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Chartered Accountants & Business Advisors

Doing Business In Australia

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Global businesses are investing in Australia for our consistent and strong economic growth, the stability of the banking system, independence of the judiciary and our Asia Pacific regional presence.

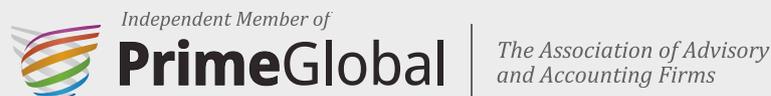
In the everchanging global economy, Australia provides immense opportunities for international business. The combination of a highly qualified work force, extensive infrastructure, natural resources and a familiar legal system to most parts of the world is the reason why international businesses, both small and large, are coming "down-under".

Hall Chadwick is one of the most enduring and respected accounting groups in Australia and New Zealand delivering for our clients expert advice on a comprehensive range of accounting, audit, tax and advisory services. We provide specialist services for forensic and investigative reports, insolvency and business recovery, international business, back office solutions and superannuation. In addition to our own services, Hall Chadwick is able to make introductions to industry contacts and other key service providers in various sectors including practitioners in law, banking and finance, recruitment and property.

Global connectivity

Hall Chadwick is a member of PrimeGlobal, one of the five largest associations of independent accounting firms in the world connecting our clients with local expertise in over 100 countries.

Global thinking. Local understanding. Personal connections.





Even with a relatively small population of under 26 million, Australia's economy is considered one of the strongest, most stable and diverse in the world

About Australia

Australia is the world's sixth largest country and offers international investors a commercially progressive and innovative business environment.

The economy is based on the free enterprise system and certain sectors are subject to government regulation.

The Australian government is a parliamentary democracy following the English Common Law system. There are six states and two self-governing territories, each with its own legislative, executive and judicial arms of government.

Our fast growing 25.7 million population is culturally diverse with 30% of the population born overseas. The national language is English and 3.2 million Australians speak an Asian language and 1.4 million speak a European language. Four state capital cities rank in the top 10 most liveable cities in the world.

Economy - The world's 15th largest

Even with a relatively small population of under 26 million, Australia's economy is considered one of the strongest, most stable and diverse in the world. The International Monetary Fund (IMF) highlighted Australia's resilience in the global pandemic challenges of 2020-22 in its January 2022 World Economic Update. In terms of Gross Domestic Product (GDP), Australia's GDP per capita was valued at US\$58,020 in December 2020 as compared to US at \$63,543, UK at \$40,284, Singapore at \$59,797 and Germany at \$45,723.

Over the past decade, Australia has further evolved a strong skills base, high quality education and training institutions, advanced physical infrastructure, and adoption and usage rates for information technology which are among the highest in the world. Our strong civil institutions underpin a free society and encourage free enterprise. Australia's cultural diversity gives Australian society a vigour and capacity to adapt rapidly to new opportunities. It is also a rich source of language and other skills which help us do business in a global economy.

The Australian economy is based on the free enterprise system, and is subject to some government regulation over certain sectors. A number of public utilities are privately operated including power, airlines and communications.

Australian industry has for a long period of time been protected by a broadly-based tariff system. This system is now being phased out, and is giving way to a largely deregulated economy, although minor tariffs still apply in some industries.

There is also a broad system of social services, including pensions and unemployment benefits. Australia is a highly developed country with a relatively high standard of living.

Interest Rates

Australia's interest rates are largely influenced by the Reserve Bank (RBA). This is set to affect the Government's fiscal policy to provide wide economic fluctuation.

The benchmark RBA rate has been less than 5% for the last 10 years. The current ATO benchmark rate is also less than 5% (4.7% at this time of publication).

Inflation

As experienced in other economies, consumer price inflation in Australia has picked up markedly since the middle of 2021. As international and domestic supply chain pressures ease, Australia will look to return to comparatively low rate of pre-pandemic levels of under 2%.

Time Zone

As the first major financial centre to open each day, Australia provides a time zone that bridges the closing of the US and the opening of the European markets.

With the Australian business day overlapping those of the US, Asia and Europe, firms that seek to operate internationally, 24 hours a day, use this time zone to their advantage.

That is why Australia is rapidly becoming the customer support centre for the region. Australia's ease of interaction and cultural affinity allows businesses to seamlessly integrate business activities while operating within the same time zone as major Asian markets.

The time difference between Australia and much of Asia, including Singapore, Hong Kong, Malaysia, and India varies from 2 – 6 hours. The ability of companies to service their Asian clients in 'real time' is an attractive advantage.



Geography & Demographics

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 rates.

Aboriginal and Torres Strait Islander peoples are the first peoples of Australia. The country has an extremely diverse and cosmopolitan flavour enriched by a vast array of people from European, Asian and many other backgrounds. The national language is English.

The multicultural nature is reflected in the many religious denomination, 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 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.

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.

Government System

The Australian political system is extremely stable. Australia has been a democratic country since Federation in 1901 and largely operates as a two-party system in which voting is compulsory.

The country has three levels of government:

Federal

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. The government is divided into an "upper" and "lower" house being the "Senate" and "House of Representatives" respectively. Both houses of federal parliament sit in Canberra. Bills introduced into federal parliament must be passed by both the upper and lower house to become law.

State

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. The main taxes (including state taxes) are covered in chapter 5 of this publication. However, there are no state income tax laws.

Local

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.

Legal System

The Australian legal system is based on the Westminster legal system where laws are created by statutes enacted by a parliament, and also through the decisions of the various Federal, State and Territory courts.

Australia has different Court structures for the Commonwealth, States and Territories, each having different jurisdiction.

The High Court (the superior federal court of Australia) is the highest Court in the Australian courts hierarchy and is the ultimate and final court of appeal in Australia. The High Court gains its authority from Chapter III of the Australia Constitution. Appeals to the High Court can only take place by special leave of the court which requires the appellant to apply, and for the High Court to grant it.

In terms of its authority or positioning in respect to the three bodies of power under the Australian Constitution (Separation of Powers), the High Court is the Judiciary and powers can be conferred on it through the Legislature (Parliament).

The state and territory court systems are separate from the Federal system, the NSW Court of Appeal (NSWCA) is therefore a lower court to the High Court of Appeal. However, the state courts can sometimes exercise federal jurisdiction and sit within the federal court system.

The Supreme Court is the highest court within the state court hierarchy. The Court of Appeal is a division of the Supreme Court of that state which hears appeals of civil matters from the Supreme Court of that state and lower (or inferior) courts. There are two lower courts, the County Court and the Magistrates Court being the lowest. Civil and Administration Tribunals or State Administration Tribunals review the decisions made by Government agencies, public officials and local governments with the objective to resolve disputes.

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.

Banking & Currency

Minimal exchange controls exist. The system of monitoring transactions with known tax havens has ceased. Rather, anti-avoidance tax rules have been increased. One requirement is for entities to advise movement of currency into or out of Australia exceeding \$10,000.

Hall Chadwick has a strong association of contacts in the banking and finance industry.

Foreign Trade

The economy is heavily dependent on high levels of exports and imports. Our major trading partners are Japan and the United States, followed by New Zealand, the United Kingdom, Germany, Canada, India and China. Trade with countries in South East Asia and the Asia-Pacific Rim continues to grow in volume and in its importance to Australia.

Import & Export Issues

Import

All goods imported into Australia must be cleared by customers, whether they are imported by air, sea or post. Customs duty and Goods & Services Tax (GST) usually applies to goods entering Australia. Businesses who regularly import can apply for a GST referral registration to ease the burden on imports.

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

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.

An Export Market Development grant maybe available in certain circumstances, see next chapter.

The Export Finance and Insurance Commission (EFIC) assists Australian businesses that export goods or services with mainly Australian content. Finance for overseas customers purchasing Australian goods may be available. In addition, insurance for performance bonds and unfair calling on contracts may also be available.

Exchange Controls

Exchange control approval is not required for any transactions involving the inflow of funds to Australia with the exception of interest-bearing investments by foreign governments, government agencies and international organisations.

Reporting of cash transactions is mandatory under the Cash Transactions Reports Act 1988 which is designed to counter money laundering and taxation evasion.

Economic & Fiscal Policy

The government's main objectives have been to reduce inflation and to achieve moderate growth in the economy in order to maintain employment levels. The government has also moved substantially towards a deregulated economy in an attempt to make Australian industries, particularly the manufacturing industry, more competitive with the rest of the world.

Resources & Industries

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, metallurgical coal, uranium and natural gas.

Major Industries

Australia has a strong services-based economy driven by wealth management, healthcare, education, tourism, IT, R&D, iron ore mining and professional services industries.

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

Primary Industries

The Australian agribusiness sector occupies a significant place in the Australian economy and has a strong track record in attracting international investment throughout the agricultural supply chain. As a major exporter of agricultural produce and services, more than two thirds of agricultural commodities produced on farms are exported each year. Over the past twenty years, the production and exports of beef, sheep, wine, dairy, horticulture and biofuel products have increased significantly in response to growing overseas demand for higher value products. The country's significant mineral and energy resources continue to power Asia's industrialisation.



Working & living in Australia

Employment

In Australia, the Fair Work Act (Act) sets out the National Employment Standards (NES), which are 10 minimum employee entitlements. These include:

1. Maximum weekly hours based on a standard week of 38 hours. Some employers operate on a 35 hour or 37 ½ hour week
2. Requests for flexible working arrangements
3. Offers and requests to convert from casual to permanent employment
4. Parental leave and related parental entitlements
5. Annual leave 4 weeks
6. Personal/carer's leave, compassionate leave and unpaid family and domestic violence leave
7. Community service leave
8. Long service leave, these do vary between states/territories
9. Public holidays
10. Notice of termination and redundancy pay.

All employees must receive the Fair Work Information Statement which outlines on these minimum entitlements in detail.

Under the NES, an employer is required to provide a permanent employee with at least the following minimum periods of notice of termination, or a payment in lieu of notice at least the amount of remuneration the employee would have received at the employee's full rate of pay until then end of the minimum period of notice. 'Modern Awards' are another important source of workplace obligation, that set rules for example, minimum pay rates, overtime and penalty rates, and other entitlements, depending on the industry or occupation in question. The Fair Work Commission (FWC) determines the scope of Modern Awards. The FWC also decides unfair dismissal claims and other industrial claims.

The Fair Work Ombudsman (FWO) ensures employers uphold key obligations arising under the NES and Modern Awards.

