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Morison KSi

Australia

Doing Business Guide





About This Guide

This guide has been produced by the Morison KSi Australian member firms for the benefit of their 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 issues that should be considered by organisations when 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 that anyone considering doing business in Australia, or looking to Australia as an opportunity for expansion, should seek professional advice before making any business or investment decision.

While every effort has been made to ensure the accuracy of the information contained in this guide, no responsibility is accepted for its accuracy or completeness.

The information in this guide is up to date as at the edition date.

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Introduction

Why Australia?

Australia is a stable, culturally diverse and democratic country with a strong, competitive economy, modern infrastructure and highly skilled workforce.

There is no better place than Australia to do business. Australia has a resilient and growing economy, stable political environment, excellent infrastructure with prominent future development plans, and proximity to the fastest growing region in the world – the Asia-Pacific region.

With over two decades of uninterrupted economic growth, Australia is one of the most resilient developed nations in the world. Australia is now in its 28th year of consecutive annual economic growth, underpinned by strong institutions, exceptional service sectors and an ability to respond to global changes. The Australian economy is:

- The world's 14th largest, and fourth largest in the Asia-Pacific region
- Rated 'AAA' by all three global rating agencies
- Forecast to have average annual real gross domestic product (GDP) growth of 2.9% between 2019 and 2021 – the highest among major advanced economies.¹

Australia is an innovative economy that supports world-class and significant research and development (R&D) activities and innovation, backed by high levels of R&D investment, generous R&D tax incentives for companies, and strong intellectual property protection.

Australia is a diverse country with people from a rich variety of cultural, ethnic, linguistic and religious backgrounds. The Australian labour force is one of the most educated, skilled, multicultural and multilingual in the world, with 56% of the workforce holding a post-school qualification.

Australia is the fourth most popular study destination for international students and a 'first choice' education destination within the Asian region.

Australia's unique geographic location provides it with easy access to the Asia-Pacific region, making it an ideal bridge to that fast-growing economy.

Australia is one of the easiest places in the world to do business, backed by the transparent and well-regulated business environment. Australia is ranked fifth on the 2018 Index of Economic Freedom. It is ranked 18th for ease of doing business by the World Bank (DB 2018 Rank).

With almost all industries open to foreign competition and a skilled workforce readily available, Australia continues to be an attractive and dynamic destination for investment.

The economy

Australia has a prosperous and free market economy. In 2019, Australia's nominal GDP is estimated at US\$1.4 trillion (almost Au\$2 trillion). According to the International Monetary Fund, this makes Australia the world's 14th largest economy and the fourth largest in the Asia-Pacific region.

Australia is one of the wealthiest Asia-Pacific nations and has enjoyed more than two decades of economic expansion and growth, reflecting strong macroeconomic policy, structural reform and the long commodity boom.



Australia has a relatively low level of public debt and an unemployment rate of around

5.2%, one of the lowest rates in the Organisation for Economic Co-operation and Development

Australia is internationally competitive in services, technologies and high-value-added manufactured goods. Mining and agriculture have historically been the main contributors to the economy. The economy is currently rebalancing and transitioning to a diversified economy following the end of the commodity boom. Australia's service sectors, in particular, the financial, professional, healthcare, education and tourism services sectors are making a significant contribution to the economy.

Australia has a relatively low level of public debt and an unemployment rate of around 5.2%, one of the lowest rates in the Organisation for Economic Co-operation and Development.

Australia is also a major financial hub in the Asia-Pacific region. As at July 2019, the Australian Stock Exchange (ASX) had 2,211 listed companies with a domestic market capitalisation of Au\$1.5 trillion, making it one of the world's top listed exchange groups.² Australia was ranked 14th in the 2018 Global Competitiveness Report by the World Economic Forum.

