

DOING BUSINESS IN AUSTRALIA



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Disclaimer

This guide includes background facts about Australia and relevant information on business operations and taxation matters, but should not be used as a substitute for professional advice.

THE AUSTRALIAN BUSINESS LANDSCAPE

A general guide designed to help foreign companies setting up a business in Australia, or anyone planning to come to Australia for work purposes. The contents of this document are general in nature, and should not be considered a substitute for specific professional advice.

Commercial Associates is a nationally recognized and internationally affiliated full service accounting and advisory firm based in Sydney, Australia. With 60 dedicated staff we have skill and expertise in tax, audit, accounting, wealth creation, corporate finance and forensic accounting.



The Australian Outback, near Uluru, NT

AUSTRALIA AT A GLANCE

GEOGRAPHY

Australia is the world's sixth largest country with a land area of 7,692,000 square kilometers.

Australia is one of the largest mineral exporters in the world and is abundant in natural resources such as coal, iron, lead, zinc, copper, nickel, bauxite, gold, manganese, tin, silver, uranium, oil and other rare metals.

POPULATION

Much of Australia's population of 23 million has a European heritage; however, more and more people are migrating from countries such as Japan, China, Malaysia, Indonesia, Taiwan, Hong Kong and Vietnam.

Australia is divided into six states and two territories, with Canberra as its capital.

Australia, like most advanced economies has an ageing population.

POLITICAL LANDSCAPE

Australia has a democratic constitutional monarchy system of Government, as well as a cabinet system. There are three levels of Government in Australia.

The Commonwealth Government is responsible for areas such as taxation, foreign investment, immigration, trade and commerce.

The State and Territory Government are responsible for indirect taxes, infrastructure, education, energy and emergency services.

Local Government focus primarily on the usage of land and the assessment / approval of development applications.

The largest political groups in Australia are the Liberal Party of Australia and the Australian Labor Party.

LANGUAGE AND CURRENCY

The national language spoken in Australia is English.

The currency used is the Australian dollar.

BUSINESS ENVIRONMENT

Australia has a highly developed economy, which has grown at a rapid pace over the last 20 years. Economic growth is driven by highly developed mineral resources, tourism and education sectors.

The legal and tax systems have a high degree of transparency. Australia has a sound financial system, and enjoys economic freedom and market stability.

REGULATORY ENVIRONMENT

Australia has a very transparent and efficient regulatory environment. A number of regulatory bodies oversee various functions in Australia. These include:

Australian Securities and Investments Commission (ASIC)

The Australian Securities and Investments Commission is the single regulator of Australian registered companies. ASIC administers the Corporations Act, the law regulating the operation and management of companies.

Australian Taxation Office (ATO)

The Australian Taxation Office is the statutory authority responsible for administering Australia's federal taxation system. The ATO also collects excise on tobacco, petrol and alcohol, administers the Higher Education Contribution Scheme and the Private Health Insurance Rebate, and has responsibility for the fiscal regulation of Australia's superannuation system.

Foreign Investment Review Board (FIRB)

The FIRB's function is to assess direct investment proposals submitted by foreign interests and to make recommendations to the Australian Federal Government on the compatibility of those proposals with Government policy and regulation. All proposals above certain thresholds need prior approval and need to be notified. The following acquisitions must be notified, irrespective of the value or the nationality of the investor:

- all vacant non-residential land
- all residential real estate (some exemptions apply)
- all shares or units in Australian urban land corporations or trust estates, and
- all direct investments by foreign governments or their agencies, including proposals to establish new businesses.

All other acquisitions (including shares or assets of an Australian business) should be notified if the target entity is valued at/above the applicable monetary threshold set by the policy or the Act.



Brighton Beach Huts, Australia

BUSINESS STRUCTURES

A sound financial system, a high degree of economic freedom and market stability, are just a few factors that characterize the Australian business environment.

A business in Australia may be operated by an individual, a trust, a company, a joint venture, a partnership (including limited partnerships in certain states) or a branch of a foreign company. Each has different legal and taxation implications.

In Australia, foreign enterprises most commonly conduct business through a company and/or branch structure.

Companies

Australian companies are governed by the Corporations Act, their constitution and common law.

There are essentially five types of companies:

- a company limited by shares
- a company limited by guarantee
- a company limited by shares and guarantee
- a company with unlimited liability, and
- a no liability company (only available to mining companies).

All Australian companies are required to disclose their ACN (Australian Company Number) or ARBN (Australian Registered Body Number) on all official documents. Companies' controlled by and foreign branches owned by, foreign enterprises may be required to lodge audited accounts with the ASIC.