In addition, employers must provide other important employee entitlements:

- » Contribute a sum to a superannuation fund at a rate of 10.5% of their employees' salary. This rate will gradually increase to reach 12%, by 2025.
- » Take out workers compensation insurance to cover employees injured in the course of or arising out of their employment. Workers compensation insurance must be provided by a state government approved insurer.
- » In Victoria, provide 13 weeks of leave after 15 years of service, available pro rata after 7 years of continuous service long service leave after a qualifying period of 7 years of service. The usual entitlement is for 2 months leave for 10 years of service. Some States have different rules, for example, providing for three months leave for 10 years' service, or a qualifying period in some cases after 5 years.
- » Provide public holidays required under State or Territory law, in addition to the 8 public holidays required by the NES. Each state may also declare additional public holidays.

An employment contract attributes rights and responsibilities between an employee and an employer. Terms and policies should be set out clearly. Employment contracts should be properly drafted, vetted by an Australian solicitor and signed by both the employee and the employer.

The current level of unemployment at January 2022 is 4% and two-thirds of the working age population participate in the labour force.

Climate

Due to the huge size of the country, Australia has several different climate zones. The northern section of Australia has a more tropical influenced climate, hot and humid in the summer, and quite warm and dry in the winter, while the southern parts are cooler with mild summers and cool, sometimes rainy winters. The largest part of Australia is desert or semi-arid. Melbourne, Victoria's capital and Australia's second largest city, is famed for often having four seasons in one day. It's residents well used to be roasting in the sunshine one minute, then drenched in rain the next.

Standard of living

Australia has one of the highest standards of living in the world. Excellent job prospects, a strong economy and world-class financial services make it a desirable place to live and work. With higher standards come better rates of pay, but a higher cost of living. The proportion of home ownership as at January 2022 was 67%. The average weekly earnings for full-time workers is AU \$1,748 as at November 2021. The minimum wage is \$21.38 per hour, or \$812.44 per 38-hour week from 1 July 2022).



The Australian government continues to recognise and support businesses who look to the future.

Government Support & Incentives

Australian Trade & Investment Commission - AUSTRADE

Austrade promotes Australian trade, investment, tourism and education to the world. The agency offers comprehensive and confidential assistance, saving valuable time and money. There are investment advisory specialists around the world, including New York, San Francisco, London, Paris, Frankfurt, Singapore, Tokyo, Shanghai, and Beijing.

The Australian government also provides a range of state and federal incentives for new investments and innovative business.

Grants & Incentives

Export Market Development Grants (EMDG)

The EMDG Scheme provides assistance to small and medium Australian exporters committed to, and capable of, seeking out and developing export business by repaying part of their promotional expenses. There are 3 different grants available, depending on a business's export maturity. Grants agreements are offered for up to 2 years or up to 3 years depending on the grant. Applicants may qualify for 50% reimbursement of eligible export promotional expenses. An SME exporter can apply for grants up to \$770,000 per applicant over 8 financial years.

Research & Development Incentive (R&DTI)

The R&D Tax Incentive is administered jointly by the Australian Tax Office and AusIndustry. The R&D Tax Incentive provides the benefit through a tax offset calculated based on the expenditure a company incurs on activities deemed to be research and development. The R&DTI is a self-assessment program.

The R&DTI aims to boost competitiveness and improve productivity across the Australian economy by:

- » encouraging industry to conduct R&D that may not otherwise have been conducted.
- » improving the incentive for smaller firms to undertake R&D.
- » providing business with more predictable, less complex support.

The incentive has two core components, as follows:

- » a 43.5% refundable tax offset for eligible entities with an aggregated turnover of less than \$20M per annum, provided they are not controlled by income tax exempt entities.
- » a 38.5% non-refundable tax offset for all other eligible entities (entities may be able to carry forward unused offset amounts to future income years).
- » For companies with an aggregated turnover of \$20 million or more, there is a two-tiered premium that ties the rates of non-refundable R&D tax offset to the incremental intensity of the R&D expenditure as a proportion of total expenditure for the year. All eligible R&D expenditure up to 2% R&D Intensity will receive a non-refundable R&D tax offset equal to that business's corporate tax rate plus 8.5% premium.
- » Additional eligible R&D expenditure above 2% R&D Intensity will receive a non-refundable R&D tax offset of that business's corporate tax rate plus 16.5% premium.

Aggregated turnover is the sum of the annual turnover for all of the following:

- » the R&D entity
- » any entity connected with the R&D entity
- » any entity affiliated with the R&D entity.

Any dealings between these entities are excluded.

Early Stage Innovation Company (ESIC)

An 'angel investor' providing capital for start-up or expansion of a new or small business venture may be eligible for the Early Stage Innovation Company (ESIC) federal grant.

The tax incentives provide eligible investors who purchase new shares in an ESIC with a:

- » Non-refundable carry forward tax offset equal to 20% of the amount paid for their qualifying investments. This is capped at a maximum tax offset amount of \$200,000 for the investor and their affiliates combined in each income year.

A 10-year exemption on capital gains tax for investments held as shares in an ESIC for at least 12 months, provided that the shares held do not constitute more than a 30 per cent interest in the ESIC.

Accelerating Commercialisation

Accelerating Commercialisation is a service under the AusIndustry Entrepreneurs' Program designed to help businesses bring novel products and services they wish to commercialise, meet the turnover test and be one of the following:

- » An Australian company.
- » A Research Commercialisation Entity or Eligible Partner Entity.
- » Individuals, partnerships or trustees who agree to form a Registered Eligible Partner Entity.

There are many more incentives and concessions given by the federal and state governments and those listed are only examples of the major incentives and concessions available at the time of this publication.



Australia has the 14th-highest amount of direct foreign inward investment in the world. The United States and United Kingdom are the biggest investors in Australia, between them, A\$1,771.6 billion was invested in 2021.

Foreign Investment

The Australian Government welcomes foreign investment for the significant benefits it provides, while recognising the need to ensure investments are not contrary to the national interest.

Foreign Investment Framework

The foreign investment review framework is set by the Foreign Acquisitions and Takeovers Act 1975 (the Act) and the Foreign Acquisitions and Takeovers Fees Impositions Act 2015 (the Fees Imposition Act) and requires foreign investors to notify the Federal Treasurer of proposed foreign investments that meet certain criteria.

The Treasurer is advised by the Foreign Investment Review Board (the FIRB), a non-statutory advisory body, which examines foreign investment proposals on a case-by-case basis and advises on the national interest implications. Responsibility for making decisions rests with the Treasurer.

Approval is required for certain investments and thresholds in the following scenarios:

- » Foreign persons generally require foreign investment approval before acquiring interests in securities or assets, or taking other actions in relation to corporations, unit trusts and businesses that have a connection to Australia.
- » Foreign persons generally require foreign investment approval before acquiring a substantial interest (generally at least 20 per cent) in an Australian entity that is valued above the relevant monetary threshold.
- » Other business investments involving acquisitions of securities or assets may require approval at a lower percentage threshold and monetary threshold.

Generally, approval is required for acquisitions in the specific industries that are considered sensitive to the economic well-being of the country, in particular national security businesses, agribusiness, media businesses, land including agricultural, commercial, residential and mining tenements.

Other business investments involving acquisitions of securities or assets may require approval at a lower percentage threshold and relevant monetary threshold.

Definition of a foreign person

A foreign person is defined as:

- » A natural person not ordinarily resident in Australia.
- » General partners of limited partnerships where:
 - » an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds at least 20 per cent in the limited partnership, or
 - » two or more persons each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate interest of at least 40 per cent in the limited partnership. A foreign government.

Exemption Certificates

Foreign investors may obtain approval for a program of investments instead of a separate approval for each investment. Generally, the maximum total and individual value of interests that can be acquired will be specified as well as the period during which acquisitions can be made. If the monetary limit is not fully utilised, application may be made to rollover to a future exemption, effectively lowering the fee of a future application.

Exemptions for acquisitions of residential real estate

FIRB approval is not required when buying a residential property with an Australian citizen as joint tenants and in a spousal relationship. Other relationships like business partners, mother/father and child, siblings, friends or relatives are ineligible relationships.

Other exempt persons:

- » an Australian citizen
- » a New Zealand citizen
- » the holder of an Australian permanent resident visa

- » an individual purchasing property as joint tenants with their Australian citizen spouse, New Zealand citizen spouse or Australian permanent resident spouse;
 - » This exemption does not include purchasing property as tenants in common.
- » an Australian corporation that would not be a foreign person if interests directly held in it by Australian citizens living abroad, Australian permanent visa holders or New Zealand citizens were disregarded;
- » the trustee of a resident trust, if at the time of the acquisition, the trustee would not be a foreign person if interests directly held in it by Australian citizens living abroad, Australian permanent visa holders or New Zealand citizens were disregarded; or a charity operating in Australia primarily for the benefit of persons ordinarily resident in Australia.

FIRB approval process

The application form and process to FIRB will depend on who is applying. Electronic lodgement (via email or fax) is preferred for all applications. Forms for applications vary depending on the type of acquisition and the purchaser. We can provide the required forms and guidelines upon request.

The application process normally takes 30 days from date of receipt of application. In some cases, FIRB may issue the applicant with a statutory notice to extend the decision date by an additional 10 days. In certain circumstance FIRB may extend the process by a further 90 days if necessary.

Fees to get FIRB approval

From 1 December 2015, an application fee will be charged to foreign investors who want to purchase Australian property. It is expected that the purchaser will pay around \$5,000-\$100,000 depending on their situation, the property value and property type. For more information, the full list of fees is set out in the FIRB Guidance Note 10.

Non-final foreign resident withholding tax

A purchaser is required to pay 12.5% of the purchase price to the ATO at or before settlement. The regime only applies if the vendor is a "foreign resident" which in broad terms is a person or entity that is not an Australian resident for tax purposes.

The 12.5% withholding tax will not apply in certain situations, including where:

- » A vendor provides a qualifying declaration that it is an Australian tax resident.
- » A vendor provides a qualifying declaration that the shares or units are not "indirect Australian real property interests".
- » The transaction is on an approved stock exchange.
- » A variation is sought from the ATO to reduce the withholding tax rate.

Foreign ownership cap for New Dwelling Exemption Certificates

A 50 per cent cap on the total amount of dwellings a developer can sell to foreign persons under a New Dwelling Exemption Certificate has been introduced made from 9 May 2017. Applications submitted prior to 9 May 2017 are not subject to the 50 per cent cap.

Annual vacancy charge

The Government applies an annual vacancy charge on new foreign owners of residential property where the property is not occupied or genuinely available on the rental market for at least six months each year. The charge is equivalent to the relevant foreign investment application fee imposed on the property at the time it was acquired by the foreign investor. It applies to foreign persons who made a foreign investment application for residential property after 9 May 2017.



