Doing Business Guide

Australia

1st Edition

Hayes Knight

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About This Booklet

This booklet has been produced by Hayes Knight for the benefit of its clients and associate offices worldwide who are interested in doing business in Australia.

Its main purpose is to provide a broad overview of the various things that should be considered by organisations considering setting-up business in Australia.

The information provided cannot be exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend anyone considering doing business in Australia or looking to the area as an opportunity for expansion should seek professional advice before making any business or investment decision.

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Overview

Australia is a stable, culturally diverse and democratic country with a strong, competitive economy, modern infrastructure and highly skilled workforce. The modern history of Australia commenced with the first European settlement on January 1788. Prior to the arrival of European settlers, Aboriginal and Torres Strait Islander peoples inhabited most areas of the continent. The Commonwealth of Australia was formed on 1 January 1901. Since federation, Australia has maintained a stable liberal democratic political system and remains a Commonwealth realm.

Australia is a diverse country with people from a rich variety of cultural, ethnic, linguistic and religious backgrounds. While Aboriginal and Torres Strait Islander people have inhabited Australia for tens of thousands of years, most Australians are immigrants or the descendants of immigrants who arrived during the past two centuries from more than 200 countries. The population of Australia is just over 22.8 million, with approximately 60% concentrated in and around the state capitals of Sydney, Melbourne, Brisbane, Perth, and Adelaide. Australia has a highly skilled workforce of approximately 11.5 million. Almost half of the workforce has a university, trade or diploma qualification.

Australia is a stable democratic country that keeps a strong link with the United Kingdom. As a federation of six states and two territories, Australia maintains a constitutional monarchy with Queen Elizabeth II being the head of state. Governments are found at three levels: federal, state or territory, and local. Federal parliament consists of the Senate and the House of Representatives; it is formed by the group that wins control of the House of Representatives, which consists of 150 members. State and territory governments are responsible for providing services such as education, power supply and health care. Local government represents the third tier of government and has responsibility for provision of service, planning and development for local communities.

The legal system in Australia is a common law system, similar to that of Britain. Federal parliament is constitutionally empowered to pass statutes and make regulations to deal with specific issues. State governments also have the power to legislate. However, only the federal government can impose customs and levy income tax. Courts are operated at federal and state/territory levels. Federal courts deal with federal matters, while the High Court of Australia hears appeals in relation to federal, state and territory matters. Each state and territory has a court hierarchy of its own, with the jurisdictions of each court varying from state to state and territory to territory. Supreme Court is generally the highest court within a state or territory.

The Australian Economy

Australia has a prosperous and free market economy. In 2011, Australia's GDP reached US$ 1,507 billion. According to the International Monetary Fund, this makes Australia the world's 13th largest economy[1] and the third largest in the Asia Pacific region.

The economy of Australia is stable and competitive. Despite recent financial crises and worldwide economic downturns, Australia is forecast to grow at 3% in 2012 and 3.5% in 2013.[2] Australia's real economic growth has averaged 3% per annum over the last 10 years. Australia has a relatively low level of public debt and an unemployment rate of approximately 5.2%, one of the lowest rates in the Organisation for Economic Co-operation and Development (OECD).

Australia is rich in natural resources. Agriculture and mining industries have historically been the main contributors to the economy. While the mining industry continues to make a major contribution to the Australian economy, the service sectors have recently made a significant contribution to the country's GDP. Among other sectors, property and business services are the largest single component of GDP, contributing approximately 12%. Manufacturing ranks second, contributing approximately 10%, followed by the mining sector and finance and insurance industry sector, each contributing approximately 7%.[3]

The Australian government is committed to building a nation with a strong knowledge-based economy. Information and communications technology has been acknowledged as a key driver of Australian economic growth.

Australia is also a major financial hub in the Asia Pacific region. As at 30 April 2012, the Australian Stock Exchange (ASX) had 2,225 listed companies with a domestic market capitalisation of AUS$1.3 trillion.[4] Australia was ranked fifth out of 57 of the world's leading financial systems and capital markets by the World Economic Forum.

The value of Australian trade in 2010 was AUS$ 552 billion, with the value of exports totalling AUS$ 285 billion. The largest merchandise trading partners of Australia were China, Japan, the United States and the Republic of Korea. China is currently the largest export market, followed by Japan, Korea, India and the United States. For 2010, the largest individual goods export items were iron ore (AUS$ 29 billion), coal (AUS$ 43 billion) and non-monetary gold (AUS$ 15 billion). For exported services, education and tourism services were significant contributors.[5]

1. *Source: Australian Department of Foreign Affairs and Trade and International Monetary Fund websites.*
2. *Source: World Economic Outlook published by the International Monetary Fund in April 2012.*
3. *Source: Year Book Australia, Australian Bureau of Statistics, 2009–2010.*
4. *Source: Australian Stock Exchange.*
5. *Source: Australian Department of Foreign Affairs and Trade.*

Operating Structures

Broadly, there are six operating structures under which a foreign investor may conduct a business in Australia. The business can be operated by an individual (i.e. sole proprietor), a trust, a joint venture, a partnership, a company, or a branch of a foreign company. Each structure has its own advantages and disadvantages and can give rise to different legal and taxation implications.