The value of Australian trade in goods and services in 2017–18 was Au\$799 billion, with the value of exports totalling Au\$403 billion. China is currently Australia's largest export market, followed by Japan, the Republic of Korea, the United States and India.³

Australia plays an active role in the World Trade Organisation, Asia-Pacific Economic Cooperation (APEC), G20 and other trade forums. Australia's free trade agreements with various countries continue to underpin its economic growth.

1. Source: 2019/20 Budget Overview.
2. Source: Australian Stock Exchange.
3. Source: Department of Foreign Affairs and Trade.





Business Structures

Choosing the right structure

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 the 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 are fixed or flexible, there are two types of trust 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 rather than a continuous business; hence, it is often seen in the mining and property development sectors.

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. However, generally there are restrictions applied to those limited liability partners as to 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 Corporations Act as well as its own constitution. There are four types of companies, being a company limited by shares, a company limited by guarantee, a company with unlimited liability, and 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 foreign company may carry on a business in Australia through an Australian branch. A branch is treated as an extension of the foreign 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 or a separate company incorporated in Australia. As it is not a separate legal entity in its own right, the foreign company remains accountable and responsible for all the debts and liabilities of the branch. 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 Australian Securities and Investments Commission (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 described below.

Australian branch

A foreign company carrying on business in Australia through a branch must first 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 as well. 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 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, Pay As You Go (PAYG) withholding, etc. 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 47% (from 1 July 2017) from the payment if the entity does not quote an ABN.

An entity can apply for an ABN through the Australian Business Register website 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 Au\$75,000 or more (Au\$150,000 or more 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 and 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 47% (45% for foreign residents).

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 Internet Corporation for Assigned Names and Numbers (ICANN).



Labour and Personnel

The Australian employment environment is governed by common law and a statutory and regulatory framework which includes the National Employment Standards (NES) and industrial agreements.

Common law

Prior to commencement of any employment, it is prudent to have an employment agreement prepared (i.e. employment contract) to limit an organisation's exposure to employment liability. An employment contract is the most obvious source of common law obligations and it is recommended this contract be in writing.

A standard employment contract would typically cover the working conditions, terms for termination, employer protection clauses and various employee entitlements. The use of an employment lawyer is recommended when preparing an employment contract.

Statutory and regulatory framework

Workers employed in the private and public sectors are usually subject to federal workplace legislation, principally the Fair Work Act 2009.

Under this Act, there are 10 legislated NES that provide all employees with the following entitlements under the federal system:

- *Maximum weekly working hours* – Employees must not be required to work more than 38 hours per week, although there are provisions for some flexibility whereby the additional working hours are reasonable.
- *Flexible working arrangements* – Certain eligible employees may request a change in working arrangements from their employer after at least 12 months of service.
- *Parental leave and related entitlements* – Employees with at least 12 months of continuous service are entitled to 12 months or up to 24 months subject to employers' agreement of unpaid parental leave for the birth or adoption of a child. Eligible employees are entitled to receive the Australian Government Paid Parental Leave Scheme up to 18 weeks' paid leave at the national minimum wage. In addition, employers may also provide for paid parental leave in their workplace policies or employment agreements.
- *Annual leave* – Employees are entitled to 4 weeks of paid annual leave (calculated pro rata for part-time employees) for each year of employment. This leave is cumulative.
- *Personal leave and compassionate leave* – Employees are entitled to 10 working days for each year of employment, which can be taken as sick or carer's leave. This leave is cumulative.
Employees are also entitled to 2 days of compassionate leave each time a family member dies or suffers a life-threatening illness or injury.
- *Community service leave* – Employees are entitled to be absent from their place of employment if they are engaged in eligible community service (i.e., jury service or voluntary emergency management activities).
- *Long service leave (LSL)* – Employees are entitled to paid long service leave and mostly depending on the LSL laws in the state or territory they work in. Generally, LSL entitlement is 2 months after 10 years of service; however, in some states, LSL entitlement is after 7 years of service.
- *Public holidays* – Employees are entitled to be absent on prescribed public holidays. These public holidays can vary by state or territory.