When considering a business operation in Australia, it is essential at the outset to identify the best business structure for your use.

Choice of Business Structure

Before commencing business in Australia, every form of organisation needs to be aware of the following controls.

The Australian Securities and Investments Commission (ASIC) is the regulatory body administering the Corporations Law. Its charter is to ensure compliance by all companies. It strictly regulates companies and mismanagement by directors carries criminal and civil penalties.

Business Names

You will need to register a business name if you carry on business within Australia and are not trading under your own name. An 11-digit Australian Business Number (ABN) is required to register a business name. An ABN identifies the business and is used in commercial transactions and dealings with the Australian Taxation Office.

Applications to register both a business name and an ABN can be made via Australian Business Registry Service (ABRS).

A company will have both an ABN and Australian Company Number (ACN). ASIC issues a 9-digit number for every Australian company. The ACN is used as the base number for the ABN. This means that they will be identical, except the ABN will have two additional numbers at the beginning.

Foreign companies trading within Australia are allocated an Australian Registered Business Number (ABN). The ABN must be displayed while trading within Australia.

Authorities

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

Types of Structures

In essence, the choice is to run the business through one of the following eight alternatives:

- » Sole Trader
- » Partnership
- » Discretionary Trust
- » Unit Trust
- » Private Company
- » Public Company
- » Joint Venture, Incorporated or Unincorporated
- » Foreign Company or Subsidiary

Private Company

A company is appropriate where:

- » The number of people in the business is such that a partnership is unworkable or not allowed by statute.
- » The degree of risk is such that there is a need for limited liability.

A proprietary company is a company having share capital, with a limit of no more than fifty (50 non-employees) shareholders, and is prohibited from inviting the public to subscribe for shares in, or debentures of the company, and from inviting the public to deposit money with the company. It must use the word "Proprietary" or the abbreviation "Pty", as well as "Limited" or "Ltd" as part of its name.

Proprietary companies may be classified as either "large" or "small". This classification determines the level of reporting required by such companies.

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

- » Consolidated Revenue > \$50m p.a.
- » Consolidated Gross Assets > \$25m p.a.
- » Employees > 100.

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.

Small proprietary companies are not required to produce financial statements unless 5% of the shareholders require them to be produced or there is a request from ASIC.

Companies which are foreign owned or controlled, whether large or small, are required to be audited and to lodge annual accounts and reports with ASIC. Companies that are deemed not to be large may apply for exemption from this requirement.

It should be noted that companies can move between the large and small classification on an annual basis if circumstances result in the above-mentioned criteria being met.

Advantages

- » A company has separate legal status which means third parties can generally only sue the company, not the shareholders.
- » Continuity is preserved and is independent of members in that a company will last forever unless liquidated by due process under the Corporations Act 2001.
- » A company is flexible in that its Constitution may be altered.
- » Shareholders usually have limited liability although directors nowadays are often asked for personal guarantees. The Corporations Act 2001 imposes onerous responsibilities upon company directors and makes them personally liable for debts incurred by the company where there is not a reasonable expectation that the company is able to pay its debts as and when they fall due at the time when the debt was incurred.
- » There is greater flexibility in introducing new members and in settling the affairs of deceased members.
- » Employees can be given an interest in a business.
- » Larger amounts of capital can be raised, both as debt and equity.
- » Small proprietary companies do not have to file annual financial statements or appoint auditors.

Disadvantages

- » The legal fees and registration fees for a company are such that most people do not incorporate companies until their business grows to a reasonable size.
- » Members have less control and need not be part of management structure.
- » Onerous regulatory responsibilities including filings with ASIC.



Main forms of a company

The different types of companies which may be incorporated under the Corporations Law are as follows:

Company limited by shares. The liability of its members is limited to the amount unpaid on the shares held by them i.e., Limited Liability Companies.

Company limited by guarantee. The liability of its shareholders is limited by the Memorandum to whatever they may respectively undertake to contribute to the assets of the company in the event of its being wound up. Usually used for non-profit entities such as clubs and hospitals.

An **unlimited company** is usually formed when a company structure is more satisfactory than a partnership agreement. No limit is placed on the liability of its shareholders.

A **no-liability company** does not have the right to recover calls made on its shares from a shareholder who defaults in payment of those calls. The use of this type of company is restricted to mining; however, it is not necessary for a mining company to be a no-liability company. A no-liability company must have "No-Liability" or the abbreviation "NL" at the end of its name.

Limited Liability Company

The most common form used for companies is the limited liability company. Overseas investors normally use this type of company. A limited liability company may be incorporated as a proprietary (private) or public company.

Public Company

A public company is any company other than a proprietary company and is in essence one in which the public owns or may own shares. They have certain controls placed on them by the Australian Stock Exchange.

On April 1, 1987, the Stock Exchanges of Adelaide, Brisbane, Sydney, Melbourne, Hobart and Perth were incorporated federally under the Australian Stock Exchange and National Guarantee Fund Act 1987 into the Australian Stock Exchange Limited.

Whilst each state continues to maintain its own second board listing rules, all companies seeking listing on the main board are governed by the ASX main board listing rules.

The listing rules are additional and complementary to the requirements in the Corporations Law. They deal with the pre-requisites for admission to, and official quotation of marketable securities on the Official List of the ASX, reporting requirements of companies and regulate such things as the acquisition and disposal of securities and corporate assets, reconstructions, prospectuses and new marketable securities issues.

Joint Venture

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, and with the 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 statutes 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.

Disadvantage

- » 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.

It is important when structuring a joint venture to ensure that the documentation is drafted in such a manner as to ensure that it is not a partnership. You should consult Hall Chadwick for further details.

Company formation

In order to form a limited liability company, an application form must be lodged with the Australian Securities and Investments Commission (ASIC). Directors and Secretaries are appointed automatically on registration of the company. All Directors or Alternate Directors of Australian entities are required to hold a Director Identification Number (DIN). This number is required before being appointed as a director.

Once the company is registered shares can be issued. The company may adopt a Constitution on registration, or if it decides not to, it shall be governed by 'replaceable rules' which are contained in the Corporations Act 2001 (as amended). As a general rule, it is recommended that a constitution be drafted in light of the specific circumstances that apply to the company.

Public companies are required, on registration, to lodge with ASIC their Constitution where one has been adopted. There is no such requirement for proprietary companies.

A local company with your choice of name and details of directors, shareholders, etc, can be set up for around \$1,000 and will take approximately 2-3 days from order to delivery.

Any changes in the details as lodged with ASIC on formation of the company must be reported within 14 days. In addition, all companies must file an annual return and all public companies and most large proprietary companies must file a copy of their audited financial statements with ASIC each year. Any member of the public may gain access to this information on payment of the appropriate fee.

Public companies are required to open their registered office to the public. Proprietary companies are not so required but must, on request, allow the inspection of relevant documents and registers.

Replaceable rules do not apply to single member companies with a sole director. There are specific general provisions in the Corporations Law which govern the conduct of business and the appointment of directors to such companies.

Requirements of corporate governance

Directors

Australia has recently introduced a 15-digit identifier system for directors of Australian entities. This Director Identification Number (DIN) is used to verify and track the corporate history of individual directors and their relationships to companies. It serves also to protect the privacy of directors by allowing them to be identified on public registers without disclosing dates of birth, full names and residential address. The application process for Australian Resident Directors differs to that for non-resident Australian citizens and Foreign Nationals. The Board of Directors usually manages the company. Its powers and duties are set out in the Corporations Act 2001 and in any Constitution the Company may have prepared. Only natural persons may be appointed as directors. A private company must have at least one director. At least one director must reside in Australia. A public company must have at least three directors with two being residents of Australia.

The procedure for appointment of the directors is set out in the Corporations Act 2001, unless a Constitution has been adopted which would then take precedence. There is usually a provision for a proportion of the directors to retire by rotation at each annual general meeting. A retiring director would normally be eligible for reappointment. There are restrictions on people over the age of 72 acting as directors of a public company.

The power to remove directors of a private company is also set out in the Corporations Act 2001, unless a Constitution has been adopted, but shareholders of a public company may remove a director before the expiration of his period of office, by a resolution in general meeting.

Directors must act honestly and with reasonable diligence. They may be held personally liable for their actions where they have failed to keep proper accounts, contracted unpayable debts or carried on business to defraud creditors prior to the company becoming insolvent. The Act itself does not require a director to hold shares in a company, but an individual company's Constitution may require that they do.

Employees have no statutory right to appoint directors or to participate in corporate management.

Company Secretary

A public company must have at least one secretary. The secretary must be a natural person, must be at least 18 years old and, if there is more than one director, at least one of them must ordinarily reside in Australia. Private companies do not necessarily require a secretary but if that position exists, the secretary must be an Australian resident.

Public Officer

Every company carrying on business in Australia or deriving Australian income from property must have a public officer for the purposes of the Income Tax Assessment Act. The Pay-roll Tax Acts and Land Tax Acts may also be relevant to his appointment. Such an officer must be a natural person, 18 years old and be ordinarily resident in Australia.

The Public Officer, similar to a Director, may be held personally liable for ATO debts of the company in certain circumstances.

Shareholders

Under the Corporations Act 2001, a company must have at least one member. An Annual General Meeting (AGM) must be held at least once in every calendar year and within five months of the end of the financial year for public companies. Proprietary companies are not required to hold an AGM. Other general meetings are held as circumstances require.

Capital

No minimum share capital is prescribed for a proprietary or public company except where it is to be listed on the stock exchange. The types and classes of shares and the rights of their holders may be specified in a Company's Constitution.

Registers

All companies must keep registers of members and where applicable, registers of charges (for example, mortgages), debentures and options. These may be kept in an electronic form.

Annual General Meeting

Public companies are required to hold an AGM of members each calendar year. The holding of an AGM is optional for proprietary companies and they are not required to pass a resolution.

Annual Review

Public companies are required to lodge an annual review with the ASIC within one month of their AGM. In respect of private companies, annual reviews must be lodged by January 31, of the subsequent financial year.



International companies establishing in Australia

Usually, companies wishing to operate in Australia will need to decide whether they wish to operate a subsidiary company, or a simple Branch Office.

A subsidiary is usually a separate private company. Operating a branch office requires registration with ASIC and the Australian Taxation Office. Both entities have the same rate of tax.

A branch office does not have limited liability and is not recognised as having a separate legal identity in the country. A Branch office exposes the Head Office to further liability for all of the Branch Offices actions.

Registration for a branch office is more complex and time consuming than for a subsidiary company with the company required to disclose both corporate information and supporting documentation to ASIC. The registration of a branch office can take up to 45 days. Using an experienced provider can generally expedite the process.

