

DOING BUSINESS IN AUSTRALIA



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ABOUT US

Weston Woodley & Robertson is a city based boutique professional services firm with experience across a diverse range of industries that meet the challenges of our clients.

Growth of business and industry saw the practice broadening its operations and services to meet the requirements of clients in all spheres of the business and finance sectors of the community.

In 1989, our long established client focus foresaw the need to expand our horizons and our national affiliation joined GMN International, a group of independent international professional accountancy firms. It is one of the world's leading International Accounting Affiliations ranked in the top 30 largest groups with over 70 member firms.

We remain independent and committed to our clients and employees and held in high regard amongst our peers and the profession. We are valued because:

- We are a leading firm in the middle market
- We offer staff a broad range of client work, excellent resources
- We care for our clients' needs
- Our work ethic ensures our employees have a friendly and enjoyable place to work
- We understand the work/life balance needs of our employees

The partners and employees are passionate about their clients. Our vision in this changing world is to deliver to our clients more than is expected. We strive to go beyond the numbers and provide objective and innovative solutions.

We have built relationships with our clients through offering professional advice in business services, audit & assurance, superannuation and consulting. Technology is a significant driver to businesses. In more recent years our technology needs have increased dramatically and we are now capable of providing new IT services to satisfy clients' needs.

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DISCLAIMER

This booklet presents the law at April 2013. It is intended as an introductory guide to doing business in Australia and answers preliminary questions frequently asked by those unfamiliar with the Australian business environment. Factors which may be relevant to particular circumstances (including industry specific regulation) are not covered. For more comprehensive professional advice please contact Weston Woodley & Robertson.

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Thomson Reuters www.thomsonreuters.com.au

1. INTRODUCTION

Australia welcomes foreign investment. It recognises the important role foreign investment plays in boosting economic growth, developing competitive industries, creating jobs and increasing exports.

Australia's economy ranks among the 20 largest in the world, with a per capita GDP on par with the four dominant West European economies. Business in Australia is conducted in a transparent, well regulated and politically stable environment. The judiciary is open, independent and accessible.



The 2013 World Bank Doing Business report judged Australia to be the second most straightforward and affordable country to start up a business; on average taking only two days to establish, and in the top 10 countries in terms of overall ease of doing business.

The Australian labour force is highly educated with a strong multicultural background. Approximately 42% of Australia's working age population has a university degree, diploma or trade qualification. Of the approximately 22 million people in Australia, more than 1.4 million are fluent in a major Asian language and more than 1.2 million are fluent in a major European language. Australia's lifestyle reflects its mainly Western origins, but Australia is also a multicultural society which has been enriched by over six million settlers from almost 200 nations. Four out of ten Australians are migrants or the first-generation children of migrants, half of them from non-English speaking backgrounds.

The Australian Government's trade policy combines multilateral, regional and bilateral approaches. Australia pursues every opportunity to open up global markets for exporters and to encourage investment flows across all sectors. As part of this commitment, the Australian Government has negotiated special access for Australian suppliers of goods and services to key export markets through free trade agreements (FTAs). The results of this policy have become particularly apparent in recent years with Australia making significant advances in its pursuit to enhance trade by completing FTAs with ASEAN, New Zealand, the USA, Thailand and Singapore and other significant agreements with China, Malaysia and Japan.

GENERAL INFORMATION

GEOGRAPHY & DEMOGRAPHICS

Australia is the largest island in the world. Australia is an island continent and the world's sixth largest country (7,682,300 sq km). Lying between the Indian and Pacific oceans, the country is approximately 4,000 km from east to west and 3,200 km from north to south, with a coastline 36,735 km long. There are rainforests and vast plains in the north, snowfields in the south east, desert in the centre and fertile croplands in the east, south and southwest. Australia has 19 listed World Heritage properties. Australia is also famous for its landmark buildings including the Sydney Harbour Bridge; its ancient geology, as well as for its high country. The numerous advantages of locating in Australia have made the country the location of choice for the regional headquarters of many multinational corporations. Located in the Asia Pacific, Australia's proximity to Asia is one major reason as well as an extensive well-educated and trained workforce boasting multi skilled and multi lingual personnel, a temperate climate and relatively low crime rate.

The national language is English. However, the country maintains an extremely cosmopolitan flavour enriched with a vast array of people from European, Asian and many other backgrounds as well as an indigenous population whose presence in the country can be traced back some thousands of years.

The multicultural nature of Australia is reflected in the many religious denominations, specialised media and schools, and of course, the cuisines of the world that are an important part of the culture. People who migrate to Australia can be sure to find facilities to meet their needs.

Australia has a stable economy for investment and has enjoyed rapid growth. Australia's industrial and rural industries have adopted world best practices and our technology and communications development and uptake is amongst the leading countries in the world.

The country is well endowed with natural resources and produces major quantities of bauxite, beach sand minerals, iron ore, lead and zinc, as well as significant quantities of nickel, copper, coal and uranium.

Water has always been a scarce resource, but continued development of dams and reservoirs has alleviated this problem to some extent.

Australia has a reasonable manufacturing industry, producing a wide range of goods, although comparatively high labour rates have forced some industries off-shore. There is also a large construction industry serving new development projects and buildings, including private housing.

With its abundance of natural resources, Australia has a significant mining industry which provides a reasonable percentage of the country's total export income.

POLITICAL SYSTEM

The Australian political system is extremely stable. The country has three levels of government - Local, State and Federal.

Australia is comprised of states and territories. The six states of Australia are: New South Wales, Queensland, Victoria, South Australia, Western Australia, and Tasmania. The two mainland territories of Australia are: Australian Capital Territory and Northern Territory.

The capital of Australia is Canberra which is situated in the Australian Capital Territory.

LOCAL GOVERNMENT

Local government is elected by the residents of each specific municipality. Their powers are rather limited and usually cover such issues as environmental, land development and other "local" concerns.

STATE GOVERNMENT

State Governments have responsibility for education, police, health facilities, energy and mining among other things. The State Governments across Australia have similar but not identical laws. Businesses operating in a particular State or Territory need to be aware of various taxes and other laws. There are no state income tax laws.

FEDERAL GOVERNMENT

Federal Government derives its power under the Australian Constitution. Its responsibilities include collection of income tax, defence, foreign affairs, immigration, social security, communications, trade practices, commerce and insurance law.