FBT is a federal taxation system under which employers are taxed on the value of certain benefits provided to their employees or their associates

- *Notice of termination and redundancy pay* – Employers must provide employees a minimum period of prior notice in writing before terminating employment. This notice period depends on the employee's period of service and the terms of termination/redundancy.
- *Fair work information statements* – The statement, including information about NES, awards and other matters must be given to all new employees by the employer as soon as practicable after the employee starts employment.

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

Compliance obligations of employers

In addition to common law and the statutory and regulatory framework, there are various compliance obligations imposed on employers regarding their employees which are regulated by various state and federal authorities.

PAYG withholding

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 either 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. From 1 July 2019, if withholding and reporting obligations are not complied with, no deduction is available for payments to employees and contractors.

Superannuation guarantee contributions

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 9.5% of an employee's ordinary-time earnings. If an employer provides less than the required minimum level of support, they will be liable to pay a non-deductible superannuation guarantee charge (SGC). SGCs 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 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 47% 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 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.

Work cover

Each state and territory has separate legislation dealing with workers 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 and for enforcing those laws. Occupational health and safety 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.

Employee incentives: Employee share schemes

One of the most effective and often underutilised ways employers can incentivise key staff is the use of employee share schemes.

The common arrangements involve employers providing employees with shares or options to acquire shares in the employer company or the holding company of the employer at a discounted price. The discount received by the employee in relation to the shares or options is generally taxed in the income year in which the shares or options are granted, unless specific conditions can be met to qualify for deferred taxation.

Employers offering shares or options under employee share schemes are required to comply with certain reporting obligations.



International Mobility

There are multiple visa options for expatriates living in Australia and overseas business owners wishing to operate in Australia (Table 1). The migration programme provides avenues for permanent or temporary stay, skilled and sponsored, business entrepreneurs, investors and working holiday individuals to stay and work in Australia.

Table 1. Visa options.⁴

Visa type	Current requirements	Visa duration
Temporary Skill Shortage (TSS) visa (subclass 482)	<p>Allows an employer sponsor to address labour shortages of certain skilled workers</p> <p>Basic eligibility:</p> <ul style="list-style-type: none"> • Nominated for a skilled position by an approved sponsor • Work for sponsor or associated entity • Possess at least 2 years' relevant work experience, skills assessment and qualification to perform the occupation • Possess relevant English language requirements • Must meet health and character requirements <p>Four application streams:</p> <ul style="list-style-type: none"> • Short-term stream – the occupation must be on the short-term skilled occupations list • Medium-term stream – the occupation must be on the medium- and long-term strategic skills occupation list • Labour agreement stream – the employer must have a labour agreement in effect with the Australian government • Subsequent entrant – this visa is for family members of subclass 482 and 457 visa holders <p>Note: This TSS visa replaced the previously known Temporary Work (Skilled) visa (subclass 457)</p>	2–4 years
Employer Nomination Scheme (ENS) visa (subclass 186)	<p>Allows skilled workers, who are nominated by their employers, to live and work in Australia</p> <p>Basic eligibility:</p> <ul style="list-style-type: none"> • Possess the required skills and qualifications for the job • Must be licensed, registered or a member of a professional body if required by the state or territory of work • Nominated by an Australian employer • Must meet health and character requirements • Generally, under the age of 45; however, exemption applies to certain occupations and visa holders <p>Three application streams:</p> <ul style="list-style-type: none"> • Direct entry stream – must have an occupation that is on the list of eligible skilled occupations list, at least 3 years' relevant work experience and competent English level • Labour agreement stream – the nominated employer must have a labour agreement in place • Temporary residence transition stream – applicants must hold visa 457, visa 482 (TSS) or related bridging visa A, B or C, and must have worked for the nominated employer for at least 3 years 	Permanent