Branch offices of foreign businesses are issued with an ARBN (Australian Registered Business Number). This must be displayed on all business documents together with their ABN.

From a taxation point of view where a subsidiary is chosen, certain establishment expenses will not be deductible from a company's assessable income and other establishment expenses will not be of use until the subsidiary is earning sufficient assessable income.

Also, the use of a foreign company operating through a branch could result in a financial institution choosing not to provide finance where no audited financial statements have been prepared by the branch. In some industries, customers require a local subsidiary rather than a branch.

In all cases, there are vigorous proof of identity requirements for the foreign entity.

A Local Director (or agent for Branch Office) is required.

Hall Chadwick has vast experience in establishing foreign entities in Australia, and at the same time we also attend to:

- » Substituted Accounting Periods (the standard Australian Year End is 30 June)
- » Audit Exemptions (where applicable)
- » Australian Business Number registration
- » Tax File Number
- » All employer registrations
- » Liaising with government agencies to assure the complex registration process is as smooth as possible.

Australia's overall tax burden is relatively low compared with other developed countries and regional competitors.

Tax Considerations

The Australian taxation issues that arise in the context of doing business in Australia are created under the jurisdictions of both Federal and State or Territory laws. The key taxes which are levied by each level of government are outlined in the tables as set out in Appendix A. All of these taxes create their own potential issues in doing business in Australia.

Income Tax

Income tax has been levied at the Federal Government level in Australia for over seventy years. The Federal Government places substantial reliance on income tax as a revenue raising measure.

Essentially, income tax is a tax levied on companies, individuals and certain trusts, on the difference between the relevant entity's assessable income and the allowable deductions, for a particular tax year ending on 30 June. This net amount is called "taxable income".

The rates of tax applicable to the taxable income of individuals is set out in Appendix A. The rate of tax applicable to base rate entities is 25% for 2022-23 income year. For companies with an aggregated turnover of more than \$50m, the tax rate is 30%.

Tax Year

The income tax year, by reference to which assessable income and allowable deductions are determined, is normally the year from 1 July to the following 30 June.

In the case of companies and trusts a substituted tax year can be allowed in certain circumstances and by following certain administrative procedures. One of the main examples where a substituted accounting period can be obtained is in relation to companies which are subsidiaries of offshore entities which have different tax years to the Australian 30 June financial year end. In that instance it is possible to seek, and obtain

permission, to use a different tax year.

Special rules for non-residents

Interest, certain types of dividends and royalties received by non-residents from Australian entities are subject to withholding tax, which in essence is a special form of income tax.

The interest withholding tax rate is 10% of the gross interest paid (i.e., without allowing for any deductions that might otherwise be applicable).

The royalty withholding tax rate is normally 30% of the gross royalty paid.

In the case of dividends, where they are paid out of a pool of profits that has not been subjected to Australian income tax, these dividends will be called unfranked dividends and are subject to the normal withholding tax rate of 30% of the gross dividend paid.

However, in both these instances, if there is a DTA between Australia and the country of residence of the entity concerned, the rate of withholding tax is normally reduced to 15% (although in recent DTAs the rate has been as low as 5% or 0%).

In relation to dividends paid out of a pool of profits that is subject to Australian income tax, there should be no further Australian withholding tax on those dividends.

Source of income is not generally defined in the Tax Act though there are specific rules for certain types of income. Where there is no statutory source rule, source is determined according to principles developed by the Courts.

Statutory source rules apply to outgoing royalties, interest payments on loans secured by mortgage of any property in Australia, and certain types of business income.

Non-residents sale of residential property

When a foreign investor sells Australian residential property after 1 July 2017, the purchaser will be required to pay 12.5% of the purchase price to the ATO at or before settlement if the market value of the property is more than \$750,000.

Non-residents who have derived a capital gain on their Australian residential property that is not their main residence will be subject to capital gains tax (CGT) if the property was acquired after 19 September 1985.

The 50% CGT discount was previously available to any individual who has a taxable capital gain on disposal of an asset held for more than 12 months, regardless of their tax residency status. However, the 50% CGT discount is no longer available to non-residents for residential properties acquired after 8 May 2012.

Residents

Residents of Australia are generally taxed on their worldwide income.

The position in relation to trusts is more complex—in essence any accumulated income is taxed either in the trustee's hands at the rate of 47%; distributed income, or income to which a beneficiary is "presently entitled" at year end, is taxed to the beneficiary at the marginal tax rate applicable to that beneficiary and is not taxed in the hands of the trustee.

In relation to superannuation funds, the normal rate of income tax is 15% if the superannuation fund is a complying superannuation fund. If the fund is a non-complying fund its earnings are taxed at the rate of 47%.

The position in relation to partnerships in Australia is, with one qualification, that all the assessable income and deductions of a partnership are treated as the assessable income and deductions of the partners in the partnership and taxed in the partner's hands. In other words, the partnership, in essence, is treated as a look-through entity for tax purposes.

The one qualification applies in relation to limited partnerships, which are effectively taxed as companies.

Once the tax payable is calculated by applying the rate of tax to the taxable income, there are further possible tax offsets which are designed to reduce the amount of tax payable.

Examples of such tax offsets available to individuals include:

- » Small business income tax offset
- » Low-income taxpayer rebate
- » Dependant rebate
- » Pensioners rebate
- » Zone and overseas forces rebate
- » Franking Rebate (the receipt of franked dividends).

Goods & Services Tax (GST)

Broadly, Australian GST of 10% is required to be imposed by the supplier (and remitted to the ATO) where the supply is considered a taxable supply. Entities have to register once their GST turnover reaches \$75,000. For non-profit entities, it is \$150,000 in turnover.

For non-resident suppliers and digital operators which make supplies that are connected with the Indirect Tax Zone (broadly Australia), and which have a value in excess of the turnover threshold of \$75,000, are required to register for GST purposes.

Supplies of goods of \$1,000 and less by overseas businesses making sales of goods to Australian private consumers are also subject to GST.

Special rules for non-residents

One of the requirements for there to be a taxable supply is that the supply must have a connection with Australia.

A supply of goods is connected with Australia if:

- » the supplier delivers or makes the goods available in Australia
- » the goods are removed from Australia (i.e., exported)
- » the supplier imports the goods into Australia.

A supply of real property is connected with Australia if the real property or the land to which the real property relates is in Australia.

A supply of anything other than goods or real property is connected with Australia if it is done in Australia, or if the supplier makes the supply through an enterprise that the supplier carries on in Australia.

Non-taxable supplies are not subject to GST. Included in non-taxable supplies are GST-free supplies that cover a range of items, most notably basic food, healthcare, education and exported goods and services.

A sale of a business which meets all the conditions of a supply of a going concern will also not be subject to GST.

Also, included in non-taxable supplies are input taxed supplies. The most significant categories of input taxed supply are financial supplies and residential rental accommodation.

There are differences between a GST-free supply and an input taxed supply. Where the supplier makes a GST free supply, any GST that it has paid in relation to acquisitions for the supplier's enterprise may be claimed as input tax credits. By contrast, in relation to input taxed supplies, where the supplier makes such a supply and there is an associated GST-inclusive acquisition, normally no input tax credit can be obtained.

Importations of goods are treated separately. In essence, imports valued above \$1,000 are taxable imports for GST purposes. In broad terms, if goods are imported into Australia that would not be GST-free or input taxed supplies if supplied locally, the GST liability is imposed on the importer and collected by the Australian Border Force for an amount equal to 10% of the value of the taxable import. The value of the taxable import includes the customs value, associated costs of transport and insurance and any customs duty payable in respect of the import of the goods.

If used entirely in the conduct of an enterprise the registered importer would also be entitled to an input tax credit equal to the GST liability. Registered importers may also be eligible for the GST import deferral scheme, which effectively defers the payment of the import GST to a beyond the point of importation.

There are strict technical rules that non-residents and their agents must comply with in relation to the matters outlined above. Further information on these rules and their application can be obtained from Hall Chadwick.

Tax on capital gains (CGT)

Interestingly, in the context of Australian taxation, the name Capital Gains Tax (CGT) is a complete misnomer. What is not readily understood is that Australia does not formally impose a separate capital gains tax. Rather, under the Federal income tax laws, capital gains are treated as assessable income and subject to tax as such, with certain qualifications.

A key qualification is that, in the case of individuals or trusts, only 50% of any capital gain is included in assessable income provided the asset has been held for at least 12 months. This discount, however, does not apply in relation to gains derived by companies.

There are also other concessions, particularly in relation to small business. Where these concessions apply, substantial capital gains can be obtained tax-free. Further information on these concessions is available from Hall Chadwick.

Special considerations for non-residents

The only type of assets on which non-residents will be subject to Australian CGT will be taxable Australian property (TAP). TAP is exhaustively defined as the following:

- » Taxable Australian real property, being real property situated in Australia (including mining, quarrying and prospecting rights to the extent that the underlying materials are situated in Australia)
- » Indirect real property interests
- » Business assets used at any time in a permanent establishment in Australia
- » An option to acquire any of the above-mentioned assets
- » A CGT asset elected by an individual to continue to be subject to the Australian CGT rules after ceasing to be an Australian resident.

The purpose of limiting Australian CGT to these particular assets in respect of non-resident investors is to encourage offshore investment into Australia (into non-TAP assets such as shares). Significantly, where a taxpayer who is a non-resident makes a disposal of an asset which is not a TAP, the gain or loss on that disposal is not subject to CGT.

Where an exemption from Australian CGT is available, non-residents still need to consider if the gain is taxable as income. This is most commonly the case where the asset was acquired for the purpose of making a gain on sale.

Fringe Benefits Tax (FBT)

FBT imposes tax upon employers in relation to all non-cash components of benefits provided to employees.

FBT covers a wide range of benefits listed Appendix A. Each category has its own designated valuation rules which mean that some categories are inevitably dealt with more favourably than others. For example, it is still possible in the Australian context to extract an advantage from salary packaging a motor vehicle, since the valuation rules for motor vehicles are slightly more generous than those applicable to other categories. However, it must be conceded that the relative advantage here has been diminished in recent years.

There are still some minor items exempt from FBT that can be salary packaged to good effect.



Conduit Foreign Income (CFI)

CFI rules have made Australia very attractive from an investment point of view as a regional headquarters for countries situated in the Asia Pacific region.

Exemptions from withholding tax

Conduit foreign income can be distributed from an Australian corporate tax entity ("CTE") to a non-resident in the form of unfranked dividends without attracting any Australian tax.