The three most common corporate structures in Australia are:

1. **Public company (limited by shares).** This company may borrow money from the public and the public may subscribe to and deal in its shares. Typically this type of company is listed on the various stock exchanges in Australia.

2. **Proprietary company (limited by shares).** The most predominant type of entity used in Australia is the proprietary company. This type of company is prohibited from borrowing money from the public and cannot allow free trade in its shares. There are no residency restrictions on members and no general minimum capital requirements for an Australian proprietary company. A company is managed by the directors of the company, but is owned by its members. A company is a separate legal entity and is liable for its own obligations. The liability of the members will generally be limited to the unpaid amount on any shares held or a specified amount.
3. **Foreign company branch.** A foreign company may carry on business in Australia as an Australian branch. To carry on business in Australia as a branch, the foreign company must register as a foreign company with ASIC. Once registered, the foreign company is required to lodge copies of its financial statements and comply with various notification obligations under the Corporations Act.

The main differences between these types of companies are in the following areas:

Disclosure. There are higher levels of disclosure for public companies. Likewise, there are higher levels of disclosure for large proprietary companies compared to small proprietary companies.

Audit. Small proprietary companies are not required to have their accounts audited except in limited circumstances. Large proprietary companies and public companies both require their accounts to be audited.

Holding of AGMs. Proprietary companies are not required to hold an annual general meeting although some, in limited circumstances, may be obliged to hold a general meeting of the company. Public companies must hold an annual general meeting not later than five months after the end of each financial year.

Setting up a company

An investor may incorporate a company for a cost of approximately \$2,000 within a period of 24-48 hours.

Registering a foreign company

A foreign company conducting business in Australia, other than through an Australian subsidiary, must register as a foreign company with ASIC. A foreign company wishing to apply for registration must:

- reserve the company's name
- lodge with ASIC a certified copy of its certificate of incorporation and constituent documents together with an application form setting out various particulars relating to the company
- appoint a local agent to represent the company in Australia, and

- have a Registered Office in Australia.

The establishment of an Australian proprietary company requires the following:

- the appointment of at least one Australian Resident Director who is over 18 years of age
- the establishment of a Registered Office Address (usually an accountants or lawyers office) which acts as the contact address for all statutory correspondence
- the establishment of a Registered Business Address (can be same as Registered Office), and
- the issue of shares to Shareholder(s).

In addition, the company must appoint a public officer who is a resident of Australia to meet the requirements of the ATO.

A company's directors can be personally liable for company obligations incurred at a time when the company is insolvent or there are reasonable grounds for suspecting it is insolvent or would become insolvent by incurring a particular obligation.

ASIC agents and tax agents

Foreign companies will usually appoint their Australian accountants (or legal advisors) as their agent for electronic lodgments and dealings with ASIC. This is achieved by completing and lodging a Form 362 with ASIC through your selected agent.

It is also common to appoint a tax agent for the lodgment of monthly, quarterly and annual tax filings such as Business Activity Statements, Fringe Benefits Tax returns and Income Tax returns. This is done by the selected agent lodging an "Appointment of Tax Agent" Form directly to the ATO.

Financial reporting and auditing regulations

All companies (other than small proprietary companies and foreign companies that satisfy certain conditions of relief) must appoint auditors to have their annual financial statements audited.

The reporting requirements for proprietary (private) companies differ between small proprietary and large proprietary.

A proprietary company is classified as "small" or "large" depending on the following factors:

- whether the consolidated gross operating revenue for the financial year of the company and the entities it controls is less than \$25 million
- whether the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls is less than \$12.5 million
- whether the company and the entities it controls have fewer than 50 employees at the end of the financial year.

If the proprietary company satisfies two of the three conditions, it is deemed to be a “small” proprietary company.

If the proprietary company does not satisfy two of the three conditions, it is deemed to be a “large” proprietary company and must prepare and lodge audited financial statements with ASIC. The lodgment of the accounts with ASIC are on the public record and are available on request.

Small proprietary companies are only required to appoint an auditor if:

- requested to do so by shareholders holding at least 5% of the voting shares in the company
- requested by ASIC
- controlled by a foreign company (except where the foreign company lodges a financial report covering the Australian subsidiaries or an exemption applies), or
- they are a disclosing entity. Relief from the requirement to lodge audited financial statements is available for small proprietary companies that are controlled by a foreign company under certain conditions.