Sole Proprietorship

Sole proprietorship is a structure where the business is owned and conducted by an individual. The individual may register a business name, but that business name is owned by the individual and does not constitute a separate business structure. While sole proprietorship may provide an investor with more flexibility and control of the business operation, under this structure a sole proprietor is personally liable for liabilities incurred in the course of carrying on the business.

Trust

A business may be carried on by a trust. A trust can be set up whereby the trustee owns the business assets and carries on the business on behalf of the beneficiaries of the trust. Depending upon whether the beneficiaries' entitlements to the trust assets and income is fixed or flexible, there are two types of trusts commonly used for trading purposes: discretionary trusts and unit trusts. The legal obligation of the trust lies with the trustee. A trust is not a separate legal or taxable entity, but is required to lodge a tax return and in certain circumstances the trustee is required to pay tax.

Joint Venture

Foreign investors may enter into a joint venture agreement with Australian entities to carry out commercial activities. A joint venture is not a legal entity, although for some tax purposes (e.g. goods and services tax [GST]) it can be separated from the parties involved. The rights and responsibilities of each party to the arrangement are generally set out in a joint venture agreement. Each party is taxed in its own right. A joint venture would typically be set up for a short-term project (such as in the mining sector), rather than for a continuous business.

Partnership

A partnership is a relationship that exists between persons carrying on a business in common with a view to profit. It is not a separate legal structure and the business is carried on in joint names. Partners are jointly and severally liable for the partnership's debts and have unlimited liability. In some Australian states, a limited liability partnership may be set up whereby some partners have limited liability. However, generally there are restrictions applied to those limited liability partners regarding their involvement in the business of the partnership. Taxation treatment can also vary. Flexibility and low cost are the main merits of this business structure.

Company

This is by far the most common business structure adopted among foreign investors in Australia. A company is a separate legal entity and governed under the Corporation Act as well as its own constitution. There are four types of companies:

- a company limited by shares
- a company limited by guarantee
- a company with unlimited liability
- a no-liability company.

The most common type of company is a company limited by shares, which may either be a proprietary company or a public company.

A private company must have at least one director who ordinarily resides in Australia. For a public company there must be at least three directors and one secretary, of which two directors and one secretary must reside in Australia. A private company is restricted to having no more than 50 non-employee shareholders. Moreover, a private company is prohibited from public funding. A public company may be listed on the ASX, in which case it must also comply with the ASX listing rules.

Branch of a Foreign Company

A foreign company may carry on a business in Australia through an Australian branch. In this instance, the foreign company must register with the Australian Securities & Investments Commission (ASIC). If the ASIC is satisfied with the application and supporting documentation, then registration usually occurs within approximately 5 working days of receipt of the application. An Australian branch of a foreign company is obliged to comply with all the disclosure and reporting requirements as prescribed under the Corporations Act.

Registration Requirements

Register with the ASIC

The ASIC is an independent Commonwealth government body. It is set up under the Australian Securities and Investments Commission Act to be Australia's corporate, markets and financial services regulator. Foreign investors carrying on a business in Australia under a sole proprietorship, trust, partnership or joint venture do not need to register with ASIC (although trusts will often use a company as trustee). The registration requirements for companies are as follows:

Australian Branch

In order for a foreign company to carry on business in Australia through a branch, it must register as a foreign company with ASIC. A foreign company wishing to apply for registration should ensure that the company's name is available in Australia and may reserve its name for registration. It must lodge with ASIC an application form, together with a certified copy of its certificate of registration and constituent documents. The foreign company must also appoint a local agent who may be either a natural person or a resident company to represent the foreign company in Australia. The foreign company must also have a registered office in Australia to which all communications and notices may be addressed and which must be open and staffed for certain prescribed hours. Once registered, the foreign company will receive a unique Australian Registered Body Number (ARBN).

Australian Company

A foreign investor can establish a new Australian company by registering the Australian company with ASIC. When registering, the foreign investor can only choose a company name not already registered by a company or business in Australia. If the company carries on a business in a name that is different from the company name, the company must register the business name in the appropriate state or territory. Once the company is registered, it will be issued a certificate of registration and an Australian Company Number (ACN).