Conduit foreign income is basically foreign income that is not assessable in Australia when derived by an Australian CTE. It includes non-portfolio dividends, foreign branch income, tax-exempt gains from the sale of a foreign company with an underlying active business, foreign income to which a foreign tax credit has been claimed, and off-shore banking income.

For CFI purposes, an Australian CTE is:

- » An Australian resident company
- » An Australian resident corporate limited partnership
- » A corporate unit trust that is a resident unit trust
- » A public trading trust that is a resident unit trust.

Accordingly, where a Foreign Company is held through an interposed Australian company the CFI would become relevant for dividends paid to a non-resident of Australia. The outcome is that Foreign Company income would be foreign income on which foreign tax has been paid and therefore the actual dividend payments to non-residents would not suffer additional withholding tax.

Superannuation Guarantee Surcharge (SGC)

The superannuation guarantee legislation is designed to encourage employers to provide a minimum level of superannuation support for all employees regardless of how much they earn. The current minimum prescribed rate is 10.5% until and will increase by 0.5% each year until it reaches 12%.

Where employers provide less than the required minimum level of support, they are liable to pay a non-deductible charge called the Superannuation Guarantee Charge (SGC).

The SGC equals the superannuation guarantee shortfall, which is made up of:

- » The total of the individual superannuation guarantee shortfalls for all employees for the year.
- » An interest component.
- » The employer's administration component for the year.

Medicare Levy

The Medicare levy applies only to resident individuals. It has no application to non-residents or to companies.

The current Medicare levy is imposed at a flat rate of 2% on the taxpayer's entire taxable income unless taxable income is less than certain concessionary amounts in which case lower rates may apply.

An additional Medicare levy surcharge of up to 1.5% of taxable income can apply to high-income earners in certain situations.

Higher Education Contributions Scheme Charge (HECS) & Higher Education Program (HELP)

Higher education at universities other approved private higher education providers may be subsidised by the government and a student is only required to make a contribution, called Higher Education Contributions Scheme Charge (HECS), once their income exceeds a certain threshold.

The liability for HECS may be deferred and borrowed in the form of a relatively interest free loan from the government known as the Higher Education Loan Program (HELP). Once the individual commences fulltime employment and exceeds a certain level of income, repayment of the HELP loan is collected via the tax system.





State & Territory Taxes

Payroll Tax

Payroll Tax is levied by each of the six Australian States and two Territories regarding assessable wages paid or payable in respect of services performed wholly or mainly within a particular jurisdiction. In every case, there is a threshold below which Payroll Tax is not payable.

The residence of the employer is not normally relevant to Payroll Tax - the critical issue is where the service is performed.

If services are performed within one of the relevant jurisdictions, payroll tax will apply subject to the threshold tests in the state where the services are performed. If services are performed by an employee in more than one jurisdiction in a particular month, then the wages are subject to payroll tax in the state in which the employee has his principal place of residence in Australia.

The only instance in which the employer's residence is applicable in determining liability for payroll tax is where services are performed in more than one state during a month and the employee does not have a principal place of residence in Australia, or where it cannot be identified, in which case the employer's ABN registered address will be used to determine where payroll tax is liable to be paid. Certain planning opportunities exist and you should contact Hall Chadwick for further details.

Land Tax

Land tax applies equally to residents and non-residents who own land in the particular State or Territory jurisdiction in question.

Land tax is a State or Territory tax that is currently imposed by all six states of Australia and by the Australian Capital Territory. It is not imposed by the Northern Territory. In each case it is imposed on the value of the land, only the methods for determining value in this context vary from state to state.

With the exception of the ACT, liability for land tax rests with the owner on a particular date or at a particular point in time. In the ACT, where all land is owned by the Commonwealth, land tax is imposed on lessees.

In NSW and Victoria, the relevant moment to judge the ownership of the asset is midnight on 31 December in any given year. The dates for all other states but not the ACT are midnight on 30 June in any given year.

In the six States and in the ACT the owner's principal place of residence is generally exempt, although there are certain differing qualifying criteria which vary between jurisdictions.

In all States there is a threshold below which there is no land tax and above which the imposition of land tax can be quite significant.

Each State imposes its own land tax and accordingly it is imposed in relation to land owned by the taxpayer in that State. The Northern Territory does not levy land tax.

Land Tax Surcharge

Various States have introduced a land tax surcharge for foreign persons who own residential land.

For example, in NSW a 2% surcharge land tax applies, in addition to the base land tax amount.

Foreign persons include individuals, companies and trusts (amongst others), but there is an exclusion for individuals who do not reside in Australia, but are Australian citizens.

Stamp Duty

The rate of Stamp Duty varies from State to State and in respect of different types of documents relating to different types of transactions.

Most commonly, Stamp Duty is applied in respect of conveyances of real property and the total amount of Stamp Duty payable on this basis can be substantial.

For example, in New South Wales, where a property is transferred for an amount of \$1,000,000, the referable Stamp Duty payable is AUD \$40,432. Similar amounts are usually payable in other States.

The residence of transacting parties is not the critical feature which gives rise to Stamp Duty. Rather, the essential connecting factors that give rise to a liability to Stamp Duty in any State or Territory include:

- » Whether a document is executed within the jurisdiction.
- » Whether the transaction relates to property located within the jurisdiction.
- » Whether the transaction relates to "any matters or things done or to be done" within the jurisdiction.

Residents conducting business operations in Australia are subject to tax in a State or Territory if, for example, the transaction relates to property located within the particular State or Territory.

Foreign Purchaser Surcharge

New South Wales

An 8% surcharge purchase duty applies where a foreign person acquires NSW residential land.

Victoria

The foreign investor surcharge on residential stamp duty is 8%.

Queensland

A 7% additional Foreign Acquirer Duty applies where a foreign person acquires residential property.

In all States and territories, the surcharge is imposed on a foreign person, which generally includes a foreign natural person, corporation or trustee of a foreign trust. However, exactly who is included in this definition varies in each State or Territory.

Australia has a strong transfer pricing tax regime designed to avoid underpayment of tax by businesses with related-party international dealings.

Cross Border Tax Considerations

There is a critical distinction between an Australian resident and non-resident. The distinction is crucial as a resident is taxed on worldwide income whereas a non-resident is taxed only on Australian sourced income.

Residency for tax purposes is not necessarily the same as immigration purposes.

In particular, in the context of companies, to achieve and maintain non-resident status the relevant company should ensure that three things occur:

1. It is incorporated outside Australia
2. Its central management and control are outside Australia
3. Its power is controlled by non-Australian resident shareholders.

The first test is essentially a factual matter which can be satisfied with ease.

The second test is more complex. There is an authority to suggest that the place where the directors of the company meet to conduct the business of the company is the sole determinant of the place of central management and control. However, the authority for this proposition is old and may no longer reflect the complete picture. It is advisable to ensure that directors meetings occur outside Australia and that these meetings determine both policy and key operational matters relating to the company. Further, it is advisable that for tax purposes that at least the majority of the directors of the company are not Australian residents and practical day to day management of the company should, where possible, be outside Australia.

The third test is again clear-cut and simply requires that those who control the voting power of the company be resident outside Australia.

As part of the 2020-21 Budget, the previous government has proposed amendments to the existing legislation to clarify the position so that a foreign incorporated company only will be treated as an Australian tax resident if it has a 'significant

economic connection to Australia'. There has been a change of government since this was first announced, and it remains unclear whether this proposal will proceed. If the measure is enacted as originally announced, a company will only be a resident of Australia where both the company's core commercial activities are undertaken in Australia and its central management and control is in Australia. Taxpayers should have the option of applying the new law retrospectively from 15 March 2017 if these measures are enacted as proposed.

Double Taxation Agreements & Multilateral Instrument

Australia has entered into over forty comprehensive Double Taxation Agreements (DTAs) with countries such as the UK, the USA, France, Germany, Japan, New Zealand and China (PRC). The purpose of DTAs is to prevent double taxation and tax evasion, and foster cooperation between Australia and other international tax authorities by enforcing their respective tax laws.

The operation of the DTA is now affected by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, also known as the Multilateral Instrument (MLI). The MLI is a multilateral treaty that enables jurisdictions to swiftly modify the operation of their tax treaties to implement measures designed to better address multinational tax avoidance and more effectively resolve tax disputes.

The MLI entered into force for Australia on 1 January 2019. The extent to which the MLI will modify the operation of each of Australia's tax treaties will depend on the adoption positions taken by each jurisdiction at ratification, acceptance or approval of the MLI.

Based on other jurisdictions' known adoption positions the MLI is expected to modify the operation of, to varying degrees, many of Australia's tax treaties.

Income Tax

Clearly, the broadest impact is in relation to income tax where the treaties operate to achieve a number of results, particularly as follows:

- » Business profits are not taxed in Australia if they are derived by a taxpayer who is resident in a DTA country in circumstances where that DTA resident does not have a permanent establishment in Australia.
- » Interest, royalty and dividend income which flows from Australia to a person resident in a DTA country is taxed at (usually) reduced withholding tax rates.
- » Certain personal services income, which is ordinarily subject to tax in Australia, may be excluded from Australian tax by the DTA.

Capital Gains Tax

Complex issues arise in relation to whether or not the DTAs can apply so as to limit the taxing capacity of treaty partners in relation to Capital Gains Tax (CGT). For DTAs entered into before Australia's CGT commenced to operate (i.e., before 20 September 1985), the ATO now accepts that it does not have the right to tax capital gains made by a foreign resident from sources in Australia if the foreign resident does not carry on business through a permanent establishment in Australia. In these circumstances, the country of residence has exclusive taxing rights over capital gains. Where there is such a permanent establishment, capital gains sourced in Australia that are derived by such a permanent establishment should be taxed under the Business Profits Article of the DTA.

Some DTAs also contain an Alienation of Property article but this article in each DTA would differ in scope. For example, some agreements only deal with the alienation of land and interest in land, while others also deal with the alienation of other forms of property including business property (other than real property) and disposal of interest in an entity (such as shares) whose sole or principal assets are real property, including indirect interests.

A note of caution - the DTAs are similar in structure but different in a number of points of detail. You should not assume that one DTA is identical to another. Each needs to be independently considered.

Transfer Pricing

When related parties, such as a non-resident parent and an Australian subsidiary, transact with one another in relation to either goods and/or services (including for example making a loan to each other), the Australian Taxation Authorities are keen to ensure that this is done on such a basis so as not to deliberately or inadvertently reduce Australian tax that would be payable if the parties were not so related.

The bottom line, in relation to the complex issues raised by the concept of transfer pricing, is that parties who are not operating at arm's length when dealing with each other, should ensure that they have properly thought through and documented the reasoning to determine the price charged between themselves.

