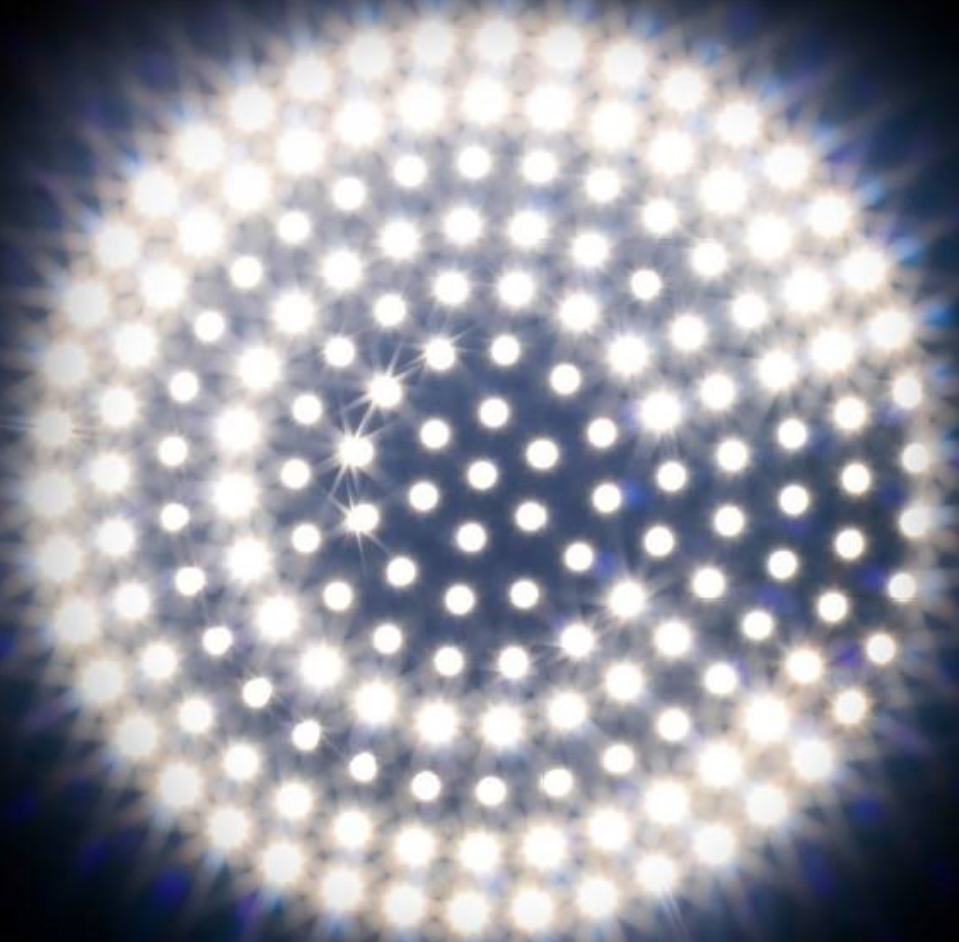


**Deloitte.**



**Taxation and Investment  
in Australia 2017**

# Contents

## **1.0 Investment climate**

- 1.1 Business environment
- 1.2 Currency
- 1.3 Banking and financing
- 1.4 Foreign investment
- 1.5 Tax incentives
- 1.6 Exchange controls

## **2.0 Setting up a business**

- 2.1 Principal forms of business entity
- 2.2 Regulation of business
- 2.3 Accounting, filing and auditing requirements

## **3.0 Business taxation**

- 3.1 Overview
- 3.2 Residence
- 3.3 Taxable income and rates
- 3.4 Capital gains taxation
- 3.5 Double taxation relief
- 3.6 Anti-avoidance rules
- 3.7 Administration
- 3.8 Other taxes on business

## **4.0 Withholding taxes**

- 4.1 Dividends
- 4.2 Interest
- 4.3 Royalties
- 4.4 Branch remittance tax
- 4.5 Wage tax/social security contributions
- 4.6 Distributions from MITs

## **5.0 Indirect taxes**

- 5.1 Goods and services tax
- 5.2 Capital tax
- 5.3 Real estate tax
- 5.4 Transfer tax
- 5.5 Stamp duty
- 5.6 Customs and excise duties
- 5.7 Environmental taxes
- 5.8 Other taxes

## **6.0 Taxes on individuals**

- 6.1 Residence
- 6.2 Taxable income and rates
- 6.3 Inheritance and gift tax
- 6.4 Net wealth tax
- 6.5 Real property tax
- 6.6 Social security contributions
- 6.7 Compliance

## **7.0 Labor environment**

- 7.1 Employee rights and remuneration
- 7.2 Wages and benefits
- 7.3 Termination of employment
- 7.4 Employment of foreigners

## **8.0 Deloitte International Tax Source**

## **9.0 Contact us**

# 1.0 Investment climate

## 1.1 Business environment

Australia is an independent country within the Commonwealth of Nations. Australia comprises six states and two territories. The head of state is Queen Elizabeth II, represented in Australia by the governor-general, six state governors and two territory administrators. Australia's head of government is the prime minister.