If a foreign company is registered with ASIC (through the ARBN system), then that foreign company is required to lodge on an annual basis the following documentation with ASIC:

- Profit and Loss Statement
- Cash Flow Statement, and
- Balance Sheet

These are not usually required to be audited unless under certain circumstances.

Companies must keep sufficient records of their operations. The Corporations Act requires these records to be kept for 7 years from the date of the transaction. The Act also states that these records must be maintained in English.

Each company will also have its own “review date” which requires confirmation of corporate secretarial details and solvency.

TRUSTS

A trust is a relationship that exists when property or income is held in trust by a trustee for the beneficiaries. Trusts may be public or private and the most common types of trust are discretionary, unit or hybrid trusts (a combination of both). Discretionary trusts are able to distribute income to the trustee’s choice of beneficiary as set out in the trust deed. A unit trust must distribute its income to unit holders in proportion to their unit holdings. A hybrid trust is a combination of the two.

Trusts do not pay tax in their own right if there is a beneficiary presently entitled to the income. Beneficiaries are taxed on their entitlements according to their status (individual, company, etc.). Any undistributed amounts are taxed at the top tax rate (45% plus Medicare levy of 2%) in the trust.

An important attribute of trust taxation is that income passing through a trust retains its character. This income is assessed in the hands of a beneficiary as if the beneficiary had derived that income. Thus a capital gain derived by a trust is assessed as a capital gain in the hands of the nominated beneficiary and a dividend remains a dividend.



Business owner conducting a review of their business

PARTNERSHIPS

A partnership is a relationship between two or more parties carrying on a business. Profits, losses and liability do not remain in the business but pass through to the partners themselves which is also where the income is taxed. Laws relating to the establishment of a partnership are found in the various State Acts.

JOINT VENTURES

A joint venture results when two businesses combine together for a particular outcome. The joint venture agreement

specifies each participant's proportional share in the assets, liabilities and results. There are no specific regulations governing the establishment of a joint venture.

REPRESENTATIVE OFFICES

Most Double Tax Agreements provide for an exemption from Australian tax for revenue profits derived by a non-resident carrying on a business in Australia, unless there is a "permanent establishment" of the non-resident in Australia. In such a case, the profits will be subject to Australian tax to the extent to which they can be attributed to a permanent establishment.



Work on-site in the Mining Industry

FUNDING ISSUES – THIN CAP RULES

It is common business practice for initial funding to be made by way of loan rather than share capital due to the potential adverse tax consequences when returning capital in lieu of profits. It is for this reason that most Australian resident entities will fund the startup of their business using low share capital and the balance as a loan. The terms of this loan should be clearly documented both for the purposes of the Corporations Act and Income Tax Assessment Act. Some restrictions apply to such loans where the business is deemed to be a large taxpayer (revenue exceeds AUD\$20 million). It is recommended that you seek independent legal/tax advice.

REGISTRATIONS

A single registration may be done by your appointed tax agent to apply for the following:

Australian Business Number (ABN) – used to identify businesses in dealings with other businesses

- Tax File Number (TFN)
- Goods and Services Tax (GST) registration – allows an entity to charge GST on its taxable supplies and obtain a refund of any GST paid in most circumstances
- Pay-As-You-Go (PAYG) withholding registration
- Employment issues

Each employee is generally required to sign an employment contract. On commencement of employment, the employee would be required to complete the following documentation:

- employment declaration: this needs to be completed in duplicate and held by the employer with the original to be sent to the Australian Taxation Office within 28 days
- employee details, and
- notification of direction for Superannuation Guarantee Contributions (SGC).

Expatriate employees have a number of additional employment issues that must be resolved. Some of these issues can lead to significant tax savings. Professional advice should be sought should you require additional information [here](#).

MIGRATION

Expatriate employees must obtain the necessary visa for Australia. The employer must obtain sponsorship status with the Department of Immigration (DIBP) and the employee and any dependent family members must make Visa applications. Persons 11 years of age and over may require radiological examinations and persons involved in classroom, health or hospitality type activities may require medical examinations.

EMPLOYMENT CONTRACTS

Australian employment conditions include annual leave, sick leave, long service leave and maternity leave. The conditions vary depending upon whether the employee is under a State or Federal award. Employment contracts drafted overseas may need substantial modification to meet Australian requirements.

EXPATRIATE STAFF AND INCOME TAX

Expatriate personnel involved in the Australian operation will, subject to Australian Income Tax Legislation be required to lodge income tax returns in Australia including income derived in Australia and worldwide income (including capital gains) if they become Australian residents. It is essential that expatriate staff seek advice on the best way to structure their salary package and on the implications of becoming an Australian resident.