Regional Sponsored Migration Scheme (RSMS) visa (subclass 187)	<p>Allows a skilled worker nominated by their employer in regional Australia to live and work in Australia</p> <p>Applicant must have similar basic eligibility as the above employer nomination scheme (ENS) visa (subclass 186), the main difference being that the nominated employer must be in regional Australia</p>	Permanent
Business Talent (Permanent) visa (subclass 132)	<p>Allows the visa holder to establish a new or develop an existing business in Australia</p> <p>Basic eligibility:</p> <ul style="list-style-type: none"> • Submit expression of interest via SkillSelect • Nominated by an Australian state or territory government agency • Must be invited to apply via the SkillSelect system • Have the minimum required funding or assets <p>Two application streams:</p> <ul style="list-style-type: none"> • Significant business history stream – net value of at least Au\$1.5 million, annual business turnover of at least Au\$3 million, and total net assets of at least Au\$400,000 in qualifying businesses for 2 of the 4 last years • Venture capital entrepreneur stream – must have funding of at least Au\$1 million from an Australian venture capital firm 	Permanent
Business Innovation and Investment (Provisional) visa (subclass 188)	<p>Allows the visa holder to own and operate businesses, conduct investment activities or undertake entrepreneurial activities in Australia</p> <p>Basic eligibility:</p> <ul style="list-style-type: none"> • Submit expression of interest via SkillSelect • Nominated by a state or territory government agency or Austrade • Must be invited to apply via the SkillSelect system • Must have the required skills or funding <p>Several application streams:</p> <ul style="list-style-type: none"> • Business innovation stream – required to possess business skills that will operate a new or existing business in Australia • Investor stream – required to invest at least Au\$1.5 million and maintain the business or investment activity in Australia • Significant investor stream – required to invest at least Au\$5 million in complying significant investments in Australia • Premium investor stream – required to invest at least Au\$15 million in Australian investments and/or philanthropic contributions that meet certain requirements • Entrepreneur stream – required to have a funding agreement with a third party to carry out entrepreneurial activities 	Up to 4 years and 3 months
Business Innovation and Investment (Permanent) visa (subclass 888)	<p>For business owners, investors and entrepreneurs to continue their activity in Australia</p> <p>Basic eligibility:</p> <ul style="list-style-type: none"> • Applicant must hold a relevant stream of the subclass 188 visa or a subclass 444 (special category) visa, or a subclass 457 (Business Long Stay) visa granted in certain circumstances • Applicant must be able to show ongoing business and investment involvement for a certain period of time, depending on the various streams applied 	Permanent

It is recommended that appropriate migration law advice be obtained by international individuals or business owners intending to operate, work, invest or employ overseas employees for application of the relevant visas in Australia.

4. Source: Department of Home Affairs.



Taxation System

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. An 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 more than 183 days during an income year or is domiciled in Australia (there are some exceptions). If an individual 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).

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. Australian residents are not taxed on the first Au\$18,200 that they earn for a financial year. Australian residents are liable to pay a Medicare levy equal to 2% of taxable income (non-residents are not required to pay this additional levy). The rates that apply from 1 July 2018 to 30 June 2020 are set out in Tables 2 and 3 (excluding the Medicare levy).

Table 2. Tax rates for residents, July 2018 to June 2020.

Taxable income (Au\$)	Tax payable (Au\$)
0–18,200	Nil
18,201–37,000	19 c for each \$1 over \$18,200
37,001–90,000	\$3,572 + 32.5 c for each \$1 over \$37,000
90,001–180,000	\$20,797 + 37 c for each \$1 over \$90,000
180,001 and over	\$54,097 + 45 c for each \$1 over \$180,000

Table 3. Tax rates for non-residents, July 2018 to June 2020.

Taxable income (Au\$)	Tax payable (Au\$)
0–90,000	32.5 c for each \$1
90,001–180,000	\$29,250 + 37 c for each \$1 over \$87,000
180,001 and over	\$62,550 + 45 c for each \$1 over \$180,000

Legislation has been passed to reduce the individual tax rates with changes from 1 July 2022 and 1 July 2024 with the marginal rates shown in Tables 4 and 5.