CLIMATE

Australia's climate ranges from tropical (monsoonal) in the north to temperate in the south. In the southern cities, temperatures are cool in winter and warm in summer.

Northern cities are warm in winter and hot in summer. The climate in the major cities and regional centres is generally moderate. The extreme temperatures are only found in sparsely inhabited areas.

Australia is a relatively dry continent, so while there might be rainfalls of 2500mm (100in) in parts of Northern Queensland, generally rainfall in the cities is lightly spread throughout the year.

BANKING & CURRENCY

The Australian dollar, which divides into 100 cents, is the national currency. Australia was the first country in the world to have a complete system of bank notes made from plastic (polymer). These notes provide much greater security against counterfeiting. They also last four times as long as conventional paper (fibrous) notes.

The polymer notes are cleaner than paper notes and easily recyclable. Australia's currency comprises coins of 5, 10, 20 and 50 cent and one and two dollar denominations; and notes of 5, 10, 20, 50 and 100 dollar denominations.

The private banking industry in Australia has benefited from almost 20 years of sustained economic growth to become the third largest private wealth market in the Asia Pacific and the 11th largest in the world.

Strategically, Australia offers a competitive regional location for providing wealth management services. Australia is distinguished by the strength and resilience of its economy, the size, depth and liquidity of its financial markets and the sophisticated and innovative nature of its funds management sector, underpinned by its mandatory retirement income policy.

Australia is also strategically located in the Asia-Pacific region, which is predicted to surpass North America in terms of cumulative wealth by 2013.

Despite its relatively small population, Australia's pool of affluent individuals (with average wealth of US\$2.94 million) is around 30 per cent bigger than those of Singapore and Hong Kong combined and 54 per cent larger than that of India.

All of the major domestic banks have designated private banking services, as do a number of the regional banks. In addition, a number of foreign banks have established private banking services in Australia, recognising both the strength of the domestic market and the potential within the region.

Australia also has strong and sophisticated financial planning and investment fund markets, as well as a growing family office sector.

Minimal exchange controls exist. One requirement is for entities to advise movement of currency into or out of Australia exceeding 510,000.

LEGAL SYSTEM

The Australian legal system is a common law system and was initially based on the English legal system. However, over the years the Australian legal system has developed its own body of case law and the legal principles and procedures are now not necessarily similar to those practised in England.

Australia has different Court structures for the Commonwealth, State and Territories, each having different jurisdiction. For the Commonwealth, there is the High Court (highest Court in Australia), Federal Court, Family Court, Federal Magistrates Service, Industrial Relations Court of Australia, and a number of tribunals (e.g. Administrative Appeals Tribunal).

In NSW, there is the Supreme Court (highest Court in NSW), District Court, Local Court, Land and Environment Court. There are also a number of tribunals such as Administrative Decisions Tribunal etc.

The legal profession is split into two groups of practitioners: solicitors and barristers. Normally if an individual wished to commence legal proceedings that person would first consult a solicitor and if the matter went to court this would then be dealt with by the barrister.

The independence of the judiciary from government is protected by the Australian Constitution.

IMPORT & EXPORT ISSUES

IMPORT ISSUES

All goods imported into Australia must be cleared by customs, whether they are imported by air, sea or post.

Customs duty and GST may apply to goods entering Australia.

Customs duty rates vary and depend upon a number of factors including the type of goods and the country of origin. Goods regarded as being hazardous or dangerous are subject to import controls.

EXPORT ISSUES

Export of goods from Australia is regulated by various laws and Government policies.

The thrust of these laws is to prohibit the export of certain goods either absolutely or conditionally; and record Australia's international trade.

Where goods are "conditionally" exported a permit may be required. The Export Market Development Grants (EMDG) scheme is a key Australian Government financial assistance program for aspiring and current exporters. Administered by Austrade, the scheme supports a wide range of industry sectors and products, including inbound tourism and the export of intellectual property and know-how outside Australia.

RESEARCH AND DEVELOPMENT

Australia actively encourages development of technology and is credited with numerous inventions and innovative ideas.

One part of the Government's focus on rewarding businesses in Australia who engage in such pursuits are the Research and Development Concessions, which are two pronged.

TAX CONCESSIONS

Companies that incur expenditure on eligible Research and Development activities may claim a number of tax concessions. The R&D Tax Concession is a broad-based, market driven tax concession which allows companies to deduct up to 125% of qualifying expenditure incurred on R&D activities when lodging their corporate tax return. A 175% Incremental (Premium) Tax Concession and R&D tax offset are also available in certain circumstances.

COMPETITIVE GRANTS AND LOANS

Help Australian companies to grow their business in international markets, including through administration of the Export Market Development Grants (EMDG) scheme and the TradeStart program.

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

It offers a range of funding options as well as multi-layered networking opportunities to help you achieve business success. Participants in the program work with dedicated Case Managers and benefit from our Expert Network. You can apply for Commercialisation Australia support at any time.

2. FOREIGN INVESTMENT

2.1 REASONS TO INVEST IN AUSTRALIA

- Strong Economical Credentials
- Democratic and Politically Stable
- Highly Skilled and Multilingual Workforce
- Sophisticated Telecommunications & Information Technology Systems
- Innovative Culture with Excellent R&D Infrastructure
- Open and Effective Regulatory Environment
- Strategic Time Zone



2.2 REGULATORY AGENCIES

Australian Securities and Investments Commission (ASIC)

www.asic.gov.au

Federal corporate regulator, company and financial services laws

The Australian Competition and Consumer Commission (ACCC)

www.accc.gov.au

This agency is responsible for anti-competitive practices. The Australian equivalent of antitrust enforcement and it reviews areas such as:

- Monopolistic practices
- Misleading conduct in relation to marketing Price discrimination
- Mergers

The Australian Prudential Regulatory Authority (APRA)

<http://www.apra.gov.au/>

The Australian Prudential Regulation Authority (APRA) is the prudential regulator of the Australian financial services industry. It oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies, and most members of the superannuation industry.

IP Australia

<http://www.ipaustralia.gov.au>

IP Australia is the Australian Government agency responsible for administering patents, trademarks, designs and Plant Breeder's Rights.