EXPATRIATE STAFF AND PRIVATE HEALTH INSURANCE

Expatriate employees may not be eligible for medical cover under the National Medicare scheme while working in Australia. Australia has reciprocal health care agreements with some countries providing limited access to Medicare for necessary medical treatment in Australia. These residents do not have cover for a private hospital or their choice of doctor.

Where an expatriate is sent to Australia from a country where a reciprocal agreement is in place, they may be liable for the Australian Medicare levy. The Medicare levy is calculated as 2% of the expatriate's Australian taxable income.



The Australian Outback, near Uluru, NT

TAXATION

The tax regime in Australia is complex. Income tax is levied by the Commonwealth Government upon the income of corporations, individuals and other entities. Certain capital gains are also brought within the income tax base. The State and Territory Governments do not levy income tax. The Commonwealth Government also levies a value added tax called the Goods and Services Tax (GST) which is imposed on the purchase of most goods and services by Australian residents, or on goods and services for use in Australia.

All State and Territory Governments levy stamp duties, payroll tax and land taxes. Each State and Territory Government is responsible for their own duties and taxes. As such, there is no uniformity in relation to State and Territory taxes.

DOUBLE TAX AGREEMENTS

Australia has a Double Tax Agreement (DTA) with a number of countries. Each of these agreements seeks to reduce or eliminate the double taxation of income between each country by providing tax relief.

FEDERAL INCOME TAXATION LAW AND ADMINISTRATION

The Australian income tax regime is contained within a number of statutes, the key ones being the Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997. The Federal taxation system is administered by the Commissioner of Taxation, through the Australian Taxation Office.

Taxable income is ordinarily determined by reference to the year ending 30 June, which is the standard Australian financial year. However, with the consent of the Commissioner of Taxation, taxpayers may choose a substituted accounting period for the purpose of determining taxable income. This generally applies to local branches and subsidiaries of foreign companies that adopt a different balance date.

TAXPAYERS

Individuals, corporations and superannuation funds that derive assessable income are taxpayers, and they are liable to income tax. Partnerships and most trusts do not pay income tax. Whilst they are required to file income tax returns which disclose their taxable income, any taxable income they derive is generally taxed in the hands of the partners, trustees or beneficiaries. Unincorporated joint ventures are not treated as separate taxpayers. If a joint venture is not a partnership it is not required to file income tax returns. Each participant in the joint venture includes their share of the income and expenses of the venture in their own tax return.

TAXABLE INCOME

The Australian income tax regime is based on a formula whereby tax is levied on taxable income. Assessable income can be classified as either ordinary income or statutory income. Ordinary income includes salary and wages, business income, income from property, and periodical receipts of rent or interest. Statutory income is receipts that are specifically included as assessable income by statute law e.g. capital gains.

ALLOWABLE DEDUCTIONS ARE:

- deductions because they are incurred in gaining or producing assessable income, or
- necessarily incurred in carrying on a business for the purpose of producing assessable income, or
- expenses, losses or outgoings that are specifically provided under statute law to be deductible.

Expenses will be non-deductible if they relate to private or domestic expenditure, are capital in nature, or they relate to income that is exempt from Australian income tax (unless it is made specifically deductible under statute law). For an item of income to be exempt, it must fall within a specific exempting provision within the statute. A deduction for certain capital expenses may be allowed over 5 years.

Any superannuation payment made to an individual over the age of 60 years old is completely tax free.



Tax compliance is important.

PAYMENT OF TAX

A taxpayer's taxable income is annually assessed on the lodgment of an income tax return. The tax payer's liability to income tax is calculated based on the amount of taxable income returned. The tax liability or the balance of the tax liability is generally paid at or after the lodgment of the income tax return.

Most taxpayers are subject to some form of prepayment of income tax. Salary and wage earners are subject to income tax deductions from all payments they receive from employers. Business taxpayers that do not quote an Australian Business Number (ABN) when they receive payment for goods and/or services may have tax deducted by the payer. Self-employed persons, persons who derive non-salary income, companies and superannuation funds are required to make tax payments through either quarterly or annual instalments, depending on their size.

The instalment payments are generally offset against the taxpayer's annual tax liability as determined in its annual tax return. Any amount remaining after the liability has been satisfied may be refunded to the taxpayer. Any shortfall is made up by an additional tax payment from the taxpayer.