Table 4. Individual tax rates for residents, July 2022 to June 2024.

Taxable income (Au\$)	Tax payable (Au\$)
0–18,200	Nil
18,201–45,000	19 c for each \$1 over \$18,200
45,001–120,000	\$5,092 + 32.5 c for each \$1 over \$45,000
120,001–180,000	\$29,467 + 37 c for each \$1 over \$120,000
180,001 and over	\$51,667 + 45 c for each \$1 over \$180,000

Table 5. Individual tax rates for residents, 2024 to 2025.

Taxable income (Au\$)	Tax payable (Au\$)
0–18,200	Nil
18,201–45,000	19 c for each \$1 over \$18,200
45,001–200,000	\$5,092 + 30 c for each \$1 over \$45,000
200,001 and over	\$51,592 + 45 c for each \$1 over \$200,000

With regard to CGT, resident taxpayers may be eligible for a 50% discount on a capital gain if the asset has been held for more than 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/unit holder has at least 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 (directly or indirectly) and more than 50% of the value of the company's/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, 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 generally subject to a tax rate of 30% on their taxable income. A corporate tax rate of 27.5% applies to companies that carry on a business with an aggregated turnover of less than Au\$10 million ('small business entity'). This 27.5% corporate tax rate will be extended to corporate tax entities that are base rate entities from the 2017–18 income year. A base rate entity will be an entity that carries on a business and:

- For the 2017–18 income year – has an aggregated turnover of less than Au\$25 million
- For the 2018–19 income year and later income years – has an aggregated turnover of less than Au\$50 million
- 80% or less of the entity's income is passive income (i.e. rent, royalties, capital gains, dividends, etc).

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

The 27.5% rate for base rate entities will subsequently be cut to:

- 26% for the 2020–21 income year
- 25% for the 2021–22 and later income years.

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 (47%) 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 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 at 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 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.

Goods and services tax

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 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 (except in relation to making input taxed supplies).

Certain supplies are treated as input taxed supplies (e.g., residential rent). 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 are simply GST-free (e.g., exports, health, education).

Once an entity is registered for GST, it is required to lodge a business activity statement (BAS) with the Tax Office on either a monthly or a quarterly basis. If the entity's annual turnover is over Au\$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.

From 1 July 2018, GST may be collected by overseas vendors of low value goods when imported by consumers in Australia – this will be charged at the point of sale. To help facilitate compliance, simplified GST allows non-residents to electronically register, report and pay, although no GST credits can be claimed under this registration.

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.



The DPT aims to ensure that the tax paid by significant global entities properly reflects the economic substance of their activities in Australia and aims to prevent the diversion of Australian profits offshore through arrangements involving related parties

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 Au\$2 million in the year.

Diverted profits tax

The DPT came into effect from 1 July 2017 and imposes a 40% tax rate on the diverted profits. The DPT only applies to significant global entities.

An entity is a significant global entity for an income year if it is:

- A 'global parent entity' whose 'annual global income' is Au\$1 billion or more; or
- A member of a group of entities consolidated (for accounting purposes) where the global parent entity has an annual global income of Au\$1 billion or more.

The DPT aims to ensure that the tax paid by significant global entities properly reflects the economic substance of their activities in Australia and aims to prevent the diversion of Australian profits offshore through arrangements involving related parties. It also encourages significant global entities to provide sufficient information to the Australian Taxation Office (ATO) to allow for the timely resolution of tax disputes.

Multinational Anti-Avoidance Law

The MAAL is part of the Australian government's efforts to combat tax avoidance by multinational companies which are significant global entities using artificial and contrived arrangements to avoid the attribution of profits to a permanent establishment in Australia.

If the MAAL operates, an entity may have their tax benefit cancelled by the Commissioner of Taxation. In addition, the entity will be subject to increased penalties for tax shortfalls arising from the application of the MAAL.