By granting these rights, and contributing to the improvement of Australian and international IP systems, IP Australia is supporting Australia's economic development.

IP Australia incorporates the Patent, Designs, Trademarks and Plant Breeder's Rights (PBR) Offices. It is a prescribed agency within the Department of Industry, Tourism and Resources (ITR) but operates independently and reports directly to the Minister.

Australian Stock Exchange (ASX)

www.asx.com.au

Whilst the ASX is not a regulatory agency, a company that wishes to list (offer shares to the public) must comply with the rules of the exchange in addition to other requirements that are required by statute such as the Corporations Act. The concept of transparency and keeping the markets informed of all matters that are likely to impact on the market pricing is a primary aim.

Australian Quarantine+Inspection Service (AQIS)

<http://www.agriculture.gov.au/biosecurity>

In addition, the quarantine laws in Australia are enforced by the Australian Quarantine + Inspection Service (AQIS). Australia has very strict regulations to ensure that we protect our borders from disease and pests.

Reserve Bank of Australia (RBA)

www.rba.gov.au

The Reserve Bank of Australia which is 100% owned by the Federal Government is the statutory authority that undertakes the country's central bank functions. The Reserve Bank of Australia's (RBA) main responsibility is monetary policy, with the objective of achieving low and stable inflation over the medium term.

Other major roles are maintaining financial system stability and promoting the safety and efficiency of the payments system. The Bank is an active participant in financial markets, manages Australia's foreign reserves, issues Australian currency notes and serves as banker to the Australian Government.

The RBA is governed by the Reserve Bank Board and the Payments System Board.

Foreign Investment Review Board (FIRB)

www.firb.gov.au

The Board's functions are advisory only. Responsibility for the Government's foreign investment policy and for making decisions on proposals rests with the Treasurer.

The Board examines proposals by foreign interests to undertake direct investment in Australia and makes recommendations to the Government on whether those proposals are suitable for approval under the Government's policy.

The main functions of the Board are:

- to examine proposals by foreign interests for investment in Australia and, against the background of the Government's foreign investment policy, to make recommendations to the Government on those proposals;
- to advise the Government on foreign investment matters generally;
- to foster an awareness and understanding, both in Australia and abroad, of the Government's foreign investment policy;
- to provide guidance, where necessary, to foreign investors so that their proposals may be in conformity with the policy; and
- to monitor and ensure compliance with foreign investment policy.

Australian Taxation Office (ATO)

www.ato.gov.au

The ATO is the statutory authority that administers the Federal taxation system via the various Acts of Parliament which comprises primarily (but not exclusively) of the:

- Income Tax Assessment Act 1936 (Cth)
- Income Tax Assessment Act 1997 (Cth)
- Taxation Administration Act 1953 (Cth)
- Fringe Benefits Tax Act 1986 (Cth)
- A New Tax System (Goods and Services Tax) Act 1999 (Act)

Business.gov.au

www.business.gov.au

This website offers you simple and convenient access to all the government information, forms and services you need. It's a whole-of-government service providing essential information on planning, starting and growing your business.

Austrade

www.austrade.gov.au

The Australian Trade Commission – Austrade – is the Australian Government's trade, investment and education promotion agency. Austrade assists Australian companies to grow their international business, attracts productive foreign direct investment into Australia and promotes Australia's education sector internationally.

3. SETTING UP A BUSINESS



There are a number of important considerations for investors when deciding on how to enter the Australian market or when establishing a business in Australia. Investors will generally need to choose between establishing a new company, registering as a foreign company or acquiring an existing company.

If establishing a new business, a variety of business structures are available, each with their own regulatory and tax considerations. Businesses may also need to establish their identity through a trade mark, online and/or physical presence.

Before commencing business in Australia, every form of organisation needs to be aware of the following compliance matters:-

3.1 BUSINESS NAMES ACT

Any organisation may not carry on business under a name other than its own name unless that other name is registered under the Business Names Act with the National Names Register administered by ASIC.

3.2 MISCELLANEOUS

A wide variety of activities require registration and specific permits. For example, construction companies, shops and factories must register with the appropriate State authority.

3.3 ALTERNATIVE BUSINESSSTRUCTURES

The principal forms of business organisations in the private sector in Australia are: -

- (a) Sole Traders
- (b) Partnerships
- (c) Joint Ventures
- (d) Australian Companies
- (e) Companies (Australian or Foreign)
- (f) Trusts

(a) Sole Traders

If you operate your business as a sole trader, although you may decide to have employees, you trade, control and manage all aspects of your business.

Advantages

- There are few legal and tax formalities involved setting up the business
- The structure is inexpensive to set up
- You have full control of the business
- You receive the full benefit of profits made by the business
- You keep all the after-tax gains if the business is sold

Limitations

- Your access to finances is usually limited to your own resources
- If you have no employees, you usually have to do all the work
- You are legally responsible for all aspects of the business
- Debts and losses cannot be shared
- You can lose private assets such as your home, contents and vehicles if the business goes into debt

(b) Partnerships

If you operate your business as a partnership, you're carrying on your business with one or more other entities as partners and receiving your income jointly.

Advantages

- Partnerships are inexpensive to set up
- Greater access to finances from the resources of all partners
- There are more people to share the work load and contribute wider range of business skills
- There are more people to share losses and legal responsibilities

Limitations

- You must share the profits with the other partners
- You and your partners are responsible for the debts of the partnership, even if you do not directly incur or cause the debt
- You can lose private assets such as your home, contents and vehicles to settle debts of the partnership

(c) Joint Ventures

A joint venture differs from a partnership in that the parties do not carry on business in common, but rather pool their business capabilities and resources in order to earn income. For example, one party may provide the capital, another act as a buying agent and a third do the selling. Profits are usually divided in agreed proportions.

The parties may be individuals, companies or other entities and enter into a joint venture to carry out a specific business enterprise with a limited objective, such relationship being terminated on completion of the project. They usually have a detailed agreement prepared specifying their respective rights and obligations.

A company or partnership structure may be used as a vehicle for a joint venture. If a company is used it is necessary for the shareholders to enter into agreements between themselves to document arrangements that are special to the venture and cannot be handled inside the company structure. Where the joint venture is in the form of a partnership, the partnership agreement or State or Territory partnership laws would govern the venture.