Non-residents deriving Australian-sourced dividend, interest and royalty income usually have withholding tax deducted at source. The amount of tax withheld is determined according to whether the recipient is resident in a country that has a Double Tax Agreement with Australia.

LODGEMENT OF RETURNS

Individuals, companies, trusts and partnerships are required to lodge income tax returns annually. Individuals, companies and some trusts are also required to lodge quarterly or monthly Business Activity Statements (BAS) in respect of which tax withholdings and instalments of income tax are payable.

RESIDENCE AND SOURCE

Australian residents are generally subject to tax on all income, irrespective of its source i.e. worldwide income. On the other hand, non-residents are only subject to income tax on Australian sourced income. The determination of an entity's tax residency and/or liability to Australian income tax may be affected by the relevant Double Tax Agreements.

RESIDENCE OF INDIVIDUALS

Residence is determined primarily by the ordinary meaning of 'resides'. People domiciled in Australia are generally deemed residents of Australia. One statutory test is whether a person is in Australia, continuously or intermittently, for more than six months of a financial year. In this case, he or she is considered a resident unless they can establish that their usual residence is outside Australia and that they do not intend to reside in Australia.

As residency is a question of fact, people who are in Australia for less than six months may also be able to establish that they are Australian residents. A number of factors determine a person's residency. Each Double Taxation Agreement (DTA) between Australia and a treaty country also contains rules to determine residency, including 'tiebreaker' rules. "Temporary residents" may be assessed at resident marginal tax rates on their domestic income (see resident tax rates below). There is no set time limit on how long a person can be a "temporary resident". It is possible that a person can be a "temporary

resident" even though they have previously been a "permanent resident". A person cannot be a "temporary resident" if they or their spouse are Australian citizens or permanent residents.

TAX RATES – INDIVIDUALS

Resident individuals (2014-15)

Individuals pay tax at varying rate. The maximum personal rate of tax for 2015 is 45% plus a Medicare levy of 2% (with exemptions for low-income earners). An additional surcharge may be imposed if the individual does not have private hospital cover.

Taxable income Tax payable

\$0 - \$18,200 Nil

\$18,201 - \$37,000 19c for each dollar in excess of \$18,200

\$37,001 - \$80,000 \$3,572 + 32.5c for each \$1 in excess of \$37,000

\$80,001 - \$180,000 \$17,547 + 37c for each \$1 in excess of \$80,000

Over \$180,001 \$54,547 + 45c for each \$1 in excess of \$180,000

Non-resident individuals (2014-15)

Non-residents only pay tax on income derived from sources within Australia at the following rates.

Taxable income Tax payable

\$0 - \$80,000 32.5c for each \$1

\$80,001 - \$180,000 \$26,000 + 37c for each \$1 in excess of \$80,000

Over \$180,001 \$63,000 + 45c for each \$1 in excess of \$180,000

Non-residents pay lower rates of withholding tax on certain classes of income.



Commuters traveling to the Sydney CBD, NSW

WITHHOLDING TAX

Type of income	General rates of withholding tax	
	Resident of a DTA country	Resident of a non DTA country
Interest	10 - 25%	10%
Unfranked dividend	10 - 35%	30%
Franked dividends	0%	0%
Royalties	5 - 25%	30%

RESIDENCE OF COMPANIES

A company is resident in Australia if it is incorporated in Australia. If the company is not incorporated in Australia, it will be a resident in Australia if it carries on business in Australia, and either its central management or control is in Australia or its voting power is controlled by shareholders that are residents of Australia.

Australian incorporated subsidiaries of foreign companies will be residents of Australia for taxation purposes.

SOURCE OF INCOME

The source of income is ordinarily determined according to the circumstances surrounding its receipt. Where a payment is for services rendered, the income will ordinarily be sourced in the place where the service is rendered. Where a payment is related to the performance of a contract, the source of the income will be determined by reference to the terms of the contract. In certain circumstances, the relevant DTA may also impact the determination of where an item of income is sourced. Business income, income from property, dividend, interest and royalty income can be impacted by terms of the DTA.

TAXATION OF PARTNERSHIPS AND TRUSTS

As noted previously, these entities are not taxable entities in their own right. They are required to lodge income tax returns, although the income they derive is taxed in the hands of the related partners, trustees or beneficiaries.

TAXATION OF COMPANIES

The taxable income for companies is determined on the same basis as for individual taxpayers, with allowable deductions off set against gross assessable income. However, whilst individuals are assessed on a sliding, progressive scale of tax, companies are taxed at a flat rate of 28% -30 %, regardless of whether the company is controlled by resident or non-resident shareholders.