In particular, they should clearly document the process by which they have reached the related party price and that documentation should include reference to all functions, assets and risks which have been assumed by the respective parties in determining the arm's length pricing amounts. The documents should reveal both the pricing and methodology adopted.

In that way, upon any subsequent transfer-pricing audit, the parties would have clear, tangible and contemporaneous documentation to present in defence of the pricing that has been arrived at.

For transactions that have taken place in the past, it would be advisable to:

- » Review the pricing policies; If none exist, develop documentation having regard to the relevant transfer pricing principles mentioned above and in the various administrative rulings.
- » Where discrepancies are found, or inadequate documentation or inappropriate pricing is discovered, consider requesting an amended assessment to avoid penalties that can arise under audit.

For future/proposed transactions, in addition to the processes referred to above, one should consider approaching both the Australian and Foreign Revenue Authorities for an "Advanced Pricing Agreement (APA)". This is an agreement between the Australian Taxation Office, the relevant Foreign Tax Office and the relevant taxpayers under which for a given period of time the pricing methodology is agreed to by all parties. The Advanced Pricing Agreement is both time consuming and potentially costly in terms of legal and accounting fees, but in the long-term cost savings and certainty can be achieved.

Tax returns for companies, trusts, partnerships and superannuation funds have a special associated schedule,

titled "International Dealings Schedule". Entities operating in Australia that engage in international transactions with related overseas entities are required to provide information about those transactions on this form where its international related party dealings (including balance of loans) are more than \$2 million for a financial year.

Multinational Anti-Avoidance (MAAL) & Tax Transparency measures

The MAAL took effect in Australia from 1 January 2016 (regardless of when the scheme was entered into), and applies to tax benefits derived after 1 January 2016. The MAAL only applies to significant global entities. A significant global entity is a multinational group with annual global income exceeding AUD \$1 billion. Where the MAAL applies, the foreign entity will be taxed as if it had made the sales through a deemed Australian permanent establishment (PE). Higher penalties can potentially also apply.

The CbC reporting regime requires all Australian and foreign groups with an Australian presence with global turnover of more than AUD \$1 billion to lodge three "statements", being a CbC report, the master file and local file with the ATO. These reports provide the following information:

- » The CbC report contains information on the location of the economic activity undertaken by the multinational group (includes revenue, headcount, main business activities, taxable income and tax paid in each tax jurisdiction globally).
- » The master file provides a high-level description of the multinational group's business operations.
- » The local file describes the Australian entity's operations and cross border related party dealings.

Which files are required to be lodged in Australia will depend on whether they are required to be lodged with tax authorities by the foreign parent. Generally, an Australian subsidiary is required to lodge the master file and local file with the ATO, and its parent will lodge the Cbc in its own jurisdiction.

Australian businesses of multinational corporations with global income of AUD \$1 billion are required to lodge general purpose financial statements to the ATO by the time of filing the tax returns.

This may be the global consolidated financial statements that include the Australian subsidiary company, otherwise the Australian subsidiary company would need to prepare general purpose financial statements (rather than special purpose financial statements).

Following the enactment of the MAAL, the Australian government also introduced a new Diverted Profits Tax (DPT), which applies to income years commencing on or after 1 July 2017.

Unlike the MAAL, which is aimed at global entities which have sought to avoid a taxable presence in Australia, the DPT is designed to target the multinationals with a taxable presence in Australia that transfer profits offshore through related party transactions.

A 40% DPT will arise where two conditions are met:

- » **Effective tax mismatch:** This arises where a cross-border transaction, or a series of transactions, between an Australian taxpayer and a related party result in a reduced Australian tax liability for the Australian taxpayer and an increased overseas tax liability for the related party. For example, if there is a \$100 reduction in the Australian tax liability, but the related party only pays \$60 in another jurisdiction, an effective mismatch will arise.
- » **Insufficient economic substance test:** This test is met where it can be reasonably concluded based on the information available at the time to the Commissioner that the transaction was designed to secure a tax reduction. An arrangement will be taken to have sufficient economic substance (so that the DPT will not apply) where the non-tax financial benefits of the arrangement exceed the financial benefit of the tax reduction.

This affects significant global entities (that is, entities which, together with any related entities, have global annual revenue of \$1b or more) and Australia entity's turnover is \$25m or more.

Note that the DPT can and is intended to operate in situations where Part IVA and other anti-avoidance rules which require a dominant purpose of obtaining a tax benefit, do not.

Funding the Australian venture

Funding of the Australian venture can be arranged either in the form of debt, equity, or a combination of the two. In this regard a number of factors are relevant as follows:

1. In relation to inward investment into Australia, rules exist to restrict deductions for interest and related expenses to the extent debt funding exceeds 60% of the value of the Australian assets of the venture, where the interest expense exceed \$2M for a financial year. This is known as the Safe Harbour debt amount. Higher amounts of interest may be deductible under other debt tests which are available, however this usually requires complex calculations and benchmarking, and is also subject to higher scrutiny by the Australia Taxation Authorities. Transactions need to be arranged having regard to this constraint; otherwise, a denial of interest deductions could arise.
2. Interest normally payable on loans is fully deductible subject to the above and the borrowing entity in Australia is required to withhold 10% when paid to a non-resident.
3. The difference between debt and equity is complex; in essence if there is an effective non-contingent obligation on the part of the borrower to repay an amount that has been lent at some future time, it is debt. Otherwise, it is equity. The length of the agreement will be relevant here.
4. Australia now has anti-hybrid rules in place which may operate to deny an interest deduction where the interest is deductible in Australia but not assessable as income overseas. Where interest is deductible in Australia but not assessable as income overseas, the anti-hybrid rules would need to be examined to determine if interest remains deductible in Australia.
5. Dividends paid on equity investments are not deductible to the Australian taxpayer and are subject to a withholding tax of 30% if they are paid out of a pool of profits which have not been subject to tax in Australia (i.e., they are unfranked dividends). This rate of 30% is, however, reduced by virtue of a DTA, where applicable. The reduced rate can be 15% and, in some instances, as low as 5% or 0%.
6. Where the dividends are franked, i.e., they are paid out of a pool of profits that have already been subject to Australian corporate tax, there is no further withholding tax.

Pulling it all together – the practical implications

These include the following three critical aspects:

1. Determine the most appropriate business structure to adopt, having regard to the nature of the business involved and the nature of the participants in the ownership of the business. In particular, consider all alternatives and identify which structure is most appropriate to your needs.
2. Consider the most appropriate method of funding of the business venture having regard to factors such as how repatriation of profits can be achieved with minimal local and foreign taxes.
3. Give careful consideration as to how you arrive at pricing in relation to transactions between related parties. In particular, consider whether the pricing arrived at is justifiable having regard to comparable arm's length transactions, and how you document the methodology that has been used in such a manner so as to satisfy a future audit.
4. Consider the overall effective tax rate after paying Australian tax and repatriating Australian profits back to the home country, and how to minimise this with the optimal mix of interest, intercompany charges, and dividends, balancing this against the requirement for arm's length pricing as part of transfer pricing.
5. Consider an exit strategy if the plan is to exit Australia in the future, and the tax implications of doing so depending on the structure adopted.



Australian Corporations Law requires that financial statements be prepared for companies operating in Australia. Financial statements must be prepared in compliance with accounting standards, except in limited circumstances for small and non-reporting proprietary companies.

Financial Reporting

Accounting standards in Australia are set by the professional bodies under the umbrella of Accounting Professional and Ethical Standards Board (APESB), and are given the force of law under Corporations Law.

The Australia Accounting Standards are being constantly aligned to ensure compliance with International Financial Reporting Standards (IFRS).

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' only need to 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, referred to as 'Substituted Accounting Periods.'

A company must file an annual return with the Australian Securities Commission showing details of capital, shareholders, directors and charges on the company's assets. Except in the case of small proprietary companies, a copy of the audited financial statements must also be filed.

Audit requirements

A proprietary company is a company that restricts the right to transfer shares, has no more than 50 non-employee shareholders, and prohibits the invitation to subscribe in shares or debentures of the company.

A public company is a company that is not a proprietary company or is a body corporate that is a public company for the purposes of the Corporations Law of another jurisdiction.

Under certain circumstances a subsidiary of a foreign parent or a foreign corporation may have reduced audit reporting compliance requirements if appropriate class orders are applied for.

Hall Chadwick is an accredited auditor with the Public Company Accounting Oversight Board (PCAOB).

Companies which seek to raise public funds must adhere to the Corporations Law rules. Broadly, such companies can be grouped into entities known as "disclosing" entities which are subject to continuous disclosure and reporting requirements. Such entities include:

- » Entities listed on a stock market.
- » Entities raising funds under a prospectus document.
- » Entities which are the subject of a take-over.
- » "Borrowing Corporations".

Reports for such entities would include half yearly reports. Listed companies are also subject to the Australian Stock Exchange rules - "Listing" and "Business rules."

A more common vehicle is the "Proprietary Limited" - "Pty Ltd" company.

Depending upon the size of a Pty Ltd company, financial accounts may be required to be submitted to the ASIC and also audited.

Subject to obtaining relief from the ASIC as noted below, a company must lodge audited financial statements with the ASIC.

A "large" company is one which satisfies at least 2 of the following conditions:

- » 100 full time employees or more.
- » Consolidated gross revenue of \$50 million AUD or more.
- » Consolidated gross assets of \$25 million AUD or more.

If a company is the subsidiary of a foreign company, it is automatically required to prepare and lodge audited financial statements. However, the ASIC can grant relief from this requirement if certain tests are met. Please contact a Hall Chadwick Partner for details.

Subsidiary of an overseas company

Financial statements do not need to be lodged with the ASIC if an Australian company, which is a subsidiary of a foreign corporation:

- » Is not deemed to be a "large" company.
- » Is not part of a "large" group in Australia.
- » The Directors resolve that the company meets the above tests.
- » The relevant form is lodged with the ASIC (within the prescribed time limits) to seek the Commissioner's approval that the lodgement and audit concessions be granted.

The financial statements are also not be required to be audited.

Branch of an overseas company

A branch of a foreign company is required to lodge with the ASIC at least once every calendar year (including the year of registration):

- » A copy of its balance sheet, cash flow and profit and loss statement.
- » Such other documentation as the company is required to prepare by the law applicable to the foreign country in its place of origin.

However, a similar relief from reporting may be applied for in certain circumstances. The ASIC provides a concession from preparation and submission of audited financial statements such that the compliance burden placed on a branch is no more than that on a similar sized business incorporated as a proprietary limited company in Australia.