Advantages

- Need not be incorporated as an entity separate from that of the co-venturers. They are therefore not regulated by specific statute as are companies and partnerships.
- An un-incorporated joint venture in many cases may be formed and managed such that each venturer's liability is limited to its agreed share of the venture.
- A joint venture, not using a company or partnership, is not required to lodge a separate income tax return.

Limitations

- In cases where a company or partnership is used for a joint venture, the financial, accounting and legal considerations are the same as for any other company or partnership.

(d) Australian Companies

A company is a more complex business structure. Usually, the set-up and administrative costs for a company are higher than for other business structures.

International investors interested in entering the Australian market may wish to establish a new Australian company or establish a new Australian subsidiary which also operates as an Australian company. Australian companies are incorporated businesses that are also distinct legal entities. Companies in Australia must be registered with the Australian Securities and Investments Commission (ASIC).

The steps involved in starting a company includes:

- deciding if a company structure is right for you
- choosing a company name
- deciding how to operate your company
- understanding your legal obligations as an officeholder
- getting the consent of those involved in your company
- registering your company, and
- understanding your legal obligations regarding your company name, Australian Company Number (ACN) and Australian Business Number (ABN).

Key Requirements

- A proprietary company must have at least one director who is also an Australian resident.
- A company needs to have an Australian registered office.

Advantages

- A company has far greater access to capital for the running of the business
- A company pays tax on its own profits
- Shareholders are not liable for the debts of the business
- Increased asset protection

Limitations

- A company is more expensive to establish
- The tax reporting requirements for companies are far greater than for sole traders and partnerships
- Shareholders may have little say in the running of the business.

(e) Foreign Companies

Foreign entities may wish to carry on business in Australia as a foreign company. The Australian Securities and Investments Commission (ASIC) outlines the criteria which define foreign companies and the rights foreign companies hold in Australia.

As with Australian companies, foreign companies must be registered with ASIC. ASIC is also responsible for the ongoing regulation of foreign companies.

Entities registering as foreign companies are required to appoint a local agent, who is:

- an individual or an Australian company
- resident in Australia, and
- authorised to accept, on behalf of the foreign company, service of process and notices.

(f) Trusts

If you operate your business as a trust, you are:

- a trustee
- responsible for holding property or income for the benefit of others (the beneficiaries).

The most common variety of trust is the discretionary trust. If you're the trustee of a discretionary trust, you have the power to decide how the profits will be distributed among the beneficiaries.

Advantages

- A trust has a limited liability if the trustee is a company
- A trust has perpetual existence and does not cease with the death of a beneficiary
- Increased asset protection

Limitations

- Like a company, a trust is more expensive and potentially complicated to establish
- It may be more expensive to complete the required tax and administrative paperwork each year
- Profits distributed to children under 18 may be taxed at higher rates

4. INCOMETAXAUSTRALIA

4.1 GENERAL PRINCIPLES

The Australian Income Tax system operates under the Income Tax Assessment Act (1936) and the "Income Tax Assessment Act (1997)". Broadly, the taxable income of a taxpayer is the excess of gross assessable income over all allowable deductions. The assessable income of a taxpayer could include capital gains, income from any business, salaries and wages, interest, rent and dividends.

The Australian taxation year runs from July 1 to June 30 each year. Alternative tax years are only granted in exceptional circumstances.

The following table is a summary of the direct taxes attributable to various entities.

A. Companies	
1. Resident companies	
Corporate tax rates	30%
Tax base	worldwide
Capital gains	net capital gains part of income; net losses cannot offset non-capital gains
Unilateral double taxation relief	yes
2. Non-resident companies	
Corporate tax rates	30%
Capital gains on sale of shares in resident companies	no, unless Australian real property holdings or assets of permanent establishment
Final withholding tax rates	
Branch profits	no
Dividends	30%; no (fully-franked part of a dividend, distributions of conduit foreign income)
Royalties	30%
Fees (technical)	30% (if royalties); 5% (if related to construction, not final)
Fees (management)	0%
3. Specific issues	
Participation relief	inbound dividends: yes outbound dividends: no
Group treatment	yes
Incentives	film industry; R&D; venture capital; environmental; small business
Anti-avoidance	general rule; transfer pricing; thin capitalization; CFC
B. Individuals	
1. Resident individuals	
Income tax rates	progressive; top rate 45% (income over AUD 180,000)
Capital gains	net capital gains part of income; net capital losses cannot offset non-capital gains
Unilateral double taxation relief	yes
2. Non-resident individuals	
Income tax rates	top rate 45% (income over AUD 180,000); no tax-free bracket

Capital gains on sale of shares in resident companies	no, unless Australian real property holdings or assets of permanent establishment
Final withholding tax rates	
Employment income	normal rates above, not final
Dividends	30%; no (fully-franked part of a dividend, distributions of conduit foreign income)
Interest	10% no (offshore public debentures)
Royalties	30%
Fees (technical)	30% (if royalties), 5% (if construction-related, not final)
Fees (directors)	same as employment income (0% for management fees)
C. Other direct taxes	
Net wealth tax	no
Inheritance and gift taxes	no
D. Turnover taxes	
VAT/GST (standard)	10%
VAT/GST (reduced)	0%
VAT/GST (increased)	no
Other	no

4.2 **RESIDENCY**

Residency for taxation purposes is a critical determination due to the fact that under current Australian legislation, a resident of Australia will be taxed on their global income from all sources. However, exemptions or foreign tax credits may apply in certain instances to reduce or eliminate tax on income derived offshore.

Residency for tax purposes should not be confused with immigration status, as the latter has no bearing on the taxation outcome.

Any person having his usual place of abode or domicile in Australia is deemed to be a resident unless he maintains a permanent residence outside Australia. The Tax Office applies a series of subjective tests for determination of this issue.

In practice, if a person takes up employment or establishes a business in Australia on a permanent basis, they will be treated as a resident from the date of arrival in Australia.