The standard income year for the taxation of income and gains is the 12 month period ending 30 June, but approval may be obtained to adopt a Substituted Accounting Period (SAP) ending on some other date such as where a foreign parent company has a tax year ending on another date.

Where allowable deductions exceed assessable income, the company incurs a loss. Losses may be carried forward indefinitely to be off set against income derived in future income years. However, the capacity of a company or a trust to utilise its carried forward tax losses is contingent on it satisfying the continuity of ownership test. This test requires that more than 50% of all voting, dividend and capital rights be held by the same natural persons in the year of loss, in the year of recoupment and all intervening years. If a company or a listed trust fails to satisfy the continuity of ownership test it may utilise it's carried forward tax losses if the company or listed trust carries on the same business it carried on immediately before the failure of the continuity of ownership test. However, if an unlisted trust fails the continuity of ownership test it will lose its capacity to carry forward its losses.

TAX CONSOLIDATION

Companies, trusts and partnerships that are wholly owned by the same ultimate corporate owner can elect to lodge a single income tax return covering the income derived by all members of the consolidated group. This means all transactions between members of the consolidated group are ignored for taxation purposes (only transactions with entities external to the consolidated group are taxable). Where entities elect to lodge a consolidated income tax return, the head company of the group is primarily liable to pay the group's tax liability. However, if the head company does not pay the tax, all members of the group are jointly and severally liable for the group's income tax liability unless they have a

valid tax sharing agreement. If a corporate group does not elect to consolidate, there is no tax relief for intra group transactions (such as the transfer of assets between group members). Losses can be offset within a consolidated group subject to various limitation tests. Groups that do not consolidate for tax purposes cannot transfer losses.



A harvester at work in the Agriculture Industry

COMPANY DIVIDEND IMPUTATION

Australia has a system of passing down taxes paid by a company to dividends received by its shareholders. The system works by the company declaring that a dividend is franked (assuming that the company has paid tax) and the shareholder then claiming a credit for the amount of franking credits attached to the dividend. Where the shareholder is an Australian resident, these tax credits entitle the shareholder to a rebate against their own income tax liability, either in respect of the dividend received, or against other income. If the shareholder's rebate is in excess of its tax liability for the year, the excess is refunded. However, companies that receive franked dividends are not entitled to a refund of their excess tax credits. They can convert the excess credits into tax losses that may be used to offset income in the year or they may be carried forward to future years. Where the shareholder is a trust or partnership, the benefit of the franking credits flow through the entity to the beneficiaries or partners. Companies that receive franked dividends may pass on the franking credits to its own shareholders by attaching franking credits to dividends that they pay.

DIVIDEND WITHHOLDING TAX

Where a franked dividend is paid to a non-resident shareholder, the dividend will not be subject to dividend withholding tax to the extent the dividend is franked. If the dividend is unfranked, it will be subject to dividend withholding tax. The general rate of dividend withholding tax is 30% unless it is modified by a DTA.

REPATRIATION OF FOREIGN INCOME

An unfranked distribution made by an Australian company from a foreign source to a foreign resident shareholder is not assessable income and is not subject to dividend withholding tax, provided the company declares this distribution to be "conduit foreign income" (CFI). The CFI can pass through a chain of interposed Australian entities without being subject to Australian tax provided the CFI is ultimately paid to a non-resident. Alternatively where the company chooses to avail itself of the deduction for on payment of unfranked dividends as mentioned above, it must treat the unfranked dividend as assessable income and withhold tax on the dividend paid to the non-resident.

TAXATION OF BRANCHES

The Australian sourced income of Australian branches of foreign companies is subject to income tax at the ordinary corporate rate of tax. The taxable income is calculated as if the branch was a separate entity from the foreign company and taxed at the corporate tax rate.

THIN CAPITALISATION/INTEREST DEDUCTIONS

Interest paid on loans and other debts is generally deductible to the extent that it relates to borrowings made for income producing purposes. The thin capitalization rules apply to reduce the deduction available where the taxpayer is a foreign entity operating in Australia, a foreign controlled Australian entity or an Australian resident with foreign business investments. In each of these cases, the tax deduction for interest may be reduced to the extent that the debt exceeds the permitted ratio of debt to equity. These rules are complex, should be addressed when the entity is being established and apply where total debt deductions exceed \$2M. It should be noted that generally a branch operation will have no equity which makes this an important decision when establishing a structure.