There are three levels of government: federal (commonwealth), state and local. Australia has a federal parliament, based on the British or Westminster parliamentary model, and separate state and territory parliaments. The federal government is responsible for foreign affairs, defense, immigration, communications, social services, banking, corporate regulation and income taxation. The states, territories and municipalities also levy certain taxes, but do not levy income tax.

Economic activity historically has been focused on the country's eastern seaboard, where most of the population lives. Substantial mining activity is undertaken in various regions, especially Western Australia and Queensland. As in most developed countries, the services sector generates the bulk of GDP.

Australia is a member of the Organization for Economic Co-operation and Development (OECD), the World Trade Organization (WTO), the Asia Pacific Economic Cooperation (APEC) and the G20.

### OECD member countries

Australia	France	Korea (ROK)	Slovakia
Austria	Germany	Latvia*	Slovenia
Belgium	Greece	Luxembourg	Spain
Canada	Hungary	Mexico	Sweden
Chile	Iceland	Netherlands	Switzerland
Czech Republic	Ireland	New Zealand	Turkey
Denmark	Israel	Norway	United Kingdom
Estonia	Italy	Poland	United States
Finland	Japan	Portugal	

### Enhanced engagement countries

Brazil	India	Indonesia	South Africa
China			

### OECD accession candidate countries

Colombia	Costa Rica	Lithuania
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\*Accession date 1 July 2016

## Price controls

The government has not enacted laws regulating prices generally, but it has the authority to do so. Australian states retain the power to impose price controls, although the range of goods actually subject to control is diminishing.

There are several price-regulating laws. The Competition and Consumer Act 2010 empowers the Australian Competition and Consumer Commission (ACCC) to examine pricing in industries placed under surveillance by the federal government. The intent of these provisions is to promote competitive pricing wherever possible and to restrain price increases in markets where competition is less than effective. The ACCC may (1) monitor prices, costs and profits of an industry or business and hold companies accountable for their pricing policies; (2) impose formal surveillance, or price vetting, of

companies operating in markets where competition is ineffective and where there is no immediate prospect of this changing; or (3) hold an inquiry when the outcome of the price surveillance procedure is perceived to be unsatisfactory.

## Intellectual property

Intellectual property laws in Australia provide protection for copyrighted works (including computer software), patents, trademarks, designs, plant varieties, circuit layouts, confidential information, business names and trading styles. Persons or corporate bodies of any nationality may acquire intellectual property protection in Australia, subject to the relevant requirements.

Disputes involving intellectual property usually are litigated in the Federal Court of Australia, a national court.

Australia's intellectual property laws provide greater protection than multilateral agreements, such as the WTO's Trade-Related Aspects of Intellectual Property (TRIPS) agreement and World Intellectual Property Organization (WIPO) treaties.

Australia is party to the major international conventions.

## Copyrights

Australia's copyright law is contained in the Copyright Act 1968 and amendments thereto, and also is based on court decisions. Copyright is assigned for the life of the creator, plus 70 years.

Remedies for copyright infringement include injunctions, damages or an accounting of profits, conversion damages and additional damages (for flagrant violations) or delivery for destruction. Certain infringing conduct also constitutes a criminal offense.

## Patents

A patent gives its owner a statutory monopoly, for instance, the exclusive right to exploit the claimed invention. Patents generally last for 20 years. The validity of a patent may be challenged on various grounds, including the absence of novelty or inventiveness. Remedies for infringement include an injunction (restraining order), damages, a declaration or an accounting of profits and delivery for destruction.

Applicants for patents are allowed a grace period during which an invention still may be protected, in certain circumstances, even if it is made public. The Commissioner of Patents may grant a valid patent for such an invention if the applicant files a complete application within 12 months of the disclosure.

## Trademarks

Trademarks are protected through common law action, provisions in the Competition and Consumer Act 2010 that prohibit misleading and deceptive conduct and registration under Australia's Trade Marks Act 1995.

The registration threshold is "whether the mark is capable of distinguishing"; even marks lacking an inherent capacity to distinguish can meet the standard with distinctiveness acquired through use. Unregistered or unregistrable marks still may be protected by a "passing-off" action or protected against misleading conduct under the Competition and Consumer Act 2010 and under state-based consumer-protection legislation.

Once a trademark is registered, rights are retroactive to the date of application. After a 10-year term, a mark may be renewed for successive 10-year periods.

Interests (such as a security interest) in a registered trademark may be recorded in the trademark register. A trademark may be transferred with or without the goodwill of the business connected with the relevant goods and/or services. Partial assignment of a trademark is possible, so that the assignment applies to only some of the trademarked goods and/or services, but geographically-limited assignments are not permitted.

Australia is a signatory to the Madrid Agreement on the International Registration of Marks. This lets an Australian trademark owner file a single application in English and pay a single fee to seek protection of a mark in all or any of the other 98 members that are parties to the treaty.

## Industrial designs and models

New or original designs are protected by the Designs Act 2003. Registration protects the unique shape, pattern, configuration and ornamentation of a design, including industrial designs, from

innocent or deliberate imitation. The maximum term for design protection is 10 years. The validity of a design may be challenged, with the usual remedies for infringement being available.