Register for Taxation

Register for an Australian Business Number (ABN)

An Australian Business Number (ABN) is a unique identifier for use in dealings with the Tax Office and other government agencies. An ABN is required for certain tax purposes, such as GST and pay-as-you-go (PAYG) withholding tax. ABN registration is not compulsory. However, if an entity is required to register for GST, it must apply for an ABN. In addition, if an entity carries on an enterprise in Australia and makes a supply of goods or services, the customer will generally be required to withhold tax of 46.5% from the payment if the entity does not quote an ABN.

An entity can apply for an ABN through the Australian Business Register website www.abr.gov.au or by lodging a paper application form with the Australian Taxation Office.

Register for GST

An entity must register for GST if it carries on an enterprise and its annual turnover from transactions connected with Australia is AUS$ ≥75,000 (AUS$ ≥150,000 for non-profit organisations). An entity that does not exceed the registration threshold may voluntarily register for GST. A branch of a foreign company is entitled to be registered for GST purposes. An entity must have an ABN to register for GST. The entity can apply for GST using the same form as that for the ABN registration; both registrations can be done at the same time.

Register for a Tax File Number (TFN)

A TFN is a unique number issued by the tax office to entities. A TFN can be obtained at the same time as an ABN, using the same application form. A TFN is mainly used for dealing with the tax office and for lodging income tax returns. If a TFN is not quoted, withholding tax would normally be withheld by investment bodies from interest, unfranked dividends and managed fund distributions at the rate of 46.5%.

Register a Domain Name

It is important to register a domain name, which provides a business with an online identity. It is also a marketing tool to develop the business's online presence and brand. Investors can buy a .com.au or .net.au domain name. The Australian domain names are administered by .au Domain Administration Ltd (auDA). For global domain names, they are administered by the Internet Corporation for Assigned Names and Numbers (ICANN).

Starting Business in Australia

Banking

The Australian banking sector is dominated by four major banks:

- Australia and New Zealand Banking Group (ANZ)
- Commonwealth Bank of Australia (CBA)
- National Australia Bank (NAB)
- Westpac Banking Corporation (WBC).

The main competitors to the 'Big Four' include Bendigo Bank, Suncorp-Metway and the Bank of Queensland. A number of foreign banks have branches or subsidiaries in Australia. Generally, foreign banks in Australia tend to have a more significant presence in the merchant banking sector than in the retail banking sector. The large foreign banks in Australia include Citibank, HSBC, ING, Bank of China, Bank of Cyprus Australia Limited, Laiki Bank (Australia) Ltd etc.

There are various types of bank accounts made available for business investors. Those who want a basic service can open a savings account or a cheque account. For a fully functional business entity, it would be appropriate to have a business bank account. A business bank account holder can easily apply for various bank products. These may include loans, mortgages and insurance. Automatic money transfers may also be offered by the bank. Fees and conditions for opening up a business bank account vary from one bank to another. Choosing the best business bank account should be a priority before starting a business in Australia.

The requirements for opening a bank account may vary depending upon which bank the investor deals with and the type of bank account. Generally, opening a bank account is a relatively easy process. Many banks offer an internet banking facility so that investors can open up an Australian bank account over the internet. However, there is government legislation requiring the bank to obtain identification from customers before opening any new bank account. Generally, the bank may conduct a search to verify the details the entity provides to the bank. Investors are responsible for ensuring that the personal details provided are accurate and up to date. In addition, where investors do not provide the bank with their TFN, the bank is obliged to deduct tax from any interest earned on the account.

When entities with foreign directors open an Australian bank account, banking institutions will often require identification of these directors to comply with Australia's anti-money laundering rules. This often requires these foreign directors to attend at a foreign branch of that bank to certify original forms of identification documents.

Insurance

Australia has a sophisticated and well-developed insurance market. Broadly, the market consists of three sectors: life, general, and health insurance. Life insurance products sold in

Australia include term life insurance and disability income insurance. Some of the larger life insurers in Australia include AMP, AXA and Allianz Australia.

General insurance products in Australia generally cover two categories: liability insurance and property insurance. The major insurers operating in this sector include Insurance Australia Group, Suncorp–Metway, QBE Insurance and Allianz Australia.

Within the Australian private health insurance market sector the largest insurer is Medibank Private. In Australia, the federal government provides residents a basic universal health insurance under the Medicare system. Hence services offered by the private health insurers are limited to those services that are not covered by Medicare or services provided in private hospitals.