Hybrid mismatch rules

The hybrid mismatch rules aim to prevent multinational companies from gaining an unfair competitive advantage by avoiding income tax or obtaining double tax benefits through hybrid mismatch arrangements. The hybrid mismatch rules are intended to deter the use of certain hybrid arrangements that exploit differences in the tax treatment of an arrangement and/or entity under the income tax laws of two or more countries. When applicable, they neutralise the effect of hybrid mismatches so that unfair tax advantages do not accrue for multinational groups as compared with domestic groups. Subject to some exceptions, the rules have application to certain payments after 1 January 2019, and to income years commencing on or after 1 January 2019.



Banking and Finance

Australian banking system

The Australian banking sector is well established and offers a stable and well-regulated environment supporting businesses and investment activities.

The Reserve Bank of Australia is Australia's central bank. Its role is set out in the Reserve Bank Act 1959, which includes setting the nation's monetary policy and issuing currency. It also seeks to foster financial system stability and promotes the safety and efficiency of the payments system. There is an extensive and detailed regulation of Australia's banking system, split between the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investment Commission (ASIC).

The Australian banking market 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 a number of smaller domestic banks and foreign banks. 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 Ltd, and Laiki Bank (Australia) Ltd. In addition to banks, there are two other types of authorised deposit-taking institutions operating in Australia: credit unions and building societies. These institutions have traditionally focused on the provision of retail banking to customers.

Setting up a bank account

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 apply for various bank products. These may include loans, mortgages and insurance. International transfers and foreign exchange services may also be offered by the banks.

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 tax file number, the bank is obliged to deduct tax from any interest earned on the account.



Australia is fast becoming a major financial hub of the Asia-Pacific and offers many fundraising avenues for local and international businesses. The most common funding sources are debt funding, equity funding or combination of both

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. It is recommended that overseas companies or local companies with overseas-based directors start the process of opening a bank account as early as possible.

For newly incorporated Australian companies, their accountants should be able to provide the company with a banking package upon incorporation which contains most of the information required to open a local bank account.

Many of the foreign banks mentioned above may have expedited processes to speed up the process of establishing a bank account if the business already has links to those banks offshore.

Australia financing sources

Australia is fast becoming a major financial hub of the Asia-Pacific and offers many fundraising avenues for local and international businesses. The most common funding sources are debt funding, equity funding or combination of both.

Debt finance

Debt finance is generally provided by external financial institutions such as banks, building societies or credit unions. Financial institutions offer a range of finance products including business loans, asset financing, lines of credit and overdraft facilities for both short- and long-term solutions.

In recent years, Australian banks have tightened their lending policies. For newly established Australian subsidiaries of foreign companies, debt funding by parent companies is common due to subsidiaries' lack of credit history and inability to obtain funding from banks.

Other forms of debt financing include trade credit via suppliers, high-interest loans through private funds, and funding from friends and family.

Equity finance

For many start-up companies, providing equity through self-funding is often the first step in seeking finance. The funds are mainly from personal finances and revenue from the business.

Private equity and venture capital are increasingly popular forms of equity funding, especially in the high-technology sector. Private investors and venture capitalists will contribute funds to a business in return for a share in the profits and equity of the business and may also provide access to an extensive network of contacts, professional management, mentoring and other valuable contributions beyond the equity raised. There are a number of firms offering structured incubator and accelerator programmes that provide some of these valuable services.

There are also a number of 'angel investor' groups that can provide early-stage seed funding.

Other sources of finance

Crowd-sourced funding (CSF) is an emerging form of funding in Australia. An amendment to the Corporations Act 2001 has recently been made that allows entrepreneurs to raise funds from a large number of investors. CSF has the potential to provide finance for innovative business ideas and additional investment opportunities for retail investors, while ensuring that investors continue to have sufficient information to make informed investment decisions. Only public unlisted companies can raise funds via CSF. There are regulatory requirements imposed on the fundraising companies and also the CSF intermediaries facilitating CSF offers.