Australia has comprehensive tax treaties with the following countries to avoid double taxation: -

- Argentina
- Austria
- Belgium
- Canada
- Chile
- China
- Czech Republic
- Denmark
- Fiji
- Finland
- France
- Germany
- Greece
- Hungary
- India
- Indonesia
- Ireland
- Italy
- Japan
- Kiribati
- Malaysia
- Malta
- Mexico
- Netherlands
- New Zealand
- Norway
- Papua New Guinea
- Philippines
- Poland
- Romania
- Russia
- Singapore
- Slovakia
- South Africa
- South Korea
- Spain
- Sri Lanka
- Sweden
- Switzerland
- Taiwan
- Thailand
- Turkey
- United Kingdom
- United States
- Vietnam

Where a conflict arises between a tax treaty and the Income Tax Assessment Act, the tax treaty is to prevail, but tax treaties generally do not substantially alter the basis of Australian Income Tax.

Transfer Pricing

Transfer pricing is a focal point requiring consideration to be given to Transfer Pricing Agreements (TPA's). Australia bases its TP rules on the OECD model but in many respects is more onerous. Related party transaction must be undertaken at commercially realistic arm's length values that can be supported by contemporaneous support documentation where possible.

Debt Equity & Thin Capitalisation

Debt Equity rules and the Thin Capitalisation rules work in tandem and can result in the denial of interest deductions where specific ratios or safe harbour provisions cannot be met. These are complex rules and require ongoing vigilance to ensure compliance.

Withholding Taxes

Withholding taxes are payable on dividends, interest and royalties. The taxing regime will vary depending on whether the payment is to a country with a comparable taxation system and the specific treaty provisions. See section 8 below for the specific rates that apply to specific jurisdictions.

Foreign Resident Capital Gains Withholding

New rules now apply to foreign resident capital gains withholding (FRCGW). For contracts entered into from 1 July 2017, the FRCGW tax rate is 12.5% for real property disposals with a contract price of \$750,000 or more from a foreign resident seller. For contracts entered into between 1 July 2016 and 1 July 2017, this rate is 10% on real property disposals with a contract price of \$2 million or more.

4.3 SUPERANNUATION

Under the superannuation guarantee law, you must pay super contributions for your eligible employees, at a minimum rate of 9% of their ordinary time earnings (from 1 July 2013, this will be 9.25%), so they can enjoy the benefits of super in their retirement.

Generally, the employer is entitled to a tax deduction for superannuation contributions that are actually paid.

Working out if you must pay super

Generally, you must pay super for an employee if they're between 18 and 69 years old (inclusive) and you pay them \$450 or more (before tax) in salary or wages in a month. It doesn't matter whether the employee is full time, part time or casual. Employees who are under 18 years old must meet these conditions and work at least 30 hours per week to be entitled to the super guarantee.

You also must pay super for contractors if the contract is wholly or principally for their labour, and for employees who are temporary residents of Australia.

If you're a sole trader or partner in a partnership you don't have to pay super for yourself, but you can make super contributions as a way of saving for your retirement.

Setting up super for a worker

You must pay contributions into a complying super fund or retirement savings account (RSA) and pass on your employee's tax file number (TFN) to their super fund where you are required to do so. Your eligible employees may be entitled to choose their super fund - if so, you must provide them with a form enabling them to make their choice.

How much to pay and when to pay?

The minimum super you must pay is 9% of each eligible employee's 'ordinary time earnings' - basically, 9% of the amount they earn for their ordinary hours of work. You can generally claim a tax deduction for super contributions

You must make payments at least four times a year. The cut-off dates are 28 days after the end of each quarter. What you must do if you haven't met your obligations
If you don't pay the minimum amount into the correct fund by the due date, you'll have to lodge a Superannuation guarantee charge statement - quarterly and pay the Australian Taxation Office the superannuation guarantee charge. This charge is the amount of shortfall super that needs to be paid for the employee, plus interest, plus an administration fee. The SGC is not tax deductible.

5. EMPLOYING PEOPLE IN AUSTRALIA

Australia has a well-developed employment system, designed to provide flexibility and certainty to both employers and their employees. This system is subject to Australian, and state and territory government requirements, as well as industrial instruments and employment contracts.

The central elements of this system include a set of national standards of employment for all Australian employees, occupational health and safety regulations, and superannuation (pension) payments. The Fair Work Ombudsman (FWO) and Fair Work Australia (FWA) are the two key organisations in Australia's workplace relations system.

The 10 entitlements under the National Employment Standards are:

- Fair Work Information Statement - employers have to give the Fair Work Information Statement to all new employees (<http://www.fairwork.gov.au/FWISdocs/Fair-Work-Information-Statement.pdf>).
- Maximum weekly hours of work - 38 hours per week, plus reasonable additional hours.
- Requests for flexible working arrangements - parents and carers can ask for a change in working arrangements to care for young children under school age or children under 18 with a disability.
- Parental leave and related entitlements - up to 12 months unpaid leave, the right to ask for an extra 12 months unpaid leave and other types of maternity, paternity and adoption leave.
- Annual leave - 4 weeks paid leave per year, plus an extra week for some shift workers.
- Personal / carer's leave and compassionate leave - 10 days paid personal (sick) / carer's leave, 2 days unpaid carer's leave and 2 days compassionate leave (unpaid for casuals) as needed.
- Community service leave - up to 10 days paid leave for jury service (after 10 days is unpaid) and unpaid leave for voluntary emergency work.
- Long service leave - entitlements are carried over from pre-modern awards or from state legislation. For details see the Long Service Leave and the National Employment Standards fact sheet.
- Public holidays - paid days off on public holidays unless it's reasonable to ask the employee to work.
- Notice of termination and redundancy pay - up to 4 weeks' notice of termination (5 weeks if the employee is over 45 and has been in the job for at least 2 years) and up to 16 weeks redundancy pay.

Industrial Instruments

Awards

Awards are legally enforceable industrial instruments which establish minimum terms and conditions of employment for those employees to whom they apply.

Enterprise agreements

Enterprise agreements are enterprise specific agreements negotiated between an employer and its employees (or unions on their behalf). The FWA governs all aspects of the negotiation, approval and operation of enterprise agreements.

Employment contracts

Subject to legislation and to applicable industrial instruments, employers are able to (and typically do) make contracts of employment with employees, covering a range of matters.

Occupational health and safety

Employers have a duty to ensure the health, safety and welfare of their employees while they are at work. If harm results to an employee through a breach of this duty, the employer may be liable to the employee both in contract and in tort.