Business insurance policies generally fall into three categories: assets and revenue insurance, liability insurance, and personnel insurance. Some common types of insurance policies for a business include:

- Property insurance – compensation for loss or damage to property
- Liability insurance – cover for legal claims against the business (e.g. for a personal injury claim made by a customer)
- Worker's compensation insurance – cover for workers who are injured on the job (this policy is compulsory for all businesses operating in Australia)
- Loss of gross profit insurance – cover for loss of profit due to business interruption
- Disability insurance – cover for loss of income due to injury, illness or death
- Other business-related insurance products – there are many different product names.

Commercial Premises

Australia has a well-developed property service market. There are hundreds of real estate agents in the capital cities of the states and territories across Australia. Depending upon the needs of the operation, businesses may look at the option of buying or leasing office suites, retail shops or industrial premises. A large number of businesses in Australia operate from leased premises. Generally, there are reasonable supplies of office premises for lease in the central business district (CBD) areas or on the outskirts of CBD areas. Property prices and rent for leased premised vary greatly across locations and fluctuate from time to time.

Employment Obligations

Industrial Relations

In Australia, there are federal and state industrial relations systems that define the employment conditions of employees. Under both systems, minimum employment conditions are defined in awards and agreements. Broadly, an award is a quasi-legislative ruling that sets out minimum rates of pay and conditions for employees working in particular workplaces, industries or occupations. An agreement is voluntarily negotiated between the employer and employees setting out the minimum employment conditions at that particular workplace.

In Australia, most employees are award-free, hence the terms and conditions of their employment are largely a result of private negotiations with their employers. However, employment agreements between an employer and employee are subject to specific state or federal legislative provisions in relation to employer superannuation contributions, annual leave, long service leave, sick leave, parental leave, minimum rates of pay, termination of employment, workers compensation, occupation health and safety, etc. Employees are also protected by unfair dismissal laws and legislation prohibiting sexual harassment and discrimination in the workplace.

PAYG Withholding Tax

The PAYG tax system requires employers to withhold tax from the remuneration paid to employees according to the tax rates prescribed by the Commissioner of Taxation. The tax withheld under the PAYG system is remitted to the Australian Taxation Office on a monthly or quarterly basis, depending on the total annual salary paid and tax withheld. Employees receive a credit for this tax when they lodge their personal income tax return for the relevant income year.

Superannuation Guarantee Contributions (SGC)

Federal legislation requires employers to provide a prescribed minimum level of superannuation contributions for each of their employees. The prescribed minimum level of superannuation support is currently 9% of an employee's ordinary time earnings (this will increase gradually to 12% by 1 July 2019). If an employer provides less than the required minimum level of support, they will be liable to pay a non-deductible SGC. These contributions are required to be made to the employee's superannuation fund on a quarterly basis.

Payroll Tax

Payroll tax is a state tax levied monthly by each state based on the payroll of employers whose total annual Australian wages exceed a specified threshold. There are special rules in relation to grouping of associated employers for payroll tax purposes. Generally, an employer or a group of related businesses whose total Australian wages exceed the prescribed monthly exemption threshold is required to register with the relevant state/territory revenue authority for payroll tax. The exemption threshold is different in each state and territory.

Fringe Benefits Tax (FBT)

FBT is a federal taxation system under which employers are taxed on the value of certain benefits provided to their employees or their associates. Fringe benefits are taxed at a rate of 46.5% after the value of the benefits has been grossed up. Generally, employers are entitled to claim an income tax deduction for the cost of providing fringe benefits and the amount of FBT paid.

The FBT system contains a number of exemptions and concessions relating specifically to employees who are either required to relocate or live away from their usual home in order to carry out their employment duties.

An entity is required to lodge an annual FBT return if it has an FBT liability for the year, which runs from 1 April to 31 March.

Worker's Compensation

Each state and territory has separate legislation dealing with worker's compensation insurance. An insurance policy is required to be taken out by employers to cover their employees in the event they suffer a work-related injury or illness. These policies ensure that injured or ill workers will receive financial compensation for lost wages, medical expenses and permanent incapacity.

Occupational Health and Safety

Each state and territory has responsibility for making laws about occupational health and safety (OH&S) and for enforcing those laws. OH&S legislation imposes strict obligations on all employers to ensure the health, safety and welfare of their employees while at work. Businesses must ensure that they do not create health and safety problems for employees, customers and the general public. The rules apply even if the business has no employees.

Statutory Reporting and Audit Requirements

Registered Foreign Company

A registered foreign company is required to lodge copies of its financial statements and any other documents it is required to prepare by the law applicable in the company's place of origin at least once every calendar year and at intervals of not more than 15 months. However, the ASIC can declare that certain foreign companies are exempt from the general financial reporting requirements. This relief would not be available if the foreign company will lodge less information than an equivalent Australian company. If relief is granted, the foreign company should only need to lodge an annual return setting out the details of the foreign company, its directors and its local agent. In addition, a registered foreign company must comply with various notification obligations under the Corporations Act.