Companies may also seek an initial public offering by floating shares on a stock market to raise capital from public. This can be a more expensive and complex option. Some companies may also achieve a listing through being acquired by an existing listed vehicle. This process is commonly known as a 'backdoor listing'.



Reporting 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. ASIC Regulatory Guide 58 sets out a complete list of reporting requirements by registered foreign companies and Australian companies with foreign shareholders.

Australian company

All public companies must prepare and lodge an independently audited financial report, director's report, and an auditor's report with ASIC for each financial year. Generally, these reports have to be lodged with ASIC and sent to shareholders within 4 months after the end of each financial year.

On the other hand, requirements relating to financial reporting and audit for an Australian proprietary company depend on whether it is classified as 'large' or 'small'. Under the Corporations 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 at least Au\$50 million from 1 July 2019 (previously Au\$25 million)
- The value of consolidated gross assets at the end of the financial year is at least Au\$25 million from 1 July 2019 (previously Au\$12.5 million)
- The company and its controlled entities (if any) have 100 or more employees at the end of the financial year from 1 July 2019 (previously 50 or more employees).

'Large' proprietary companies are required to prepare and lodge a financial report, a director's report, and an auditor's report with ASIC for each financial year, unless ASIC grants relief.

'Small' proprietary companies are generally not required to prepare such reports and lodge them with ASIC; they are merely required to keep adequate written financial records. These 'small' proprietary companies may still be required to prepare, audit or lodge their financial reports with ASIC, when directed by ASIC or when requested by 5% or more of their shareholders.

All Australian proprietary companies that are controlled by foreign companies must prepare and lodge with ASIC a financial report, a directors' report and an auditor's report within 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 a financial report with ASIC is available to a 'small' proprietary company controlled by a foreign company that is not part of a 'large group'. Directors must resolve and lodge the relevant relief form with ASIC. Relief will be granted if ASIC considers the relief will not adversely affect the information needs of users and potential users of the financial report.

ASIC Regulatory Guide 115 sets out guidance for certain proprietary companies seeking audit relief. Audit relief will be granted if shareholders and directors have unanimously resolved that



an audit is not required and ASIC is satisfied that the company is well managed and in sound financial condition along with other reporting requirements being met. A notice of the resolution along with relevant form must be lodged with ASIC within the specified time frame for the audit relief to apply.



Grants and Incentives

The Australian Government offers a wide range of grant schemes and incentives to promote and develop foreign investment in Australia. The incentives offered take a wide variety of forms including taxable grants, tax relief or the provision of infrastructure services at discounted rates.

The online Grant and Assistance tool allows a business to search for government grants and assistance that they may be eligible for: <https://www.business.gov.au/assistance>.

Some of the significant government incentives are outlined 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 R&D undertaken in Australia. Qualifying companies are entitled to a 43.5% refundable tax offset if they have group turnover of less than Au\$20 million or a 38.5% non-refundable tax offset for all other companies. The offset reduces to the corporate tax rate once R&D expenditure reaches a cap of Au\$100 million. Companies would normally need to spend at least Au\$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
- 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 R&D activities may qualify if certain conditions are satisfied.

Small business CGT concessions

Generous capital gains tax concessions are available to an entity on the sale of a CGT asset used in carrying on a business if the entity is a CGT small business entity or passes the Au\$6 million net asset value test and also passes the active asset test. An entity is a CGT small business entity if it carries on a business and has an aggregated turnover of less than Au\$2 million in the income year.

A sale of shares in an Australian company or units in an Australian trust may also qualify if certain conditions are met.

There are four CGT concessions available, subject to meeting the relevant conditions:

- 15-year asset exemption
- 50% active asset reduction
- Retirement exemption
- Small business rollover.

If the entity is eligible for the concessions, the capital gain can be reduced or eliminated completely.