The conditions for relief from lodging audited financial statements of the foreign company must continually be monitored each year. Otherwise, audited financial statements of the foreign company (incorporating the Australian branch's activities) must be submitted on an annual basis.

ASIC's role is to protect users of financial accounts, regulate and enforce laws that are applicable to Australian Companies and to maintain a public database to provide certainty in commercial dealings.

ASIC administers annual returns with audited financial statements that are lodged (unless a concession is available) with the ASIC on an annual basis as well as the submission to the ASIC of Dealers, Brokers and Advisers reports on a six-monthly basis.





Legislation in Australia exists to protect consumers, the environment and the community while promoting fair trading and competition.

Other Legal Considerations

Trademarks

Australia has laws which provide for the exclusive use and enjoyment of a Trademark registered in Australia.

Australia has become a member of the Madrid protocol from 11th July 2001. This will allow the filing of International Trademark Applications.

An International Trademark application can now be lodged as a single document which covers up to 50 member countries.

The Australian Trademarks Office accepts applications. Countries for which coverage is required must be nominated in the application.

Patents

A patent is legally enforceable in Australia. Once registered, the owner of the patent is allowed the exclusive use and enjoyment of the intellectual property.

Copyright

Another form of protection in Australia is contained in the Copyright Act 1968. Protection is automatic without the need to register. As a result of international treaties, such as the Berne Convention, most foreign copyright owners are protected in Australia.

Trade Practices Law

The Trade Practices Law that operates in Australia governs Competition Law, the liability of companies for product failure as well as enforcing a regime of proper practice by corporations in the conduct of trade.

The legislation prohibits various business practices, such as primary and secondary boycotting, third line forcing, resale price maintenance and misuse of market power. Certain exemptions can be claimed from the Australian Competition and Consumer Commission (ACCC) to allow various business practices to operate notwithstanding their prohibitions. However, permission needs to be granted first by the ACCC who have to be satisfied as to the utility of the conduct sought to be approved.

The Trade Practices Law that operates in Australia governs

Competition Law, the liability of companies for product failure as well as enforcing a regime of proper practice by corporations in the conduct of trade. Australian Trade Practices Law also prohibits misleading and deceptive actions by individuals or by corporations in the conduct of business. Damages can be awarded against companies that engage in such practices and prosecutions can also be invoked.

Finally, manufacturers will be responsible for any liability of their product under the Trade Practices Laws. Care needs to be taken by manufacturers to ensure that products are safe and capable of operating as intended.

Hall Chadwick works with businesses to obtain any necessary advice for our clients and can make necessary introductions to specialist legal practitioners in this area if required.

Industrial Law in Australia

Australia has a number of legal instruments that govern employment relationships in Australia. First and foremost, and establishing a foundation in the employment context, is the common law, which has developed over the centuries and is sourced from the law of England. The basic principles of Contract Law and Commercial Law affect employment relations between employers and employees.

There are a number of unique features to Australian Employment and Industrial Law. These include the system of Awards which are essentially Court orders emanating from various industrial tribunals around the Commonwealth. These Awards regulate the work practices and conditions of many Australian employees.

In addition, there is legislation sourced from a number of Acts including the various State Industrial Relations Acts, the Federal Workplace Relations Act as well as Work Safety legislation found in the various jurisdictions.

Australian Privacy Principles

There are 13 Australian Privacy Principles underpinning the privacy protection framework in the Privacy Act 1988. These govern standards, rights and obligations, amongst others, the collection, use and disclosure of personal information. A breach of an Australian Privacy Principle is an 'interference with the privacy of an individual' and can lead to regulatory action and penalties.

Appendix A: Tax Rates & Tables

Included

INCOME TAX - RESIDENT

INCOME TAX NON RESIDENT

INDIVIDUAL MEDICARE LEVY

MEDICARE LEVY SURCHARGE

TAX OFFSETS/ REBATES

SUPERANNUATION/ TERMINATION PAYMENTS

DEPRECIATION/ CARS

FRINGE BENEFITS TAX

COMPANY TAX RATE

AUSTRALIAN INDIVIDUAL RATES/MEDICARE LEVY

RESIDENT TAX RATES - 2022-23

Taxable income \$	Tax payable \$ (excludes medicare)
0 - 18,200	Nil
18,201 - 45,000	Nil + 19% of excess over 18,200
45,001 - 120,000	5,092 + 32.5% of excess over 45,000
120,001 - 180,000	29,467 + 37% of excess over 120,000
180,001 +	51,667 + 45% of excess over 180,000

NON-RESIDENT TAX RATES - 2022-23

Taxable income \$	Tax Payable \$
0 - 120,000	32.5%
120,001 - 180,000	39,000 plus 37% of excess over 120,000
180,001 +	61,200 plus 45% excess over 180,000

MEDICARE LEVY SURCHARGE

The Medicare levy surcharge (MLS) is a tax for high income earners that don't hold private hospital insurance with a registered health fund.

2021-22 and 2022-23	\$	Tier 1 \$	Tier 2 \$	Tier 3 \$
Singles	0 - 90,000	90,001 - 105,000	105,001 - 140,000	140,001 +
Families ¹	0 - 180,000	180,001 - 210,000	210,001 - 280,000	280,001 +

MEDICARE LEVY SURCHARGE

Rates	0.0%	1.0%	1.25%	1.5%
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¹ For families with 2 or more dependants who are children, the surcharge thresholds to tiers 1, 2 and 3 are increased by \$1,500 for each dependent child after the first child.

Surcharge amount depends on the taxable income, reportable fringe benefits of the taxpayer, reportable superannuation contributions, and net investment losses (i.e. "income for surcharge purposes").

MEDICARE LEVY - 2021-22 THRESHOLDS

The general rate of the Medicare levy is 2% of taxable income, subject to exclusions and reduced levy as per table below.

Taxpayer	No levy if income does not exceed \$
Individual	23,365
Members of a family with:	(family income)
0 dependents	39,402
1 dependent	43,021
Each additional dependent	+3,619
Senior and pensioner Australians¹	36,925
Senior Australian w/spouse and 0 dependents	51,401
Each additional dependent	+3,619

¹ Entitled to Senior and Pensioner Tax Offset (SAPTO). Eligible seniors will not pay Medicare levy until they begin to incur an income tax liability.

Note: the thresholds for 2022-23 are unlikely to be known until May 2023 (usually announced in the Budget).

TAX OFFSETS/REBATES

HEALTH INSURANCE TAX OFFSET 2022-23

2021-22 ³	\$	Tier 1 \$	Tier 2 \$	Tier 3 \$
Singles	0 - 90,000	90,001 - 105,000	105,001 - 140,000	140,001 +
Families ¹	0 - 180,000	180,001 - 210,000	210,001 - 280,000	280,001 +

Health insurance tax rebate				
Aged under 65 ²	24.608%	16.405%	8.202%	0%
Aged 65 - 69 ²	28.710%	20.507%	12.303%	0%
Aged 70 or over ²	32.812%	24.608%	16.405%	0%

- Family income threshold increases by \$1500 for each Medicare Levy Surcharge dependent child after their first child.
- The rebate percentage figures apply from 1 April 2022.
- The thresholds are indexed and will apply until 30 June 2023, but the rebate percentages may change.

LOW MIDDLE INCOME TAX OFFSET 2022-23

Taxable income (TI) \$	Rebate \$
0 - 37,500	700
37,501 - 45,000	700 - [(TI - \$37,500) x 5%]
45,001 - 66,667	325 - [(TI - \$45,000) x 1.5%]
66,668+	Nil

LOW MIDDLE INCOME TAX OFFSET 2021-22

Taxable income (TI) \$	Rebate \$
0 - 37,000	675
37,001 - 48,000	675 + [(TI - \$37,000) x 7.5%]
48,001 - 90,000	1,500
90,000 - 126,000	\$1,500 less 3c for each \$1 over 90,000

The Low and Middle Income Tax Offset ended on 30 June 2022.

SUPERANNUATION/TERMINATION

SUPERANNUATION GUARANTEE - SUPPORT LEVELS

Year	Prescribed
2021-22	10%
2022-23	10.5%

Maximum contribution base for an individual employee for each quarterly contribution period is \$60,220 for 2022-23.

GENUINE REDUNDANCY/EARLY RETIREMENT

	2022-23 income year	2021-22 income year
Tax - Free	\$11,591 + (\$5,797 x years of service)	\$11,341 + (\$5,672 x years of service)
Excess	Taxed as Employment Termination Payment	Taxed as Employment Termination Payment

SUPER CONTRIBUTIONS - 2022-23

Contributions above the annual contributions caps will be subject to excess contributions tax levied on the individual.

2022-23 income year		
Type of contribution	Annual contributions cap - per person (\$)	Excess contributions tax
Concessional	27,500 ¹	N/A ²
Non-concessional	110,000 ⁵	47% ^{3,6}
TFN not quoted ⁴	N/A	47% ³

- From the 2019, if your total super balance is less than \$500,000 at the end of 30 June of the previous financial year, you may be able to increase your concessional contributions cap. To increase your cap you must have unused concessional contributions cap amounts for one or more of the previous 5 years (but not before 2018-19), and make concessional contributions in the year over the general concessional contributions cap.
- Excess concessional contributions are taxed at the taxpayers marginal rates.
- Includes the 2% Medicare levy.
- Where a member's TFN has not been quoted to a super fund by 30 June each year, this "no-TFN contributions income" is taxed at the outlined rate in the hands of receiving fund. A super fund must return non-concessional contributions within 30 days where the member has not quoted a TFN.
- From 1 July 2022, individuals under 75 may bring forward the non-concessional cap for the next 2 years (up to \$330,000), if their super balance is less than \$1.48M.
- From 1 July 2013, taxpayers have a release option in relation to non-concessional super contributions.

TAX OF SUPERANNUATION BENEFITS 2022-23

Age of recipient	Payments from taxed fund ¹		Payments from untaxed fund ¹	
	Lump Sum	Income Stream	Lump Sum	Income Stream
60+	Tax-free ^{2,3}	Tax-free ^{2,3}	15% - \$0 - \$1.65m ³ 45% - \$1.65m+	Tax at marginal rate but eligible for a 10% tax offset
55 ⁵ - 59	0% - \$0 - \$230,000 15% - \$230,001+	Taxed at marginal rates but eligible for 15% tax offset	15% - \$0 - \$230,000 30% - \$230,000 - \$1.65 m 45% - \$1.65m+	Taxed at marginal rates with no tax offset
0 - 54 ⁵	20%	Taxed at marginal rates with no 15% tax offset ⁶	30% - \$0 - \$1.65m 45% - \$1.65m+	Taxed at marginal rates with no tax offset

- Separate tax treatment applies for lump sums paid from an untaxed source (i.e. an element untaxed in fund) depending on the lump sum amount and recipient's age.
- Non-assessable, non-exempt income (i.e. not counted in working out tax payable on taxpayer's other assessable income).
- Untaxed plan cap amount (2022-23 - \$1.65m)
- Table excludes Medicare levy.
- Preservation age of 55 phasing to age 60 for those born after 1 July 1960.
- Tax offset 15% available if a disability super benefit

EMPLOYMENT TERMINATION PAYMENTS 2022-23

Component	Tax payable (including Medicare)
Tax free ¹	Nil
Taxable ²	First \$230,000 taxed at 32% ³ and excess taxed at 47% ^{4,5} . Lifetime cap.
• If under preservation age ³	
• If preservation age and over	First \$230,000 taxed at 17% ³ and excess taxed at 47% ^{4,5} . Lifetime cap.