## **Confidential information**

Confidential information and know-how are protected under common law that prevents disclosure of confidential information when imparted, subject to confidentiality and use restrictions. A confidentiality agreement often is used to stop employees from revealing secrets or proprietary knowledge during and after their employment or association with a business.

## **1.2 Currency**

The currency in Australia is the Australian dollar (AUD).

## **1.3 Banking and financing**

Australia has a competitive banking system and a wide range of other financial intermediaries. Major providers of capital include banks (debt), insurance companies (equity and debt) and superannuation funds for pensions (equity and debt). The principal services provided by banks include deposit-taking, lending, payments and international transactions, management of electronic accounts and risk exposure, issuance of credit cards and clearance of checks and other payment instruments, including smart cards.

Banks have interests in a range of nonbanking operations in and outside Australia. These include finance companies; money market corporations (which may be merchant banks); bullion dealers; brokers of securities, commodities, futures and options; online stockbrokers; property companies; and venture capital firms. They also offer nominee and custodian services.

## **1.4 Foreign investment**

The federal government encourages foreign investment that is consistent with community interests. The government's policy should be considered in conjunction with the Foreign Acquisitions and Takeovers Act 1975 (FATA) and the Foreign Acquisitions and Takeovers Regulations 1989.

Under the foreign investment policy and the FATA, certain foreign investment proposals require prior approval. These include proposed investments in Australian land corporations/trusts, acquisitions of interests in an Australian business where the value of the gross assets is above AUD 252 million (indexed annually on 1 January) and direct investments by foreign governments and their agencies, irrespective of size. Some thresholds are higher for foreign nongovernment investors under the terms of the relevant free trade agreements (e.g. those with Chile, China, Japan, Korea (ROK), New Zealand and the US). Rules are more restrictive, with lower thresholds, for foreign government investors, or investments in agribusinesses, agricultural land and mining tenements. Approval of proposals that would result in the acquisition of control of an Australian company or business or an interest in real estate will be denied if the investment is deemed contrary to the national interest.

Australia's foreign investment policy applies to foreign persons. A foreign person is defined as any of the following:

- An individual not ordinarily resident in Australia;
- A corporation in which an individual not ordinarily resident in Australia or a foreign corporation holds a substantial interest;
- A corporation in which two or more persons, each of whom is either an individual not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest;
- The trustee of a trust estate in which an individual not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- The trustee of a trust estate in which two or more persons, each of whom is either an individual not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

A substantial interest exists where a foreign person (and associates) has 15% or more of the ownership or several foreign persons (and associates) together have 40% or more of the ownership of a corporation, business or trust.

Proposals for foreign investment are submitted to the Foreign Investment Review Board (FIRB), which examines proposals for acquisitions and new investment projects and makes recommendations to the Treasurer. The FIRB's functions are advisory, and final responsibility for making decisions on proposals rests with the Treasurer.

Industries in which there are limitations on foreign equity include banking, airlines and airports, telecommunications and the media.

Due to increased scrutiny over the taxation affairs of foreign investors in Australia, some FIRB approvals may now be granted subject to the satisfaction of certain tax conditions, which may include ongoing tax reporting obligations.

## 1.5 Tax incentives

### Research and development (R&D) tax incentive

An R&D tax incentive program applies. Foreign entities that are tax resident in Australia or that carry on a business via a permanent establishment (PE) in Australia may be eligible R&D entities in their own right. Additionally, an Australian entity or a PE can carry on R&D activities on behalf of a foreign parent or body corporate, provided certain conditions are satisfied.

Under the R&D tax incentive program, eligible expenditure on eligible R&D activities is not deductible for tax purposes; instead, companies with an aggregated group turnover of less than AUD 20 million are entitled to a 43.5% refundable tax offset and larger companies are entitled to a 38.5% nonrefundable tax offset. (For assessments for income years commencing before 1 July 2016, companies with an aggregated group turnover of less than AUD 20 million were entitled to a 45% refundable tax offset and larger companies were entitled to a 40% nonrefundable tax offset.)

The maximum expenditure eligible for the R&D tax incentive is AUD 100 million. The offset is deducted from the basic income tax liability after franking credits and foreign income tax offsets (if any) have been deducted. Excess nonrefundable amounts may be carried forward and utilized under certain conditions.

The definition of eligible R&D activities focuses on experimental activities whose outcome cannot be known in advance and that are carried out to generate new knowledge. Various integrity measures may apply to increase the tax liability where the products of R&D activities are sold or the costs are recouped, or a government grant is received.

### Early stage innovation company (ESIC) tax incentives

As from 1 July 2016, investors of an Australian ESIC have access to certain tax incentives. Whether a company qualifies as an ESIC is tested at the point immediately after the issue of the tranche of shares for which tax incentives are to be granted. The test requires the ESIC to meet certain registration timing requirements, meet certain income and expense thresholds, have no equity interests listed on any stock exchange and pass certain innovation requirements.