Australian Company

The requirements relating to financial reporting and audit for an Australian proprietary company depend on whether it is classified as 'large' or 'small'. Under the Corporation Act, a proprietary company will be classified as large if it (including controlled entities) satisfies any two of the following criteria:

- Consolidated gross operating revenue for the financial year is AUD$ ≥25 million
- The value of consolidated gross assets at the end of the financial year is AUD$ ≥12.5 million
- The company and its controlled entities (if any) have ≥50 employees at the end of the financial year.

All Australian proprietary companies that are controlled by a foreign company must prepare and lodge with ASIC a financial report, a directors' report and an auditor's report ≤4 months after the end of the company's financial year. The financial report, directors' report and auditor's report must also be given to shareholders within this 4-month period. However, relief from preparing and lodging financial statements is available if a small proprietary company is not part of a large group and the directors have resolved to apply the relief.

Relief is also available from the requirement to have the financial statements audited if shareholders and directors of the small proprietary company agree that an audit of the company's financial report is not required and ASIC is satisfied that the company is well managed and in a sound financial condition. A notice that the small proprietary company is relying on the reporting and audit relief must be lodged with ASIC within the specified time frame.

Taxation

Australia operates a self-assessment tax system where taxpayers need to lodge an income tax return for each financial year and pay tax in accordance with the return. Residents are liable to tax on their worldwide income, while non-residents are only liable for tax on Australian sourced income. In Australia, capital gains tax (CGT) is incorporated into the income tax provisions, which means that net capital gains are included in taxable income. Any entity's tax obligations will vary depending upon the type of business structure being used.

Taxation of Income and Capital Gains

Individuals

An individual is an Australian resident for tax purposes if the person resides in Australia under ordinary concepts. In addition, an individual who does not ordinarily reside in Australia may be considered an Australian resident for tax purposes if the person stays in Australia for >183 days during an income year or is domiciled in Australia (there are some exceptions). An individual who is living and working in Australia on a temporary visa will typically be classified as a temporary resident for tax purposes, which means they are not taxed on most foreign sources of income.

Individual taxpayers are subject to a set of progressive tax rates. From 1 July 2012, Australian residents are not taxed on the first AUS$ 18,200 that they earn for a financial year. Australian residents are liable to pay a Medicare levy equal to 1.5% of taxable income (non-residents are not required to pay this additional levy). The rates that apply from 1 July 2012 are set out in Table 1 (excluding the Medicare levy).

Table 1. Tax rates applying to Australian residents and non-residents, 2012–13.

Residents

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

Non-Residents

Taxable income (AUS$)	Tax payable (AUS$)
0–80,000	32.5 c for each $1
80,001–180,000	$26,000 plus 37 c for each $1 over $80,000
≥180,001	$63,000 plus 45 c for each $1 over $180,000

With regard to CGT, resident taxpayers may be eligible for a 50% discount on a capital gain if the asset has been held for >12 months. Non-residents and temporary residents are only subject to CGT in Australia on assets that are classified as 'taxable Australian property'. Land and buildings situated in Australia are classified as taxable Australian property. In addition, shares in a company or units in a trust are treated as taxable Australian property if both of the following conditions are satisfied:

- The shareholder or unit holder has a ≥10% interest in the company or trust (including shares/units held by associates); and
- The company/trust holds land and buildings located in Australia and >50% of the value of the company's or trust's assets relates to that Australian property.

Companies

A company is taken to be an Australian resident if it is incorporated in Australia. If a company is not incorporated in Australia but carries on business in Australia, then the company is still taken to be an Australian resident for tax purposes if either of the following conditions is met:

- The company's central management and control is in Australia; or
- The company's voting power is controlled by Australian resident shareholders.

If a company is classified as a tax resident of Australia and another country, it will be necessary to refer to the relevant clauses of Australia's double tax agreements (if applicable). Non-resident companies are generally only taxed on Australian sourced income and income generated through a permanent establishment in Australia. Resident and non-resident companies are both currently subject to a tax rate of 30%. Companies are also assessed on net capital gains but are not eligible for the 50% discount that is available to individuals and trusts.

One of the distinct features of Australia's tax system is 'imputation'. The imputation system was put in place to ensure that profits earned by a resident company are not taxed a second time when the company's taxed profits are distributed to shareholders as dividends. Resident shareholders are entitled to a tax offset when they receive a 'franked' dividend from a company (i.e. a dividend that has imputation or franking credits attached to it by the company). A company has to maintain a franking account and a franking tax return may need to be lodged with its income tax return.