- Includes the pre-July 1983 segment and invalidity segment
- Payment must be received within 12 months of taxpayer's termination of employment. Cannot be rolled over to a superannuation fund.
- Preservation age of 55 phasing to age 60 for those born after 1 July 1960.
- Table includes Medicare levy.
- A whole of income cap of \$180,000 can also be applied to certain ETPs and reduce thresholds.

SUPER CONTRIBUTIONS - SPOUSE REBATES 2022-23

Spouse assessable income and reportable fringe benefits (SAI) ³ \$	Maximum rebatable contributions (MRC) \$	Maximum rebate ¹ \$
0 - 37,000	3,000	540 ²
37,000 - 39,999	3,000 - [SAI - 37,000]	MRC x 18% ²
40,000 +	Nil	Nil

- The rebate is not available if an employer deduction is allowed, or you claimed a tax deduction for the contributions made for your spouse.
- The actual amount of the contribution x 18% will be the maximum rebate where it is less than these figures.
- Assessable income, reportable fringe benefits and reportable employer super contributions.

SUPER - GOVERNMENT CO-CONTRIBUTIONS

2022-23 Income year		2021-22 Income year	
Adjusted taxable income (AI) ¹	Maximum Govt co-contribution ² \$	Adjusted taxable income (AI) ¹	Maximum Govt co-contribution ² \$
0 - 42,016	500	0 - 41,112	500
42,016 - 57,016	500 - ([AI - 42,016] x 0.03333)	41,112 - 56,112	500 - ([AI - 41,112] x 0.03333)
57,016+	Nil	56,112+	Nil

- Assessable income, reportable fringe benefits and reportable employer super contributions.
 - If amount payable < \$20, minimum payment = \$20.
- Government co-contribution (up to max \$500) is 50% of eligible personal superannuation contribution made to a complying super fund or RSA during income year. Must be under age 71 and lodge a tax return with super balance < \$1.7M and not contributed more than non-concessional contributions cap.

PENSIONS & ANNUITIES - % FACTORS 2022-23

Age of beneficiary	0-64	65-74	75-79	80-84	85-89	90-94	95+
Standard percentage factor ^{1,2}	2%	2.5%	3%	3.5%	4.5%	5.5%	7%

- Pensions commenced under a transition to retirement income stream (age 55+) cannot withdraw more than 10% of the account balance in any one year. The tax-free segment is tax-free regardless of age of pensioner. Taxable component is tax-free from age 60, if paid from a taxed source (a 15% rebate applies for those aged 55-59).
- Pension factors have been reduced by 50% in FY 2023 as part of Government's Covid-19 response.

DEPRECIATION/CARS

SMALL BUSINESS ENTITIES - 2022-23

- Immediate write-off the full value of an eligible depreciable asset acquired from 7:30pm AEDT on 6 October 2020 and first used or installed by 30 June 2023 for businesses with aggregated turnover < \$5 billion, but can opt out by choice and claim depreciation under other rules (see below).¹
 - Other depreciating assets allocated to general small business pool²
 - Deduction (on diminishing value basis) is generally opening pool balance x 30% for general pool. Half pool rate (i.e. 15%) for new acquisitions (in the first year).
 - Certain depreciating assets are excluded, e.g. buildings.
- Full expensing in the year of first use will apply to new depreciating assets and the cost of improvements to existing eligible assets. Eligible businesses with aggregated turnover less than \$50 million can immediately deduct new or second-hand assets.
 - Eligible businesses with aggregated turnover less than \$10 million can deduct the entire balance of the pool at the end of the income year while full expensing applies.

UNIFORM CAPITAL ALLOWANCE SYSTEM - 2022-23

Decline in value of assets worked out using Prime Cost (PC) method or Diminishing Value (DV) method:

PC method	DV method
Assets cost ¹ x (days held/365 ²) x (100%/Assets effective life)	Base value ¹ x (days held/365 ²) x (200%/Assets effective life)

- Base value is either the cost of the asset (in the first income year) or the opening adjustable value for that year (in later income years).
 - "365" does not become "366" for a leap year.
- Apportionment is required in the year of acquisition or disposal and where the asset is also used for non-taxable purposes.
 - Pooling for low cost/low value depreciating assets (i.e. cost/value <\$1,000) is 18.75% in the year of allocation and 37.5% pa thereafter.
 - Pooling is also allowed for "in-house software" expenditure but it is depreciated at a different rate to the low cost/low value pool.
 - Immediate deduction for non-business taxpayer for assets costing \$300 or less.
 - Certain assets are excluded from uniform capital allowance system, e.g. buildings, certain primary production assets, and some vehicles.

CAR DEPRECIATION COST LIMIT

The 2022-23 motor vehicle depreciation cost limit is \$64,741 (2021-22 \$60,733)

CAR EXPENSES - PER KILOMETRE RATES

Business km travelled ¹	Cents per km/Business usage	Maximum deductions \$
< 5,000	78 ²	3,900
Any	Business usage ¹	N/A

- The Commissioner will also allow taxpayers to claim their car expenses for their business related usage. A logbook must be kept for a minimum 12 week period.
- Rate increased to 78 cents per KM from 1 July 2022 and is current rate to FY 23.

BUILDING WRITE-OFF

Type	Construction commenced	Rate %
Short-term traveller accommodation	27/2/92+	4.0
	16/9/87-26/2/92	2.5
	22/8/84-15/9/87	4.0
	22/8/1979 to 21/8/1984	2.5
Non-residential income producing	20/7/82-21/8/84	4.0
	22/8/84-17/7/85	
All income producing	18/7/85 - 15/9/87	2.5 ¹
	16/9/87-26/2/92+	
Industrial activities and certain buildings connected to industrial activities	27/2/92+	4.0

- 4% rate may be available if contractual arrangements were entered into before 16 September 1987
- May include buildings used for R&D activities

PRIVATE COMPANY LOANS - BENCHMARK INTEREST

Income year	Interest rate %
2022-23	4.77
2021-22	4.52

FRINGE BENEFITS TAX

FBT RATE AND GROSS-UP FORMULA

The rate of fringe benefits tax for the year commencing 1 April 2021 is 47%¹ (no change from 1 April 2017).

Fringe benefit type	Type 1 Gross Up Rate - input tax credit available	Type 2 Gross Up Rate - all other cases
2022 and 2023 FBT years (31 March 2022 and 2023)	2.0802	1.8868

FBT - BENCHMARK INTEREST RATE

The statutory benchmark interest rate for the 2021-22 and 2022-23 FBT year is 4.52% per annum.

FBT - CAR STATUTORY PERCENTAGES

For contracts entered into after 7:30pm (AEST) on 10 May 2011, the statutory fraction for cars is 20%. Cents per kilometer rates for vehicles other than cars.

Engine Capacity	FBT Year 2020-21 (%)	FBT Year 2021-2022 (%)	FBT Year 2022-2023(%)
0 - 2,500 cc	56 cents	56 cents	58 cents
Over 2,500 cc	67 cents	67 cents	69 cents
Motorcycles	17 cents	17 cents	17 cents

COMPANIES

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TAX RATE 2022-23

Income year	Tax rate %
Companies other than Base Rate Entities	30
Companies that are Base Rate Entities	25 ¹

- A Base Rate Entity is one which has aggregated turnover of less than \$50M for the year ended 30 June 2023 and passive income of no more than 80% of total assessable income.
- Different time periods apply for companies with a substituted accounting period.

Appendix B: Case Studies

CASE STUDY 1

US investor purchasing commercial property in Australia

On 1 November 2020, a US investor buys an office block in Melbourne, Australia, for \$12 million. The investor intends to purchase the property through an Australian private company, which will be directly and wholly owned by the investor's US corporation.

The overseas investor plans to arrange a loan of \$11 million to be provided by an Australian bank at 6.25% interest only. The balance of the purchase cost will be financed by equity.

During the year ending 30 June 2022, the projected rental income is expected to be \$800,000. The interest expense will be \$990,000 and there should be other incidental expenses of \$100,000.

The overseas investor plans to sell the Australian property in August 2024 at its projected market value of \$15 million. It plans to repatriate the funds to the home country.

Question:

What Australian tax and related issues should the investor be aware of?

Considerations:

1. FIRB
2. Location of the entity to own the shares in the Australian company
3. Unit trust rather than company
4. GST
5. Legal fees
6. Land Tax
7. Thin capitalisation
8. Debt / equity
9. Loan from an Australian bank vs. loan from an offshore bank
10. Depreciation and other deductions
11. Losses
12. Capital gain on sale
13. Repatriation of funds
14. Return on investment
15. Tax treaty issues
16. Withholding tax.

CASE STUDY 2

International joint venture purchasing Australian business with plans to franchise

A Hong Kong investor wishes to purchase a hotel in Sydney as a joint venture with a European investor. Their long-term intention is to acquire more hotels in other Australian locations and sell or float the Australian business. They have substantial funds for the purchase of the first hotel.

As a separate venture, they are also considering franchising the hotel name, so they will receive commissions / royalties from new hotels, whereby they will own the real estate but will not operate the hotel business, i.e., they would be landlords.

Question:

The investors have asked for advice on all the issues they should consider before proceeding with the investment?

Considerations:

1. Structuring each investment - unincorporated or incorporated joint venture, partnership or joint venture?
2. Tax treaty issues
3. Funding, including thin capitalisation
4. GST
5. Losses
6. Depreciation / balancing adjustments
7. Capital gain on sale
8. Repatriation of funds
9. Return on investment
10. Withholding tax on royalties.

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We focus on understanding what is important to you and deliver solutions that drive success in your business and growth in your private wealth.

As one of Australia's top 20 accounting firms Hall Chadwick collaborates the talent and skills of many to deliver solutions across Australia.

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