The investors of an ESIC will be eligible for the following:

- A nonrefundable carryforward tax offset equal to 20% of the amounts paid for newly issued equity interests (shares) in the ESIC, provided the investor does not fall within the scope of the list of specified exclusions. This tax offset is capped at AUD 200,000 and must be used in priority above R&D tax offsets (for company investors).
- Concessional capital gains tax (CGT) treatment for interests in an Australian ESIC if the investor qualifies for the 20% nonrefundable carryforward offset. Any capital gains arising from any CGT event occurring in respect of a share held for more than 12 months, but less than 10 years, may be disregarded (i.e. treated as tax exempt). Otherwise, if still held on the 10th anniversary of its issue, the first element of the cost base and reduced cost base of the share becomes its market value on that date. Any capital loss arising from any CGT event occurring before the 10th anniversary of its issue is disregarded.

### Investment Manager Regime (IMR) concession

Australia's IMR provides nonresidents (e.g. hedge funds) with an Australian income tax exemption for returns or gains in respect of the disposal of their investments that otherwise may be subject to Australian tax. Nonresidents qualify for the IMR exemption for an income year if they invest in an "IMR

financial arrangement" directly in Australia (direct IMR concession) or invest in Australia via an Australian fund manager (indirect IMR concession).

If an entity is entitled to an IMR concession, returns or gains derived from the disposal of shares, loans or derivatives will be exempt from Australian income tax. Amounts that are subject to withholding tax, such as dividends or interest, will not be entitled to the IMR concessions and will continue to be subject to existing Australian withholding tax law. These concessions were introduced by 2015 amendments to the IMR regime (IMR 3) and apply to the 2015-16 and later financial years. However, qualifying taxpayers may elect to apply them to income years from 2011-12.

### Other incentives

Various other incentives also are available (e.g. film tax incentives).

The governments of Australia's six states and two territories offer a range of incentives to local and foreign companies, including limited direct financial assistance, holidays from state taxes and charges and concessional rentals of industrial land.

## 1.6 Exchange controls

The government formulates exchange control policies with advice from the Reserve Bank of Australia (RBA, the central bank) and the Treasury.

The RBA, entrusted with protecting the currency, has the power to implement exchange controls, although there currently are none. There are no guarantees against inconvertibility.

Instead of exchange controls and tax screening mechanisms, the government relies on two systems to monitor exchange and remittance: the accruals or attributions system for taxing certain foreign-source income, and the reporting requirements of the Financial Transaction Reports Act 1988.

The tax legislation lists countries with tax regimes comparable to that of Australia, thereby identifying by omission countries that may function as tax havens. The tax authorities may deem income earned by a subsidiary in a tax haven to have accrued to the company's Australian parent and may tax the income accordingly, even if the funds have not been remitted to Australia.

Under the Financial Transaction Reports Act 1988, certain currency movements must be reported to the Australian Transaction Reports and Analysis Centre (Austrac). Persons moving AUD 10,000 in cash or the equivalent in foreign currency into or out of Australia, and banks making electronic funds transfers of any size into or out of the country, must report the movement to the agency. The tax authorities use Austrac's records to determine whether persons remitting funds to tax havens have fulfilled their tax obligations.

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 provides Austrac with additional financial intelligence to prevent and detect money laundering and terrorism financing.

# 2.0 Setting up a business

## 2.1 Principal forms of business entity

The most widely used forms for doing business in Australia are the limited liability company, sole proprietorship, partnership, corporate limited partnership, trust, joint venture and branch of a foreign company.

The Corporations Act 2001 permits a limited liability corporation to take one of two main forms: a private company (proprietary limited or Pty Ltd) or a public company (limited or Ltd). Other corporate forms are available (such as those limited by guarantee and those formed under royal charter or Acts of Parliament), but these are infrequent in normal business practice.

A foreign corporation can operate in Australia by incorporating an Australian subsidiary or registering as a foreign corporation and operating a branch office.

### Formalities for setting up a company

An application for registration as an Australian company can be made to the Australian Securities and Investments Commission (ASIC). When a company is registered under the Corporations Act 2001, it automatically is registered as an Australian company and can conduct business throughout Australia without having to register in individual states or territories.

All corporate entities must report regularly on their shareholders, directors, executives and general financial position to the ASIC, and this information is available to the public. The ASIC polices adherence to the companies and securities law, and may prosecute breaches in the federal court.

The status of a corporation (public or private) may not be the same under federal tax law as under company law. A company that is private under company law, and incorporated as such, might have public status under the tax law. For example, a private subsidiary of a public company usually is deemed to be public for tax purposes.

To be considered public for tax purposes, a company ordinarily must meet two tests: (1) its shares, other than fixed preference shares, must, for tax purposes, be quoted on the official list of a stock exchange in Australia or abroad at the end of the income year; and (2) at no time during the tax year may 20 or fewer persons receive, or be entitled to receive, 75% of the dividends paid, or hold or have the right to acquire 75% of the equity capital or voting power. A subsidiary that is (or is capable of being) more than 50% controlled by a public company also is considered public. In certain circumstances, the Commissioner of Taxation can designate as public other entities that fail to meet the tests.

Conversely, an entity may be registered as a public company under company law but fail to meet the tests for classification as public for tax purposes. Private and public companies generally are taxed in the same manner, although the tax law may provide for different treatment in certain cases (e.g. private company loans to shareholders).

The tax law distinguishes between resident and nonresident companies based on the place of incorporation, the location of a company's central management and control and the residence of the shareholders that control the voting power.