A wholly owned group of resident companies may make an irrevocable election to form a consolidated group for income tax purposes. The group is treated as a single taxpayer. The head company is responsible for lodging a tax return on behalf of the group and transactions between group members are ignored for income tax purposes.

The standard income year for Australian taxation purposes starts on 1 July and ends on 30 June of the following year. However, a company can apply for a substituted accounting period from the Australian Taxation Office (e.g. if the company's foreign parent company has a different reporting period). Each company, including where a foreign company operates in Australia through a branch, must appoint a resident public officer for tax purposes.

Trusts

Trusts are generally treated as 'flow-through' entities for tax purposes. Income received by a trust is generally taxed in the hands of the beneficiaries when the income is distributed or appointed to them, rather than being taxed in the hands of the trustee. However, the trustee would be subject to tax at the highest marginal rate (46.5%) if any of the income of the trust for the year is not distributed to beneficiaries. The terms of the trust deed provide when and how the trustee makes a distribution. Generally, a distribution must be made by 30 June each year to ensure that the trustee is not taxed at the highest marginal rate. Where a distribution is made to a non-resident beneficiary, the trustee will be assessed on behalf of the non-resident at non-resident tax rates.

Discretionary Trusts

A discretionary trust is a popular type of trust, particularly in a family business situation. The trustee has discretionary powers conferred by the trust deed to appoint income and capital distributions to beneficiaries each year. This can assist the family group with minimising their overall tax liability as the trustee can distribute income to beneficiaries on lower marginal tax rates.

Unit Trusts

Unit trusts are usually established as an alternative structure to a company. Investment funds commonly adopt a unit trust structure, and the trust deed may allow units to be bought and sold in much the same way as shares in a company. Distributions of income or capital from a unit trust generally depend on the number and/or classes of units held by the unit holders.

Partnerships

Under general law, a partnership is a relationship between people carrying on a business in common with a view to profit. For tax purposes, the definition of 'partnership' also includes persons in receipt of income jointly, whether carrying on a business or not. This means that investment properties held jointly by more than one person will be treated as a partnership for tax purposes.

Partnerships are treated as 'flow-through' entities for tax purposes. Although a partnership is required to furnish a tax return, the partnership is not liable to pay tax on the partnership income as the partners are assessed individually on their share of net income of partnership. Tax losses are shared by the partners (unlike with companies and trusts, where the losses cannot be distributed). The rules ensure that any non-resident partners are not assessed on their share of any foreign income derived by the partnership.

GST

GST is a broad-based consumption tax imposed on certain supplies that are connected with Australia. GST is payable where the entity making the supply is registered or required to be registered for GST. GST is also payable on the importation of goods. GST is calculated as 10% of the value (excluding GST) of the consideration that an entity receives for making the supply. An entity may claim input tax credits for the GST paid to acquire goods and services where the acquisitions relate to its business operations.

Certain supplies (e.g. residential rent) are treated as input taxed supplies. This means that the supply is not subject to GST, but the supplier cannot claim input tax credits for acquisitions they made in relation to making the input taxed supply. Certain other supplies (e.g. exports, health, education) are simply GST-free.

Once an entity is registered for GST, it is required to lodge a business activity statement (BAS) with the tax office on a monthly or a quarterly basis. If the entity's annual turnover is AUS$ >20 million, it must lodge its BAS on a monthly basis. An entity would report its obligations for a range of taxes on the BAS including GST, PAYG withholding and instalments, non-resident withholding tax and FBT instalments.

Customs Duty

Customs duty is generally payable at the time goods are entered into Australia. It is generally levied on the customs value of goods in accordance with Australian law, and may not necessarily be the same as the sale price of the goods. A customs broker may be engaged to prepare the required documentation and organise clearance of goods from customs. Australia has entered into a number of free trade agreements with some countries, which confer duty free trade on most imports from those countries.

Stamp Duty

Stamp duty is a state and territory tax that imposes tax on certain transactions and documents either at a fixed rate or on a sliding scale, depending on the value of the transaction involved. Stamp duty would typically apply to the transfer of land, a business or shares in a company that owns substantial land in the relevant state or territory. The rules vary from state to state and exemptions are available in certain circumstances.

Transfer Pricing

Australia's transfer pricing rules operate as an anti-avoidance mechanism to prevent profits being shifted out of Australia. Under these rules, the Commissioner of Taxation has the power to substitute arm's-length amounts if international related parties have not been dealing at arm's length. When an Australian entity or branch undertakes transactions with a foreign related party, it is important to document that the prices for goods or services have been established on an arm's-length basis using an acceptable transfer pricing methodology.