Workers' Compensation

All employers must have in place a statutory workers compensation insurance policy which provides for compensation for employees who are injured in the course of employment. Workers compensation legislation also includes protections against unfair termination of employment as a result of an employee's work-related injury/ illness. The legislation also imposes a positive duty on employers to find appropriate alternative employment for a partially incapacitated employee.

Discrimination and Equal Opportunity

Both federal and state legislation prohibits discrimination (in a range of aspects of employment including recruitment, promotion and termination) on the basis of certain unlawful grounds including sex, race, disability, religion and age. Furthermore, sexual harassment in an employment context is unlawful under federal and state legislation.

Redundancy Procedures and Payment

A redundancy generally arises if the duties of a position are no longer required to be performed. If an employee's employment is terminated for redundancy, the employee may be entitled to a redundancy payment under the NES, an applicable industrial instrument or possibly, in their employment contract or a binding policy/procedure.

Unfair Dismissals

Under the FWA, an employee may commence proceedings if they consider that the termination of their employment was 'harsh, unjust or unreasonable'. The remedies are reinstatement or compensation if reinstatement is not appropriate.

6. TAXES OTHER THAN INCOME TAX

6.1 GENERAL

The Federal Government is responsible for Goods & Services Tax (GST), Fringe Benefits Tax (FBT), Withholding Tax, as well as Income Tax, which was discussed in the previous section.

The State Governments Levy Stamp Duty, Land Tax, and Payroll Tax.

Workers' Compensation Insurance is payable to State Government instrumentalities which administer various compensation schemes for employees.

Local Government bodies raise much of their revenue through local Property Rates.

Gift Duty and Death Duty are not payable in Australia, but import duties and excise can be levied.

6.2 GOODS & SERVICES TAX (GST)

A 10% goods and services tax (GST) started full operation in Australia on July 1, 2000. GST replaced sales tax (formally known as the wholesale sales tax).

GST is an indirect, broad based consumption tax, which is levied on the supply of most goods and services in Australia and on goods imported into Australia. GST is not just limited to goods and services, it also extends to cover transactions such as real estate and creation of rights.

You must register for GST if you are an individual or an entity carrying on an enterprise in Australia and your annual turnover is \$75,000 or more (\$150,000 or more for non-profit organisations). You may choose to register if you are an entity carrying on an enterprise with an annual turnover less than \$75,000.

Most goods, services and anything else consumed in Australia are subject to GST. These are defined as taxable supplies.

There are other types of supplies that are not subject to GST. These are called GST free supplies and input taxed supplies.

If supplies are GST free you do not charge GST for them, but you are entitled to claim input taxed credits for anything acquired or imported for use in your enterprise. GST free supplies include most food, exports and most education and health services.

If supplies are input taxed, you do not charge GST on the supply, but neither are you entitled to claim input taxed credits for anything acquired or imported to make the supply. Input taxed supplies include financial supplies, supplies of residential rent and residential premises.

GST is charged on imported goods. Everyone has to pay GST on taxable importations. This includes entities that are registered for GST as well as those that are not, including individuals and other entities that may not even be carrying on an enterprise.

The reporting and remission of GST to the Australian Taxation Office occurs on a periodic basis (either monthly, quarterly or annually).

6.3 ENVIRONMENTAL TAXES

All three levels of government in Australia are involved to varying degrees in making and enforcing environmental laws. The following represents the most common environmentally based taxes levied by the Federal Government.

Minerals Resource Rent Tax

A new taxation arrangement for the resources sector came into effect on 1 July 2012, which included extending the current Petroleum Resource Rent Tax to apply to all onshore and offshore oil and gas production, including the North West Shelf project, and coal seam methane and oil shale production, and introducing a Minerals Resource Rent Tax to apply an effective 22.5% tax rate to profits from coal and iron ore projects.

Carbon Pricing Mechanism

A carbon tax was introduced with effect from 1 July 2012 for certain industries with particular emissions including mining, electricity generation, stationary energy (eg. power stations), non-legacy waste and industrial processing and manufacturing, with a proposed 'cap and trade' regime replacing the 'fixed price' carbon tax from 1 July 2015.

6.4 FRINGE BENEFITS TAX (FBT)

The value of non-cash benefits provided by employers to their employees or associates of their employees is subject to Fringe Benefits Tax.

Fringe Benefits specifically subject to the tax include private use of an employer owned car, waiver of a debt, interest-free or low interest loans, payment of expenses, free or cheap housing or board, some living-away-from-home allowances, airline transport provided to airline and travel industry employees, and entertainment expenses. Any other benefits provided are known as property or residual benefits and are also subject to FBT.

In order for a benefit to be taxable, it must be provided in connection with the recipient's employment.

The FBT Act specifically excludes: -

- Superannuation fund contributions (except contributions to a non-complying fund)
- Payments from superannuation funds.
- Benefits from employee share acquisition schemes.
- Payments on termination of employment.
- Capital payments for personal injury.
- Payments deemed to be dividends for income tax purposes.

The current rate of tax is 46.5% on the grossed-up value of the benefit. The amount of Fringe Benefits Tax paid will be deductible against taxable income of the employer.

Important: From 5 May 2012, certain living away from home allowances (LAFHA) payments will no longer be treated as exempt fringe benefits.

6.5 WITHHOLDING TAX

Withholding Tax is payable on payments of dividends, interest and royalties to non-residents. Please refer to table above in section 4.1 for the non-resident withholding tax rates.

6.6 STAMP DUTY

Stamp Duty is imposed on certain transactions at either a fixed rate or at an "ad valorem" rate calculated on the amount of consideration in the transaction, or the value of the property being transferred.

Stamp Duty is generally payable on conveyance and transfer of property, transfer of shares or units in a unit trust scheme, lease agreements, deeds, insurance policies, sale documents, and goodwill generated on the sale of a business.

Transfers of shares or units quoted on the Australian Stock Exchange or other recognised stock exchanges are not subject to duty.

Each State has its own Duties Act. Transactions subject to Stamp Duty and the rate of duty payable varies from State to State.

6.7 LAND TAX

Land Tax is imposed by States on the unimproved value of taxable land held. The rates of tax payable vary between States with Queensland, South Australia, and Western Australia exempting the principal residence from the calculation.