### Forms of entity

#### Requirements for a public or private company

**Capital:** *Both:* There is no minimum or maximum nominal or paid-up capital. Shares may be issued for cash or other consideration, but details must be reported to the ASIC. No legal reserves are required.

**Founders, shareholders:** *Ltd:* There must be at least one member, but no maximum is stipulated. Registers must be kept of shareholders, including their names, addresses, occupations and dates of acquisition and disposition of shares. *Pty Ltd:* There must be at least one member and a maximum of 50 nonemployee shareholders. The list of shareholders must be filed annually.

**Board of directors:** *Ltd:* There must be at least three directors, two of whom must be resident in Australia. Information on directors, including their shareholdings in the company, must be reported



annually. Directors must disclose to one another any interest in proposed contracts. *Pty Ltd*: There must be at least one director, who must be Australian resident. Information on directors and their other directorships must be filed annually.

**Management:** *Both*: There are no special requirements.

**Taxes and fees:** *Both*: ASIC fees payable on registration include AUD 34 to reserve a name for one year (for a new Australian company), AUD 469 to register a company with share capital and AUD 2,350 to register a managed investment scheme.

**Types of shares:** *Ltd*: All shares must be registered and all companies must keep share registers. Common, cumulative preferred shares are permitted, among others, as are multiple-vote shares (usually designated by Class A, Class B, etc.). A public company may invite the public to subscribe for shares, debentures and other securities; alternatively, it may operate as an unlisted public company. To list on the Australian Securities Exchange (ASX), a company must satisfy the exchange's listing requirements, such as the size of its capital base and the number and spread of its shareholders. *Pty Ltd*: The same rules apply, where applicable. A private company may issue shares privately for cash or consideration to individuals or companies, and may arrange secured loans.

**Control:** *Ltd*: A simple 51% majority normally is all that is needed, but companies may limit voting rights of foreign shareholders. Shareholders may vote by proxy. Annual meetings are required, and members must receive statements in advance. Issues of more shares, or a change in the memorandum or articles, require a special resolution (three-fourths majority) in accordance with the articles. "Oppressed" minority shareholders may approach the courts for protection. *Pty Ltd*: A simple 51% majority normally is all that is needed; two persons (present in person or by proxy) constitute a quorum (unless there is only a single member in the company).

## Requirements for a partnership

Two or more persons, usually up to a maximum of 20 (except in the case of certain professional partnerships, such as legal and accounting firms), may agree to carry on a business in partnership. Each partner is treated for tax purposes as having an individual interest in the net income and assets of the partnership. A company may be a partner in a partnership with another company or with individuals.

A partnership is required to file an income tax return for the income of the partnership, but the partnership itself is not liable to pay income tax on such income. Each partner is required to file an individual tax return that shows the net distribution of income and losses (if any) from the partnership, and each partner is liable to pay income tax on his/her share of the net income at his/her marginal tax rate.

A partnership asset is treated for CGT purposes as being owned by the partners individually (and not the partnership) in proportion to each individual partner's interest in the partnership. As a result, capital gains or losses arising as a result of CGT events occurring in respect of partnership assets (e.g. sale or disposal) must be disclosed in each partner's tax return.

## Requirements for a trust

Trusts are a common form of investment vehicle, including for property investments and sometimes for business operations. Generally, trusts are treated as flow-through entities for tax purposes, with the tax liability for the trust's net income falling on the beneficiary(ies) or unit holder(s). Certain trusts, referred to as Managed Investment Trusts (MITs), can qualify for certain concessional tax treatment, including a reduced rate of withholding tax (15%) on distributions to certain nonresidents and the ability to elect that certain assets are held on capital account.

## Requirements for a corporate limited partnership (CLP)

Most limited partnerships are CLPs for tax purposes, i.e. they are effectively treated as companies for income tax purposes.

The treatment of a CLP (including dividends paid by such a partnership) in respect of various international matters broadly corresponds with the treatment of a company in these areas (for instance, foreign income tax offsets and controlled foreign company (CFC) provisions).

A CLP is considered incorporated in the place in which it was formed under a law enforced in that place. A CLP that is formed in Australia will be a tax resident of Australia; where not formed in Australia, the partnership may be a tax resident if it carries on business in Australia or has its central management and control in Australia. This is an extremely broad definition—merely carrying on business in Australia can result in a CLP being an Australian tax resident.

If a CLP pays or credits an amount to a partner in the partnership from profits or anticipated profits, the amount paid or credited will be deemed to be a dividend paid by the CLP to the partner out of profits derived by the CLP.

## **Partnership versus joint venture**

A partnership for tax purposes is distinguished from a joint venture. The essential difference is that joint venturers do not derive income jointly, as is the case with a partnership, and they are individually liable for the costs of operating the joint venture.

After apportioning the costs of production, joint venturers usually are entitled to their individual share of the product of the joint venture that they sell independently from the other venturers.

While each joint venture party is free to make its own election in respect of the tax treatment of its separate interests in property, any election made by a partnership is binding on all partners.