REPATRIATION OF PROFITS AND TRANSFER PRICING

The rules deal with the shifting of profits out of Australia through intercompany and intra-company pricing. In addition to paying interest and dividends, the payment of management fees, service fees and royalties are methods of repatriating profits to non-resident associates, controllers and owners of Australian entities. In these circumstances, the payments made by the Australian resident to the non-resident associate must reflect the market value of the goods and/or services to the Australian company. Where the ATO takes the view that the Australian company has paid an excessive amount, the ATO can disallow the deduction claimed by the Australian company, and substitute an alternative price.

Considerable emphasis is placed on the need for taxpayers to create documentation that supports an acceptable pricing

methodology. This means that prices payable by an Australian entity or branch for goods or services acquired from a non-resident should be substantiated with documentation which demonstrates that the prices have been established on an arm's length basis, in accordance with an acceptable pricing methodology. If during the income year the aggregate amount of your international related party dealings, including the value of any property/services transferred or the balance of any loans, exceeded \$2 million, you will be required to complete an International Dealings Schedule.



A farmer inspects his successful corn grain harvest.

TAXATION OF CAPITAL GAINS

Australia imposes tax, at a taxpayers ordinary marginal rate of tax, on gains made on the disposal of assets other than depreciable assets or assets acquired for resale (such as trading stock and short term investments held by share traders) acquired after 19 September 1985, where the disposal proceeds exceed the cost of acquisition. The Capital Gains Tax (CGT) net is very wide and will bring to tax almost every receipt that is not income where the assets are acquired after 19 September 1985.

A significant concession available to individuals and most trusts that realise capital gains is a 50% discount on the assessable gain provided the entity that realised the gain held the relevant asset for at least 12 months (the 12-month holding period rule).

Superannuation funds are entitled to a 33% reduction in the assessable capital gain subject to the same 12 month holding period rule. This is referred to as the CGT discount.

Companies are not entitled to the CGT discount, whilst individuals, trusts and superannuation funds are only entitled to the discount if they elect to use the discount method rather than indexation method (for assets acquired prior to 21 September 1999).

Capital losses may result when an asset is disposed of for less than its cost. In calculating the loss realised on the disposal of any CGT asset, the CGT discount and indexation are ignored. The net capital gain included in the assessable income is the

excess of taxable capital gains in the year of income over current and prior year carried-forward capital losses

Australian residents are subject to the capital gains tax provisions in respect of their worldwide transactions.

Non-residents are generally only subject to CGT where the gain is attributable to Australian real estate (land and buildings), mining rights or business assets of an Australian permanent establishment e.g. an Australian branch.

INTERACTION WITH INTERNATIONAL TAX REGIMES

Australia is a signatory to a number of DTAs, based upon the OECD Model. Counter parties include Australia's major trading partners, Canada, Japan, China, most South-East Asian nations, New Zealand, the United States of America, the United Kingdom and many European nations.

Foreign losses can generally be offset against both domestic assessable income and foreign income. Special rules that applied to limit or quarantine the use of foreign losses ceased to have effect from 1 July 2008.

Australia has a foreign tax credit system known as a foreign income tax offset (FITO) regime under which an offset/credit for foreign income taxes paid can be claimed against foreign income that is assessable for Australian tax purposes, essentially providing relief from international double taxation.

As noted above, CFI is not assessable and not subject to withholding tax when paid to a non-resident shareholder as an unfranked dividend. Profits derived by foreign branches of Australian resident companies from active businesses are also exempt from Australian tax. Such profits may also qualify as CFI.

OTHER TAXES AND IMPOSTS

GOODS AND SERVICES TAX ("GST")

A GST is imposed on all goods and services imported or sold (with a few exceptions) at a rate of 10%. An input tax credit is allowed for the GST paid on goods and services acquired in carrying on an enterprise. Generally, an entity will be required to be registered for GST purposes if that entity has an Australian turnover of more than A\$75,000 per year. The GST payable on that supply will be calculated as 10 percent of the value of the consideration that entity receives for making the supply (excluding GST). The GST on a taxable supply must be paid to the ATO by the entity making that supply. There is also a limited range of GST free supplies where GST is not charged on the supplies but the supplier is entitled to a refund of the input tax. GST on taxable supplies and input tax credits are accounted

for in the Business Activity Statement that may be lodged monthly or quarterly.



Doing Business In Australia

IMPORTING GOODS – CUSTOMS DUTY AND GST

A customs duty is imposed on many goods imported into Australia. This duty is imposed as an anti-dumping instrument and to provide protection for domestic manufacturers and wholesalers.