Thin Capitalisation

The Australian tax system also places a limit on the interest deductions that can be claimed by an Australian taxpayer in certain circumstances. The rules are designed to ensure that the Australian operations of an international group are not too heavily funded by debt. These rules do not apply if the interest deductions to be claimed by the group in Australia do not exceed AUS$ 250,000 in the year.

Government Incentives and Grants

The Australian government offers a wide range of grant schemes and incentives to promote and develop foreign investment in Australia. The Australian Trade Commission (Austrade) is a dedicated government agency that seeks to promote and support productive foreign investment into Australia. The incentives offered take a wide variety of forms including taxable grants, tax relief or the provision of infrastructure services at discounted rates. Some of the significant government incentives are described below.

Research and Development (R&D) Tax Incentive

The R&D tax incentive is one of the Australian government's initiatives designed to increase the amount of research and development undertaken in Australia. Qualifying companies are entitled to a 45% refundable tax offset if they have group turnover of AUS$ <20 million or a 40% non-refundable tax offset for all other companies. Companies would normally need to spend AUS$ ≥20,000 on qualifying R&D activities in an income year to claim a tax offset.

The tax offset is available to companies incorporated in Australia, companies incorporated outside Australia that are treated as an Australian resident for tax purposes and companies that are residents of a country that has a double tax agreement with Australia and carry on business through a permanent establishment in Australia.

While the incentive is generally intended to apply to R&D activities carried out in Australia, overseas activities can qualify as long as the expenditure on overseas activities is less than the expenditure on R&D activities carried out in Australia.

Innovation Investment Fund (IIF)

In addition to tax concessions, the federal government has also established the IIF, which aims to promote the commercialisation of Australia's research. Under the IIF programme, new fund managers are established to provide equity finance to small, early stage Australian companies. The Australian government calls for applications annually. Innovation Australia will undertake a technical assessment of applications at various stages.

Export Market Development Grants (EMDG) Scheme

The EMDG scheme is a key Australian government financial assistance programme for exporters with business turnover not exceeding AUS$ 50 million. The scheme is administered by Austrade and provides cash grants as an incentive to Australian residents who export eligible goods and services, industrial property rights and know-how. The applicant must have incurred AUS$ ≥20,000 of eligible expenditure in the claim year. Where the application is successful, the scheme reimburses up to 50% of eligible export promotion expenses above AUS$ 10,000.

Export Finance and Insurance Corporation (EFIC)

EFIC is a self-funding statutory corporation, wholly owned by the Australian government. EFIC provides assistance through specialist finance and insurance services to Australian companies exporting and investing overseas. As an export credit agency, EFIC operates beyond the limits of the commercial market. The finance and insurance services provided may otherwise be unavailable to Australian exporters. In addition, finance can also be arranged for foreign customers to assist them purchase Australian goods or services.

Regulation of Foreign Investment in Australia

While the Australian government welcomes foreign investment and recognises the substantial benefits that foreign investment may provide to the country, it maintains a series of laws and policies that can prevent the acquisition of Australian property or businesses by foreign investors. The main piece of governing legislation is the Foreign Acquisitions and Takeovers Act 1975.

For example, a foreign entity seeking to acquire a 'substantial interest' (≥15%) in an existing Australian business that is valued at AUS$ ≥244 million should notify this to the government, as the acquisition will be subject to prior approval. Also, foreign entities need to inform the government if they wish to acquire an interest in a foreign company whose Australian subsidiaries or gross assets are valued at AUS$ ≥244 million. An increased threshold will generally apply to US investors (the increased threshold is likely to also apply to New Zealand investors in the near future).

In addition, some industry sectors are subject to special treatment under the foreign investment regulations, which include banking, civil aviation, airports, media, shipping and telecommunications.

Under the Foreign Acquisitions and Takeovers Act 1975, the Australian government has the power to block proposals that are determined to be contrary to the national interest. The government has released a set of foreign investment policy statements that set out guidelines on national interest matters in relation to real estate and other sensitive sectors. These statements can be viewed at the Foreign Investment Review Board website (www.firb.gov.au).

Expatriates Living in Australia

Visa Requirements

The Australian government has introduced specific initiatives designed to help Australian businesses obtain staff from overseas with a minimum of formality and to help overseas people either conduct or establish business in Australia. Expatriates coming to Australia generally need to apply for a temporary business entry visa. Business entry visas allow employers to recruit skilled people from overseas for a stay of up to 4 years. Some of the most common business entry visas are summarised below.

Subclass 457 Business (long stay) Visa

The Subclass 457 visa allows skilled people to work in Australia for an approved employer for a period from 3 months up to 4 years. The prospective employer must first apply to become a standard business employer, which allows them to sponsor an agreed number of overseas workers for a 2-year period. The employer needs to nominate the position to be filled by the overseas worker, who must meet minimum skill and salary requirements.

