duty payable on the goods

A registered person, or a person required to be registered, who makes a taxable importation for a creditable purpose is entitled to an input tax credit of the GST paid when the goods were imported.

GST-free activities
Persons involved in making GST-free supplies have no obligation to pay GST on the supplies they make, but have a full entitlement to claim input tax credits for things they acquire in the course of carrying on their enterprise. Exports are GST-free.

Exported goods must be physically exported from Australia and exported services must be performed outside Australia for a non-resident.

While Internet shoppers have enjoyed tax exempt status for purchases less than A$1,000, the federal government is considering imposing GST on all overseas online purchases.

Input tax activities
Input taxed supplies are not taxable supplies. Persons who make input tax supplies have no obligation to charge GST on those supplies. Consequently, those goods and services do not qualify for input taxed credits as they were not acquired for creditable purposes.

Where a person makes input taxed supplies, the GST included in the acquisition cost of goods, services, property and other items is a cost borne by that enterprise in carrying on the activity. Financial services are an example of input taxed activities.

Other taxes

Withholding tax
From 1 July 2016, a new 10 percent withholding tax will apply to acquisitions of Taxable Australian Real Property (TARP) or Indirect Australian Real Property (IARP) interests.

The withholding is based on 10 percent of the purchaser's CGT cost base for TARP or IARP and must be paid to the Australian Taxation Office (ATO) on or before the settlement date, unless the purchaser is exempt under one of the following exclusions:

- The market value of the CGT asset is less than A$2 million
- The transaction is either on an approved stock exchange or conducted using a crossing system
- Withholding has already occurred under another provision
- The foreign resident vendor is under insolvency or similar arrangements under a foreign law

The withholding can also be avoided if:

- In relation to a TARP or a Company Title Interest, the vendor provides to the purchaser prior to settlement a Commissioner Certificate verifying they were an Australian resident at the contract date
- In relation to IARP, the vendor provides to the purchaser prior to settlement a Declaration in the prescribed form verifying either that they are an Australian resident, or the share or trust they are selling is not IARP, as at the contract date

Applications can also be made to the Commissioner for a variation to reduce the 10 percent withholding rate. Reasons for applying for a variation may include:

- The non-resident vendor will not make a capital gain from the disposal of the TARP, or IARP
- The vendor and the purchaser may both be members of the same tax consolidated group
- The non-resident vendor may have carry forward tax losses available to offset the capital gain

While any withholding tax must be paid to the ATO on or before the settlement date, the vendor can claim the 10 percent back once they've lodged their tax return or it can become a credit against tax payable.

Customs duties
Customs duty is imposed by the Commonwealth Government on imported goods and is primarily directed at protecting local industry.

The value of goods for custom duty purposes is based on the General Agreement on Tariffs and Trade (GATT) Code. However, where it can be established that the goods have no direct Australian equivalent, these goods attract a lower concessional rate of duty.

Excise duty
Excise duty is imposed by the Commonwealth Government on the local production of such goods as tobacco, petrol and alcohol at varying prescribed rates. Excise duty is indexed to movements in the consumer price index.

Petroleum Resources Rent Tax (PRRT)
The Australian Government imposes a tax on the extraction of petroleum products from both on and offshore. It is assessed on either a project or production licence area basis. It is levied on taxable profits at a rate of 40 percent. The tax itself is tax deductible for income tax purposes. State governments also charge royalties on the extraction of petroleum within their jurisdiction.

Land tax
Land tax is imposed by state governments on the unimproved capital value of land. The rates of land tax and the levels for exemptions vary for each state. Land tax is in addition to municipal rates imposed by local councils. There is an exemption from land tax for property which qualifies as a person's main residence during the calendar year.

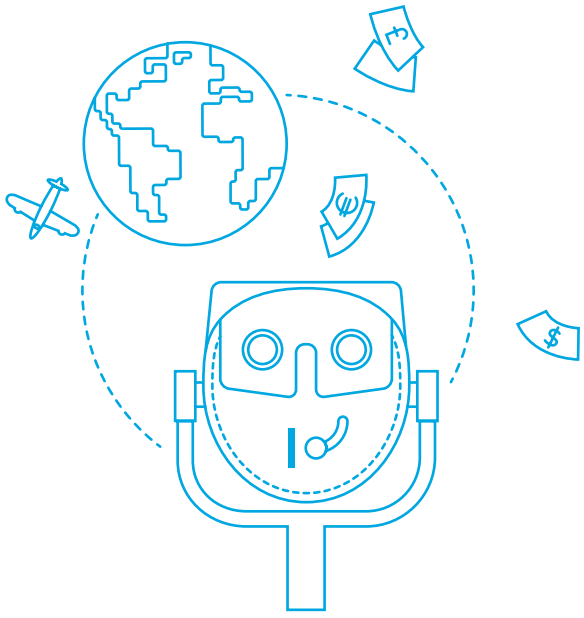
Stamp duties
Stamp duty is imposed by state governments on dutiable events, or documents such as bills of exchange, promissory notes, leases and contracts affecting the transfer of shares and real estate. Rates and exemptions vary on a state by state basis.