Customs duty is imposed on most goods. An exemption may be provided for goods that are not subject to Australian competition.

GST is charged on the importation of goods. A deferral of the GST can be arranged so that it is effectively offset against the GST collected from the sale of goods, to improve cash flow.

PAYROLL TAX

Payroll tax is a State/Territory tax levied at specified rates by reference to annual wages and salaries of employees that exceed the "exemption threshold" amounts in each State or Territory. Exemption thresholds vary between states/territories. Payroll tax is payable to the state/territory by an employer, based on total wages paid to all employees. Wages include salary, allowances, superannuation contributions, fringe benefits, shares and options and certain contractor payments. Rates range from 4.75% to 6.85% on payrolls over approximately \$550,000 per annum. Related companies and companies sharing employees are grouped together to determine the tax threshold.

STAMP DUTY

All states impose duty on various documents including those to convey property, including land and shares. Rates vary from State to State but may be as high as 7%.

LAND TAX

Most states impose tax on the unimproved value of land holdings at a rate between 0 and 3.7%. Various thresholds and exemptions are provided under the legislation of each State.

ANNUAL/HOLIDAY LEAVE

Annual leave entitlements are generally four weeks of paid leave per annum. Any unused annual leave is usually paid out when an employee leaves employment. Some awards also provide for an additional leave loading of 17.5% to be paid on holiday pay.

LONG SERVICE LEAVE

Entitlements vary by State but approximately two months of paid long service leave will accrue after 10 years of service. A similar proportion will accrue every 5 years.

PERSONAL/SICK LEAVE

An annual allowance of ten days per annum must be provided to employees for personal/carers leave (including sick leave), together with an additional two days of unpaid carer's leave and a further two days of compassionate leave. Any unused leave is not required to be paid when the employee leaves employment.

PARENTAL LEAVE

The Australian Fair Pay and Conditions Standard provides for a maximum of 52 weeks of unpaid parental leave, shared between both parents at the time of the birth of a child, or adoption of a child under 5 years of age. Parental leave can be taken as maternity, paternity or adoption leave. Parental leave provisions apply to all full-time, part-time and eligible casual employees with at least 12 months continuous service with their current employer.

SUPERANNUATION GUARANTEE CHARGE (SGC)

Federal legislation requires employers to provide a prescribed minimum level of superannuation (or pension) contribution for each of their employees. The prescribed minimum level of superannuation support that employers must provide for each of their employees is currently 9.5% of an employee's notional earnings base (payroll).

FRINGE BENEFITS TAX

Benefits provided to employees other than salary and superannuation are subject to Fringe Benefits Tax (FBT) payable by the employer. Examples of benefits that are subject to FBT include private use of motor vehicles provided by the employer, car parking, entertainment and the provision of private health insurance. FBT of 47% will then be payable

on the grossed up value of the benefit. The FBT is deductible from the employer's assessable income. The FBT year ends on 31 March.

WORKERS COMPENSATION

Workers compensation provides protection to workers and their employers in the event of a work related injury or disease. All employers must have a workers compensation policy if they pay more than \$7,500 in wages per annum, employ an apprentice or trainee, or are part of a group for premium purposes.



Scientists researching plants and diseases

TAX INCENTIVES AND GOVERNMENT GRANTS

RESEARCH AND DEVELOPMENT

Resident companies that undertake eligible Research and Development Expenditure are entitled to a refundable tax offset of 45% or non-refundable tax offset of 40% subject to certain criteria. A branch is not able to receive these incentives.



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Background

Fleming is the group Chief Executive Office of CAAA – Commercial Associates, Accountants, Auditors and Advisors. Fleming specialises in advising clients across a broad spectrum of industries and demographics with a stated mission of delivering professional, practical advice to all those who request it.

Having trained under practitioners from some of the world's most well-known professional service firms, Fleming brings a high level of expertise to the firm and its clients.

Fleming was responsible for the conception and vision of CAAA, and together with a talented team of advisors, has been the driver of the firm's phenomenal growth and achievement over the last 5 years.

Education

Fleming commenced his tertiary education at Sydney's Macquarie University, later transferring to the University of Newcastle where he completed his Commerce Degree.

Expertise

Fleming is a tax strategist, helping many of his clients redesign their affairs or solve problems to their maximum advantage. He is also heavily involved with tax based restructures, effective structure design, negotiation with tax authorities, solution-based transaction advice on mergers, acquisitions or divestments and self-managed superannuation.