## **Branch of a foreign corporation**

Foreign companies may conduct business in Australia through a branch. Within one month of starting a business, a branch must be registered as a foreign company with the ASIC. To register, the company's representative (who may be of any nationality) must submit the following documents: copies of the document of incorporation of the head office and its memorandum and articles of association (or corresponding documents in the home country); a list of directors; and the name of the secretary or appointed agent. A branch of a foreign company normally must supply the parent's annual balance sheets and other reports to the ASIC and must note its country of incorporation and Australian business premises on bills, letterheads and other forms issued in Australia.

A branch of a foreign corporation is taxed in broadly the same manner as a subsidiary in Australia.

## **2.2 Regulation of business**

### **Mergers and acquisitions**

Mergers and takeovers are prohibited where they would have the effect, or the likely effect, of substantially lessening competition in a market for goods or services. The ACCC may authorize a merger that will lead to a substantial lessening of competition if it is satisfied that there will be public benefits, including a resulting significant increase in the real value of exports or significant import substitution. The ACCC has adopted an indicative position of not opposing mergers where a sustained and competitive level of imports exceeds 10% of the market. The ACCC may allow a merger to proceed subject to enforceable undertakings, such as requiring companies to dispose of certain business assets to maintain market competition.

To assess a proposed merger or takeover, the ACCC aggregates the market power of the buyer with that of corporations with which it is associated. "Association" exists between corporations when the activities of one firm in a market are influenced to a substantial degree by another; for example, a parent company and its subsidiary operating in the same market would be regarded as associated. Factors taken into consideration include actual and potential import competition, barriers to entry, market concentration, market dynamics, vertical integration, the resulting pricing power accruing to the acquirer, market substitutes, countervailing market power and whether the acquisition results in the removal of a vigorous and effective competitor from the market. Influence arising from the competitive activities of companies or from normal sales of goods and services is disregarded.

There are no specific tax regulations affecting mergers and takeovers. However, Australian tax consequences will follow from mergers and takeovers, based on the nature and form of the transaction. Broadly, a 100% acquisition of an Australian company by another Australian company may be treated as if it were an asset acquisition, which generally results in a resetting of the tax basis of the underlying assets. However, this is not the case where the transaction is a partial acquisition, an acquisition by a nonresident entity or an acquisition of or by certain other types of entity.

### **Monopolies and restraint of trade**

There is no law specifically to break up monopolies or prevent market dominance, but the Competition and Consumer Act 2010 states that firms in a position to have substantial control over a market must refrain from preventing entry to that market, reducing competition in the market or harming or unlawfully eliminating a competitor (other than through the normal process of competition).

A company wishing to enter into an anti-competitive arrangement, such as a price agreement, may apply to the ACCC for authorization. If the company can show that the arrangement will result in

public benefits that outweigh the anti-competitive effect, it will receive legal immunity for what otherwise would be a breach of the act. The immunity comes into effect only after the ACCC has granted the authorization. The ACCC may revoke an authorization if there has been a material change of circumstances since it was granted.

A company wishing to enter into an exclusive dealing arrangement must submit it to the ACCC. There is no requirement for the company to show public benefit, and the protection cannot be revoked unless the ACCC is satisfied that there is insufficient public benefit flowing from the anti-competitive conduct to outweigh the lessening of competition.

## 2.3 Accounting, filing and auditing requirements

### Financial reporting requirements

Companies operating in Australia must prepare and file financial reports to comply with the requirements of the Corporations Act and the ASIC, Australia's corporate, financial markets and financial services regulator. Companies may be exempt from financial reporting in certain circumstances (e.g. based on their size).

### Financial reporting framework and accounting standards

The "reporting entity" concept underpins the financial reporting requirements. Reporting entities are those entities for which it is expected that there would be users who are not in a position to require the entity to prepare reports tailored to their particular information needs.

Reporting entities are required to prepare a financial report in compliance with all accounting standards and interpretations, referred to as general purpose financial statements (GPFS).

"Non-reporting entities," however, have the option to prepare special purpose financial statements (SPFS) in compliance with accounting standards and interpretations considered necessary to enable the financial reports to meet the special purpose needs of the users. Entities preparing and filing SPFS under the Corporations Act, however, must prepare reports that give a true and fair view, which generally is interpreted to mean compliance with all the recognition and measurement requirements of the accounting standards, as well as certain stipulated disclosure requirements.

Australian accounting standards are set by the Australian Accounting Standards Board (AASB), an independent government agency. The accounting standards are broadly comparable to the requirements of IFRS, although the AASB has made modifications to certain standards and has issued additional interpretations and guidance to accommodate Australia's specific legislative and economic environment, or to meet the specific reporting requirements of entities such as nonprofit organizations.

As from 1 July 2016, a significant global entity (SGE) (i.e. an entity belonging to an accounting group that has annual global revenue of AUD 1 billion or more) that is either an Australian tax resident or a foreign resident operating an Australian PE will be required to file GPFS with the Australian Taxation Office (ATO), if such entity does not file GPFS with the ASIC.

# 3.0 Business taxation

## 3.1 Overview

The principal taxes levied in Australia are income tax (which includes tax on capital gains), withholding tax, and goods and services tax (GST). Other taxes include fringe benefits tax (FBT), payroll tax, land tax, stamp duty and petroleum resource rent tax (PRRT). Only the federal government levies income tax.