Early-stage innovation company (ESIC)

From 1 July 2016, eligible investors who purchase new shares in an ESIC may receive the following tax incentives:

- Non-refundable carry-forward tax offset equal to 20% of the amount paid for their qualifying investments. This is capped at a maximum tax offset amount of Au\$200,000 for the investor and their affiliates combined in each income year.
- Modified CGT treatment under which capital gains on qualifying shares that are continuously held for at least 12 months and less than 10 years may be disregarded. Capital losses on shares held for less than 10 years must be disregarded.

To qualify for the tax incentives, investors must have purchased new shares in a company that meets the requirements of an ESIC immediately after the shares are issued, and the shares must be issued on or after 1 July 2016.

Venture capital limited partnership (VCLP)

The VCLP programme aims to stimulate Australia's venture capital sector by attracting foreign investors with a flow-through tax incentive (exemption from CGT for gains made on eligible investments).

The tax incentives for VCLPs are:

- Flow-through taxation treatment for registered venture capital partnerships
- Exemption for investors (limited partners) from income tax on capital gains and revenue profits from the disposal of eligible venture capital investments by the VCLP
- The fund manager can claim their carried interests in the partnership on capital account, rather than as income.

Similar tax incentives are also available to earlier-stage venture capital limited partnerships (ESVCLPs). From 1 July 2016, partners investing in an ESVCLP may be eligible for a non-refundable carried-forward tax offset of up to 10% of their contributions made to the ESVCLP during an income year.

Export market development grant (EMDG)

The EMDG scheme is a key Australian Government financial assistance programme for exporters with business turnover not exceeding Au\$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 at least Au\$15,000 of eligible expenditure in the claim year (except for the first year of making a claim, where eligible expenditure can include expenses from the two previous financial years). Where the application is successful, the scheme reimburses up to 50% of eligible export promotion expenses above Au\$5,000.



Agencies Providing Assistance

The Australian government and its agencies provide various guidance and support to foreign investors and foreign businesses.

The role of investment promotional agency

The Australian Trade and Investment Commission, Austrade, is a government agency that promotes trade, investment and education, and develops tourism policy, programmes and research. Through its global network, Austrade helps Australian companies attract productive foreign direct investment and assist investors to expand into Australia. (<https://www.austrade.gov.au>)

Industry organisations and trade associations

Australian Chamber of Commerce

The Australian Chamber of Commerce and Industry is Australia's largest and most representative business association, comprising state and territory chambers of commerce and national industry associations. (<https://www.acci.asn.au>)

Other key government organisations

There are a number of different Australian government departments and organisations which foreign entities wishing to do business in Australia need to be aware of:

- **Department of Industry, Innovation and Science:** The department of the Australian Government responsible for consolidating the Government's efforts to drive economic growth, productivity and competitiveness by bringing together industry, energy, resources and science. It is responsible for administering many of the key innovation grants and incentives offered by the Commonwealth government. (www.business.gov.au)
- **Australian Taxation Office:** ATO is the Australian tax authority. (<https://www.ato.gov.au/>)
- **Foreign Investment Review Board:** The FIRB's function includes assessing investment proposals submitted by foreign interests. (<http://firb.gov.au/>)
- **The Australian Competition and Consumer Commission:** The ACCC's primary role is to administer the Competition and Consumer Act to promote competition and fair trading, and to provide for consumer protection. (<https://www.accc.gov.au/>)
- **Australian Securities and Investments Commission:** ASIC is the independent Australian statutory regulator of Australian registered companies, and one of three federal government bodies that regulate financial services. (<http://asic.gov.au/>)
- **IP Australia:** IP Australia is the federal government agency that administers registration of intellectual property rights and legislation in relation to patents, trademarks and designs in Australia. (<https://www.ipaustralia.gov.au/>)
- **Australian Government Department of Home Affairs:** This department is responsible for Australia's federal law enforcement, national and transport security, criminal justice, emergency department, multicultural affairs and immigration and border-related functions. (<https://www.homeaffairs.gov.au/>)
- **Department of Foreign Affairs and Trade:** This department provides foreign, trade and development policy advice to the government. (<http://dfat.gov.au>)



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