Payroll tax
Payroll tax is imposed by all state governments on all remuneration paid to employees, or in some cases contractors, for work performed in their particular jurisdiction. The rate of payroll tax varies amongst the states, but ranges between 4.75 percent and 5.50 percent of the payroll[28]. There are payroll tax exemption thresholds which may apply which vary between states. In order to determine if the threshold applies, consideration of the total remuneration paid in Australia by the employer or an associate of the employer is taken into account.

WorkCover
All Australian states have legislation requiring employers provide insurance to employees and in some cases contractors for workplace injury or death. Premiums are paid to an approved insurance agent who administers the scheme on behalf of the relevant State WorkCover authority. The various state authorities have taken steps to harmonise their systems and administration.

Superannuation guarantee levy
The Commonwealth Government imposes a superannuation guarantee levy on employers who fail to provide prescribed minimum contributions towards employee superannuation. The prescribed minimum contribution is currently 9.5 percent of employee's ordinary time earnings.

A non-deductible levy calculated at the relevant rate on total employee earnings, plus forgone earnings, is imposed on employers who fail to comply with the minimum contribution requirements.



FINANCIAL ASSISTANCE AND GOVERNMENT GRANTS

The Commonwealth and state governments provide a wide variety of financial assistance and government grants to assist business in Australia. This assistance takes various forms including taxation incentives, export incentives and direct financial assistance (e.g. grants and loans, technical assistance, training and information services).

Taxation incentives

The Income Tax Assessment Act 1936 and 1997 (Cwlth) includes specific provisions providing concessions to taxpayers operating in particular industries in Australia. Industries which receive special tax consideration include: primary production, mining, high technology and films.

Following changes that began on 1 July 2011, entities incurring expenditure on Research & Development (R&D) may claim one of two R&D tax credits depending on their size. The credits are aimed at providing greater incentives to partake in R&D and provide further support for Australian companies and jobs. The tax credit replaces the tax concession regime, providing greater incentives and less complexity.

Entities undertaking R&D activities may claim either:

- A 45 percent refundable tax offset for eligible entities with an aggregated turnover of less than A$20 million. When the entity is in a tax loss claiming the tax offset will result in a cash refund; or
- A 40 percent non-refundable tax offset for all other eligible entities

A$100 million R&D expenditure limit exists for R&D claimants of all sizes.

The potential exists for Australian resident companies, or foreign companies with permanent establishments, to claim R&D undertaken in Australia but hold the intellectual property offshore, given that the Australian and foreign entities are either connected or affiliated. This is also subject to meeting other eligibility criteria.

To gain access to the credit, entities must partake in eligible R&D activities as specified in the Act[29].

A special system of tax deductions applies to capital expenditure incurred on the construction of new buildings used for the purpose of producing assessable income.

Capital expenditure on extensions, alterations or improvements is also eligible. Capital expenditure may be written off over 25 years if the building is used for eligible industrial purposes and 40 years if used for other income producing purposes.

Export assistance

Export market development grant scheme[30]
The Commonwealth Government has an export market development grant scheme which is designed to reduce the costs to export promotional and development, to encourage growth of exports.

The scheme is administered by the Australian Trade Commission (Austrade) and applies to a range of export development activities in relation to goods, external and internal services, industrial property rights, travel and tourist services, which are substantially of Australian origin.

Eligible expenditure under the scheme is limited to those activities which involve market research and information, export promotion, soliciting export business and similar export market developments.

Export insurance
The Commonwealth Government has established the Export Finance and Insurance Corporation (EFIC) which provides insurance and related overseas transactions against commercial and political risks.

The corporation's major objective is to ensure that exports have access to credit insurance, guarantee and loan facilities comparable to overseas competitors. The insurance cover provides the exporter with protection against working capital difficulties and bad debts.

Other export assistance
The Commonwealth Government, under the Customs Act 1901 (Cwlth), permits exporters of goods containing imported parts on which duty was paid or would normally be payable to secure relief from import duties, or recover customs duties paid.