Australia has an R&D tax incentive scheme and an IMR (see 1.5, Tax incentives); individual states also offer incentives.

Australia operates a full “imputation” system for the avoidance of economic double taxation on dividends. Under this system, the payment of company tax is imputed to shareholders, so that resident shareholders are relieved of their tax liability in respect of dividends that are sourced from profits that have been subject to Australian tax at the company level.

Australia operates a full self-assessment system, under which the ATO does not review income tax returns on filing, but has wide-reaching audit powers to monitor compliance.

Australia’s tax rules generally do not favor a subsidiary over a branch operation, or vice versa. The taxable income of either form of operation is subject to the company income tax rate.

Australia operates several regimes designed to prevent the evasion or avoidance of tax. There are thin capitalization rules, CFC rules, a general anti-avoidance rule (GAAR), a promoter penalties regime and a transferor trust regime.

The main tax legislation governing companies is the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997, as amended. The ATO is the country’s main revenue collection agency.

### Australia Quick Tax Facts for Companies

Company income tax rate	30%/28.5%
Branch tax rate	30%/28.5%
Capital gains tax rate	30%/28.5%
Basis	Worldwide (resident)/Australian-source (nonresident)
Participation exemption on outbound investment	Yes

### Loss relief

<ul style="list-style-type: none"><li>Carryforward</li></ul>	Indefinite (subject to utilization tests)
<ul style="list-style-type: none"><li>Carryback</li></ul>	No
Double taxation relief	Yes
Tax consolidation	Yes
Transfer pricing rules	Yes
Thin capitalization rules	Yes
Controlled foreign company rules	Yes
Tax year	1 July to 30 June
Advance payment of tax	Monthly for large entities; quarterly otherwise
Return due date	15 January/28 February

### Domestic withholding tax

<ul style="list-style-type: none"><li>Dividends</li></ul>	0%/30%
<ul style="list-style-type: none"><li>Interest</li></ul>	10%

• Royalties	30%
• Branch remittance tax	No
• Managed investment trust (MIT) distributions	15% for recipients resident in information-exchange countries; 30% otherwise
Capital tax	No
Payroll tax	4.75%-6.85%
Superannuation contribution	9.5% of (capped) employee earnings
Fringe benefits tax	49%
Real estate tax	See stamp duty
Land tax	Varies, up to 3.7% (plus a surcharge in some cases)
Stamp duty	Varies, up to 7% (plus a surcharge in some cases)
Petroleum resource rent tax	40% of taxable profits
GST	10%

### 3.2 Residence

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

The location of the company's central management and control is a question of fact, to be determined in light of all relevant facts and circumstances.

### 3.3 Taxable income and rates

In principle, a resident company is liable for company income tax on its worldwide income, although some types of foreign-source income are exempt. A nonresident company generally pays taxes only on income derived from Australian sources.

Tax rates and treatment generally have been the same for all companies, including branches of foreign companies, although there are exceptions for special types of company, such as cooperative firms, mutual and other life insurance companies and nonprofit organizations.

The company income tax rate is 30%. For small businesses (with less than AUD 2 million annual turnover), the rate is 28.5%. Proposals have been made to reduce the corporate rate over ten years.

#### Taxable income defined

Company income tax is levied on a company's taxable income derived during each income year. To calculate taxable income, a company computes assessable income and subtracts allowable deductions.

Assessable income includes ordinary income and statutory income. Ordinary income derived by a company carrying on business usually includes gross business income (e.g. proceeds from the sale of goods, or provision of services), dividends, interest, royalties and rent. Gains that are capital in nature (capital gains) may be included in assessable income. Assessable income excludes exempt income, such as certain dividends received from pooled development funds and income derived by certain entities, such as charities.

Some income is characterized as nonassessable nonexempt (NANE) income. The important distinction between NANE income and exempt income is that the latter reduces current-year and previous-year tax losses before they are carried forward to offset later assessable income.

As mentioned above, Australia operates a full "imputation" system under which the payment of company income tax is imputed to shareholders, in that shareholders are relieved of their tax liability to the extent dividends they receive are sourced from profits that have been taxed at the corporate level. Dividends paid out of profits on which corporate tax has been paid are said to be "franked," and generally entitle shareholders to an offset for the corporate tax paid. A simplified imputation regime has been in effect since 2002.

## Deductions

Expenses incurred in deriving assessable income are deductible to the extent they are incurred in gaining or producing assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income. Expenses that may be deducted in calculating taxable income include interest, royalties and management fees paid to nonresidents, if these expenses conform to commercial standards. The thin capitalization rules (as discussed in 3.6, Anti-avoidance rules), however, may affect the deductibility of interest. Most indirect taxes paid by a business, such as payroll tax and FBT, are deductible. Generally, dividend payments are not deductible.

Deductions may be claimed for tax depreciation and previous-year tax losses (see below).

## Depreciation

A uniform capital allowance system generally applies to capital assets, including patents and buildings. The eligible cost of depreciating assets is deductible over the effective life of the asset, using either the prime-cost method (under which the cost is allocated uniformly over the effective life) or, in some circumstances, the diminishing-value method (which produces a progressively smaller decline over time and gives a higher deduction for the decline in value in the earlier years than the prime-cost method).