Labour Agreement

A labour agreement is a formal arrangement negotiated between the Australian government and an employer or an industry association. Labour agreements enable Australian employers to recruit a specified number of workers from overseas in response to identified or emerging labour market (or skill) shortages in the Australian labour market. Agreements are normally negotiated for a period of 2–3 years.

Business Visas

Business visas can be issued for either a single entry or for multiple entries. Holders of a multiple-entry visa may make an unlimited number of journeys to Australia for up to 3 months on each occasion, for the life of the passport held by the individual at the time of being granted the visa. These visas will often be used by business people visiting Australia to attend a conference or training session or to attend business meetings.

eVisitor

The eVisitor is an electronically stored authority for travel to Australia and is only available to passport holders from the European Union and a number of European countries. The eVisitor allows visitors to travel to Australia for up to 3 months. An individual can apply for an eVisitor over the internet.

Working Conditions

The Australian labour market is very competitive. Pay and working conditions for workers in Australia can be set by an award, a statutory agreement or an individual employment agreement. Employees have the freedom of choosing whether to join a trade union. All jobs and professions are open to men and women. There are strict laws to protect employees against unfair treatment or discrimination based on their gender, race, disability, religion or sexual orientation.

Accommodation

Australia offers many types of accommodation, from hostels and boarding houses to modern apartments and homes. Rental costs vary greatly and will depend on the type of accommodation, size and location. A family home could easily cost AUS$ 800/week in a central location in one of the big cities.

Demands for residential property have been high for many years in Australia. With Australia's population expected to continue to grow and the shortage of property supply due to economic recession, a low level of vacancy has been seen in the residential market across the board in all major capital cities. Houses in Sydney are the most expensive in Australia, with the median house price currently around AUS$ 650,000. The vacancy rate in the Sydney rental market can be as low as 1%. Renting or buying a house or an apartment is generally done through a licensed real estate agent. Properties for sale or rent are advertised in newspapers as well as various real estate agent websites.

Transportation

Australia has an advanced public transport system. Buses, trains and ferries operate in most Australian cities and run on a strict timetable. Public transport is slightly different in every city, as the systems are operated by the various state governments. Taxis are an alternative to public transport, but are relatively expensive. Higher rates apply in the evenings, weekends and public holidays. All taxis in Australia are obliged by law to use the fare meter.

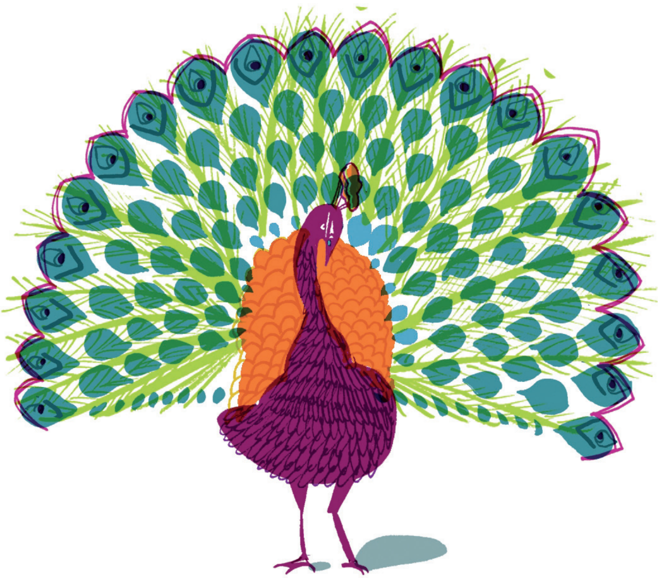
Where you prefer travelling by car, you must drive on the left-hand side of the road. The maximum speed limit is between 100 and 110 km/h outside cities, and 50 or 60 km/h in urban areas. Australian drivers' licenses are administered at state/territory level, and regulations vary as a result.

Hospital and Medical

The Australian government provides residents and citizens with basic health cover through a system called Medicare. However, temporary residents do not generally have access to Australian social welfare benefits and Medicare. As such, expatriates may need to arrange a private health insurance policy to help them with the cost of medical services while in Australia.

Education

In Australia, children between the ages of 5–15 generally must attend school. Public schools are administrated by state and territory governments, which provide free education to local residents. The conditions for enrolment may vary in each school and fees may be charged to temporary resident visa holders. Information on enrolments is available from state and territory education departments or local neighbourhood schools. There are also many private schools operated by various churches and other groups. However, full fees will be payable in relation to these schools.



The Next Step

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