Export Access is a programme designed to assist small and medium enterprises to become involved in exporting on a sustainable basis. Export Access provides a manager offering professional counselling and hands on assistance in planning and implementing an export programme. Export Access also provides a comprehensive package of training and practical assistance for a small fee.

The state governments also offer various forms of assistance for exporters. The type of assistance varies from state to state.

Other assistance

Government purchasing
Government purchasing involves a degree of preference to Australian businesses. Governments recognise the Australian content of goods offered and in such cases structure their purchasing preferences. Preferences also arise from the application of national tariffs to imported goods, thereby reducing the degree of price advantage overseas goods would normally have.

In addition, Australian businesses may also be able to participate in offset purchasing. Offset purchasing allows Australian businesses to gain access to opportunities generated by overseas business obtaining government orders and having to offset a part of their sales to the government by purchasing from Australian suppliers.

Bounties
The Commonwealth Government, on the recommendation of the Industry Commission, may allocate bounties to certain domestic manufacturing industries. These bounties may be in lieu of, or supplementary to, assistance provided by tariffs and customs duties.

Bounties enable manufacturers to sell the products at lower prices, thus becoming more competitive with imports.

The extent of the bounties is dependent upon the individual circumstances which give rise to the bounty. The Commonwealth Government has been a strong supporter of global trade liberalisation through GATT, APEC, and the Cairns Group. Tariff and other trade barriers have been reduced on a consistent basis.

Commercialisation Australia
Commercialisation Australia is a competitive, merit-based assistance programme offering funding and resources to accelerate the business building process for Australian companies, entrepreneurs, researchers and inventors looking to commercialise innovative intellectual property.

Commercialisation Australia provides assistance under four key components:

- Skills and Knowledge – grants up to A$50,000 to access expert advice and services
- Experienced Executives – grants up to A$350,000 over two years (up to A$175,000 per year) to engage an experienced Chief Executive Officer or other executive
- Proof of Concept – grants from A$50,000 up to A$250,000 to assist with establishing the commercial viability of a new product, process or service
- Early Stage Commercialisation – grants from A$50,000 up to A$2 million to assist with bringing a new product, process or service to market

In order to be eligible for Commercialisation Australia assistance you must be either of the following:

- A non tax-exempt company incorporated under the Corporations Act 2001
- A researcher applying through the commercialisation office of an Australian University or Publicly Funded Research Agency (PFRA)
- An individual or researcher applying through an eligible partner entity
- An individual or researcher who agrees to form a non tax-exempt company incorporated under the Corporations Act 2001 if your application to Commercialisation Australia is successful

And you are able to satisfy the following:

- You meet various turnover limits depending on the type of applicant you are (where applicable)
- You comply with the Workplace Gender Equality Act 2012 (where applicable)
- You are able to demonstrate that you are able to fund your share of the project costs
- You have ownership or beneficial use of the Intellectual Property (IP) for your commercialisation project
- Your proposed expenditure is on eligible activities

Small business

The various federal and state government departments provide numerous incentives and assistance to small businesses to encourage their development. The incentives and assistance vary but include:

- Management training courses
- Financial assistance through loan and guarantee facilities
- Special project grants

Decentralisation
The state governments offer various decentralisation incentives to encourage a shift of industries to non-metropolitan areas. The incentives vary from state to state and include:

- Payroll tax and land tax rebates
- Loans and guarantee facilities
- Housing assistance
- Rail freight, fuel and labour training subsidies
- Provision of technical and other services

CONCLUSION

With a flexible market-driven economy, skilled and multilingual workforce, competitive tax structure and stable regulatory environment, Australia remains an attractive and competitive location for foreign investors to find and capitalise on investment opportunities.

As one of the fastest growing economies in the OECD (Organisation for Economic Co-operation and Development), Australia seeks foreign investment, especially if it expands employment opportunities or introduces new technology and innovation.

In addition to relatively low set-up costs, Australia offers easy access to the Asia Pacific region, a vibrant financial and professional services sector and time zones that are in sync with Australasian partners, while also complementing the close of business in the United States and trading opening in Europe.

Adding to Australia's already strong ties with the countries in the region and beyond are bilateral trade relationships with many trading partners. Australia is also party to a number of Free Trade Agreements (FTA) that further reduces barriers to trade and investment.

These are some of the reasons why a growing number of international businesses are locating their regional headquarters to Australia.

This *Doing Business in Australia* publication aims to answer the most common questions and issues raised by foreign investors about the commercial, legal, taxation and regulatory environment they will face in Australia, plus an insight into the type of assistance and incentives that are available at both the state and federal government level.