Land used for primary production is exempted (except in Tasmania), as is land owned and used by charitable institutions, religious bodies and schools.

6.8 PAYROLL TAX

Employers whose annual wages bill exceeds minimum limits set by the various State Governments are liable for Payroll Tax. The tax is payable on wages, commissions, allowances and bonuses paid to employees of the employer.

The rate of tax ranges from 3% to 7% depending on which state it is.

Provisions exist to group related businesses (as defined by the Payroll Tax Acts), and apply throughout Australia.

6.9 PROPERTY RATES

Local councils and Shires levy annual rates based on the taxable value of properties within their municipality. Various State Government bodies levy water rates on property owners based normally on taxable value of properties.

7. COMMERCIAL CONSIDERATIONS

Competition and consumer protection

The Australian Competition and Consumer Act (CCA) (formerly known as the Trade Practices Act) regulates competition and consumer protection law in Australia. The competition provisions of the CCA are based on antitrust legislation in the USA and are not dissimilar to the anti-trust provisions of the European Community's Treaty of Rome. The CCA prohibits:

- anti-competitive behaviour
- misuse of market power
- anti-competitive mergers
- unfair business practice when dealing with small businesses.

The Australian Competition and Consumer Commission (ACCC) is responsible for administering and enforcing the CCA. It has the power to authorise, on public benefit grounds, conduct which may otherwise breach the CCA.

Anti-Competitive Behaviour

The Competition and Consumer Act prohibits anti-competitive behaviour such as:

- agreements between competitors to fix, maintain or control prices
- agreements between competitors to split up a market or customers
- agreements between competitors not to deal with suppliers, customers or other competitors
- the supply of goods or services on condition that the customer purchase goods or services from a third party and
- inducing resellers to not sell products below a specified price.

Australia is a signatory to the United Nations Convention Against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which require steps to be taken to combat corruption in both the public and private sectors. Bribery of foreign public officials is prohibited under the Criminal Code Act and involves the following elements:

- an Australian citizen, resident, corporation anywhere in the world
- offers a 'benefit' to another person
- the benefit is not legitimately due
- with the intention of influencing a foreign public official in the exercise of their duties.

Intellectual property

Australia's laws provide comprehensive protection for intellectual property including:

- copyright
- patents for inventions
- trade names and trade marks
- domain names
- trade secrets and confidential information and
- registered designs.

Privacy and freedom of information

Privacy

The Privacy Act is the primary means of privacy protection in Australia. It contains 10 National Privacy Principles which set out broad principles on how private sector organisations should use personal information. These provide individuals with a right to know what information an organisation holds concerning them and a right to correct that information. Currently, organisations are subject to an exemption in respect of information held about employees. Additionally, private sector organisations have privacy obligations including credit reporting requirements and tax file number requirements.

Freedom of information

The federal Freedom of Information Act and various state legislation grants the right to every person to access certain information in the possession of the Government and its agencies.

8. IMMIGRATION

Entry, work and residence entitlements are governed by the Migration Act and administered by the Department of Immigration and Citizenship (DIAC). Non-Australian citizens who are not Australian permanent residents are generally required to hold a valid visa with work entitlements in order to work in Australia.



Significant Investor Visa

The significant investor visa commenced on 24 November 2012. The purpose of this visa is to provide a boost to the Australian economy and to compete effectively for high net worth individuals seeking investment migration. Migrant investors will be required to invest \$5 million (AUD) into complying investments for a minimum of four years before being eligible to apply for a permanent visa.

Employer Nomination Scheme

An Employer Nomination Scheme (Subclass 121/856) visa permits businesses to facilitate highly skilled workers (generally under 45 years old) from overseas, or in Australia on temporary visas, obtaining permanent residency when the employer has been unable to fill a vacancy from within the Australian labour market or through its own training programs. It requires evidence of at least a three year contract with the nominating employer but the visa holder becomes a permanent resident and can effectively remain in Australia indefinitely. No sponsorship obligations are imposed on the employer pursuant to this visa scheme.

Business Long Stay – Subclass 457 visa

The Temporary Business (Long Stay) (Subclass 457) visa is the visa program most commonly used by businesses to sponsor overseas employees wishing to work in Australia on a temporary basis.

The Subclass 457 Visa enables overseas residents to, for a period of three months to four years:

- work in Australia (but only for the sponsor employer)
- bring any family members with them and
- have no limit placed on travel in and out of Australia.

9. ACCOUNTING & AUDIT REQUIREMENT

9.1 BOOKS & RECORDS

Every company is required to keep in the English language and in Australian currency such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time. Similar records need to be maintained for other entities.

A company is also required to keep certain other records, such as a register of shareholders, minute books and a register of charges.

A company's accounting records (which for this purpose include such working papers and other documents as are necessary to explain the methods and calculations by which the accounts can be made up) must be retained for seven years after the completion of the transactions to which they relate.

9.2 ACCOUNTING STANDARDS

Financial statements must be prepared in compliance with accounting standards, except in limited circumstances for small and non reporting proprietary companies.

Large companies are those that satisfy two of three criteria per Section 45A of the Corporations Act:

- Consolidated Gross Revenue of \$25m p.a or more.;
- Consolidated Gross Assets of \$12.5m p.a or more; and
- Full time employees of 50 or more.

These companies are required to lodge accounts with the Australian Securities and Investments Commission (ASIC) within four months of the end of the financial year. Generally, such accounts must be audited.

If a company is a subsidiary of a foreign company, it is automatically required to prepare and lodge audited financial statements. However, ASIC can grant relief from this requirement if certain criteria are met.

9.3 FINANCIAL STATEMENTS

Financial statements prepared by "reporting entities" normally include:

- Directors' Report
- Directors' Declaration
- Auditor's Report
- Statement of Financial Position
- Statement of Financial Performance
- Notes to the Financial Statements
- Statement of Cash Flows

The disclosure requirements for financial statements are set out in the Australian Accounting Standards. "Non-reporting entities" need only disclose abridged financial information.

The normal financial year is from July 1 to June 30, but there is provision for companies to adopt alternative balancing dates.