In summary, Australia offers the following advantages to entrepreneurs and investors:

- Abundant energy and other natural resources
- Expanding domestic market with ready access to the Asian and Pacific markets
- Highly skilled and adaptable workforce with long experience in meeting the special needs of large and small markets
- Well established infrastructure in a diversified economy
- Business activity that operates in a generally free enterprise economy
- Stable government
- Government that looks favourably upon foreign investment capital
- Minimal currency control and restrictions
- Few import or export restrictions
- Types of business organisations are varied and easy to establish
- Readily available financing from a variety of sources
- Comprehensive tax system with incentives and benefits
- Many government financial assistance programmes
- Government encourages immigration of business people
- Good international political relationships

This guide is intended as a summary of the issues only. If you require more information or advice about your particular circumstances, please do not hesitate to contact RSM in your home country, or our Asia Pacific Regional Leader, Neil Hough on +61 3 9286 8106 or neil.hough@rsm.com.au.

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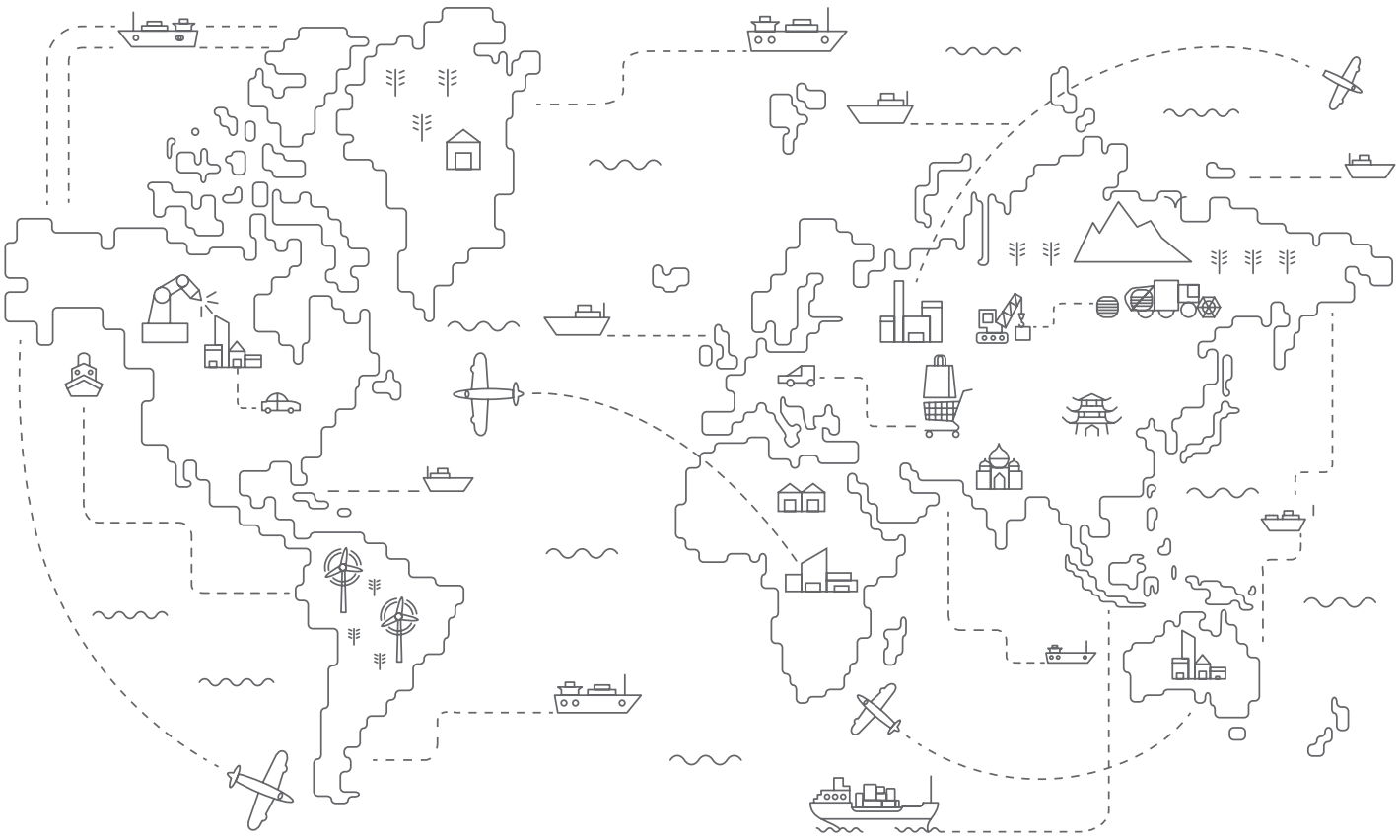

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