Country by County Reporting

Country by Country (CbC) reporting dictates that from 1 January 2016, certain significant global entities (SGE) need to lodge the following statements for each income year commencing on or after 1 January 2016:

- a) CbC report: information relating to the global allocation of income and taxes paid, indicators of the location of economic activity

- b) Master file: overview of the multinational enterprise group business including, transfer pricing policies, global allocation of income and economic activity
- c) Local file: includes specific transactions between the entity and its enterprises in other countries including the amounts involved, analysis of transfer pricing determinations it has made

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

- A global parent entity with annual global income of A\$1 billion or more
- A member of a group of entities consolidated (for accounting purposes), with such a global parent entity

This includes:

- Australian-headquartered entities (with or without foreign operations)
- the local operations of foreign headquartered multinationals.

Administrative, scheme and failure to lodge on time penalties apply for significant global entities and have been changed.

From 1 July 2015, penalties for SGEs that enter tax avoidance or profit shifting schemes are doubled.

From 1 July 2017, administrative penalties will double for SGEs that:

- make false or misleading statements
- fail to have a reasonably arguable position
- fail to provide a document where the document is necessary for the Commissioner to determine a tax-related liability accurately

From 1 July 2017 failure to lodge a taxation document on time will result in a failure to lodge on time penalty. The base penalty amount is multiplied by five hundred for an SGE.

Penalties

Culpable behaviour	Base penalty amount applicable from 1 July 2017
Making a false or misleading statement	50%, 100%, 150% of shortfall amount
Making a statement which treats a law as applying in a way that was not reasonably arguable	50% of shortfall amount
Failing to provide a document as required	150% of tax-related liability

Increases for false or misleading statements that do not result in a shortfall amount

Penalty units	From 1 July 2017
Intentional disregard	120 penalty units (\$25,200)
Recklessness	80 penalty units (\$16,800)
No reasonable care	40 penalty units (\$8,400)

Failure to lodge on time penalty for an SGE

Days late	SGE penalties
28 or less	\$105,000
29 to 56	\$210,000
57 to 84	\$315,000
85 to 112	\$420,000
More than 112	\$525,000

9.4 AUDIT REQUIREMENTS

Every company except a small proprietary company generally is required to appoint an auditor who must report to the shareholders on the annual financial statements. The auditor must be a registered company auditor.

10. APPENDIX 1 – STATISTICS FROM WORLD BANK DOING BUSINESS: 2013

AUSTRALIA

Ease of doing business (rank)	10	GNI per capita (US\$)	65,477	Population (m)	22.6
Starting a business (rank)	2	Registering property (rank)	37	Trading across borders (rank)	44
Procedures (number)	2	Procedures (number)	5	Documents to export (number)	6
Time (days)	2	Time (days)	5	Time to export (days)	9
Cost (% of income per capita)	0.7	Cost (% of property value)	5.1	Cost to export (US\$ per container)	1,100
Minimum capital (% of income per capita)	0.0			Documents to import (number)	7
		Getting credit (rank)	4	Time to import (days)	8
Dealing with construction permits (rank)	11	Strength of legal rights index	10	Cost to import (US\$ per container)	1,120
Procedures (number)	11	Depth of credit information	5		
Time (days)	112	Public registry coverage (% of)	0.0	Enforcing contracts (rank)	15
Cost (% of income per capita)	13.4	Private bureau coverage (% of)	100.0	Procedures (number)	28
				Time (days)	395
Getting electricity (rank)	36	Protecting investors (rank)	70	Cost (% of claim)	21.8
Procedures (number)	5	Extent of disclosure index (0-	8		
Time (days)	75	Extent of director liability index	2	Resolving insolvency (rank)	18
Cost (% of income per capita)	8.7	Ease of shareholder suits index	7	Time (years)	1.0
		Strength of investor protection	5.7	Cost (% of estate)	8
				Recovery rate (cents on the dollar)	80.8
		Paying taxes (rank)	48		
		Payments (number per year)	11		
		Time (hours per year)	109		
		Total tax rate (% of profit)	47.5		

11. APPENDIX 2: USEFUL LINKS

AUDA	www.auda.org.au
AusIndustry	https://www.business.gov.au/advisory-services/ausindustry-nsw-state-office
Austrade	www.austrade.gov.au
Australian Accounting Standards Board	http://www.aasb.gov.au/
Australian Bureau of Statistics	www.abs.gov.au
Australian Financial Review	www.afr.com
Australian Competition and Consumer Commission	www.accc.gov.au
Australian Government's Business Entry Point	www.business.gov.au
Australian Industrial Relations	http://www.airc.gov.au/
The Australian Newspaper	http://www.theaustralian.com.au
Australian Prudential Regulation Authority	www.apra.gov.au
Department of Agriculture, Fisheries and Forestry (quarantine)	http://www.agriculture.gov.au/biosecurity
Australian Securities & Investments Commission	www.asic.gov.au
Australian Stock Exchange	www.asx.com.au
Accelerating Commercialisation	https://www.business.gov.au/assistance/entrepreneurs-programme/accelerating-commercialisation
CSIRO (Commonwealth Scientific Industrial Research Organisation)	http://www.csiro.au/
Department of Immigration and Citizenship	http://www.immi.gov.au/
Environment Australia On—line	www.environment.gov.au
Fair Work Australia	www.fairwork.gov.au/
Foreign Investment Review Board	www.firb.gov.au/content/default.asp
IGAF Worldwide	www.igafworldwide.com
Institute of Chartered Accountants in Australia	http://www.charteredaccountants.com.au/
International Accounting Standards Board	www.iasb.org
Reserve Bank of Australia	www.rba.gov.au
Taxation Institute of Australia	www.taxinstitute.com.au
Treasury Department	www.treasury.gov.au
State Revenue Offices:	
Australian Capital Territory Revenue Office	www.revenue.act.gov.au/
Northern Territory Revenue Office	http://www.treasury.nt.gov.au/
Office of State Revenue Western Australia	http://www.treasury.wa.gov.au
Office of State Revenue Victoria	www.sro.vic.gov.au
Office of State Revenue South Australia	www.revenuesa.sa.gov.au
Office of State Revenue Queensland	www.osr.qld.gov.au
Office of State Revenue NSW	www.osr.nsw.gov.au
State Revenue Office - Tasmania	www.sro.tas.gov.au/
Weston Woodley & Robertson	www.wwr.com.au