Statutory effective lives are set for certain infrastructure assets, including aircraft and some assets used in the oil and gas industries. The ATO conducts an ongoing review to determine new effective lives for depreciating assets.

Special rates apply for primary producer assets and investment in Australian films. Mining and petroleum companies enjoy immediate deductibility for certain expenditure on exploration or prospecting and onsite rehabilitation.

Notional tax depreciation on assets that are the subject of the R&D activities or are used to carry out R&D activities can be eligible for inclusion in eligible R&D expenditure, increasing the net tax benefit available.

Small business entities that carry on business and fall below an AUD 2 million turnover threshold may choose to use simplified depreciation rules. There is an immediate write-off available for small business entities that acquire assets costing under AUD 20,000 that generally are installed between 12 May 2015 to 30 June 2017, and for certain establishment expenditure starting from the 2015-16 income year.

Certain "black hole" capital expenditure that is not taken into account elsewhere in the income tax law may be written off over five years.

## Losses

Tax losses arise where allowable deductions exceed assessable income and exempt income (see above). Tax losses may be utilized and carried forward indefinitely to offset future assessable income, provided a "continuity of ownership" test (more than 50% of voting, dividend and capital rights) or a "same business" test is satisfied.

Small mining companies can sacrifice tax losses for exploration tax credits that can be provided to their shareholders from 1 July 2014, for an initial three-year period.

## 3.4 Capital gains taxation

Assessable income includes net capital gains, after offsetting capital losses. Net capital gains derived by companies are taxed at the company income tax rate of 30% or 28.5%.

Capital gains or losses on the disposal of shares by an Australian company in a foreign company in which the Australian company held at least a 10% voting interest for a specified period may be reduced by a percentage that reflects the degree to which the assets of the foreign company are used in an active business.

Foreign investors are liable to CGT only on assets that constitute "taxable Australian property" (TAP) in Australia. TAP includes direct and indirect interests in Australian real property (which includes real property and mining and prospecting rights) and the assets of Australian PEs of nonresidents. In addition, the disposal of shares in companies that are directly or indirectly Australian land-rich (i.e. where more than 50% of the gross asset value of the company is attributable to Australian real property) are subject to CGT if the seller (and its associates) has a greater-than 10% interest.

The CGT rules contain a number of rollover provisions allowing for the deferral of tax on capital gains (e.g. replacement rollovers, where the ownership of one CGT asset ends and another asset is acquired to replace it).

## 3.5 Double taxation relief

### Unilateral relief

Australia generally taxes Australian residents on their worldwide income, including capital gains.

Under the Australian dividend participation exemption, a distribution received by an Australian resident corporate tax entity will be characterized as NANE income where:

- It is a foreign equity distribution from a foreign company; and
- The Australian resident holds a participation interest of at least 10% (directly or indirectly) in the foreign company.

The foreign income tax offset (FITO) rules allow taxpayers to claim a tax offset for foreign tax that has been (or is deemed to have been) paid in respect of amounts that have been utilized in assessable income. The amount of the tax offset equals the foreign income tax paid, subject to a cap that reflects the Australian tax that would have been paid on that amount and other foreign-source amounts. The taxpayer must have paid (or must be deemed to have paid) the foreign income tax before an offset is available, and the offset may be used only in the income year to which the foreign tax relates. Offsets may not be carried forward to future income years.

### Tax treaties

Australia has a broad tax treaty network, with most treaties following the OECD model treaty. Treaties generally provide for relief from double taxation on all types of income, limit the taxation by one country of companies resident in the other and protect companies resident in one country from discriminatory taxation in the other. Australia's treaties generally contain OECD-compliant exchange of information provisions. In addition, Australia's new treaty with Germany is BEPS-compliant.

Australia has entered into numerous tax information exchange agreements, including agreements with the British Virgin Islands, Cayman Islands and Guernsey.

Australia meets its obligations under its tax treaties by incorporating them directly into domestic law. Each treaty is given the force of law domestically under the International Tax Agreements Act 1953 (ITA Act), the provisions of which override any inconsistent provisions of domestic law, except for the general anti-avoidance provisions (Part IVA; see 3.6, Anti-avoidance rules). The ITA Act also clarifies that treaties are to be interpreted and read as one with the assessment acts.

Consistent with Australia's self-assessment regime, there is no requirement for nonresidents to obtain a certificate of residence or other certification to obtain treaty benefits.

#### Australia Tax Treaty Network

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

## 3.6 Anti-avoidance rules

### Transfer pricing

Australia's transfer pricing rules are contained in subdivisions 815-B, 815-C and 815-D of the Income Tax Assessment Act (ITAA) 1997; subdivision 284-E of schedule 1 to the Taxation Administration Act (TAA) 1953; Australia's tax treaties; and a number of public rulings issued by the ATO. The transfer pricing legislation is required to be applied to achieve consistency with the OECD's transfer pricing guidelines.

The rules in subdivision 815-B, 815-C and 815-D of the ITAA 1997 and subdivision 284-E of the TAA 1953 (applying to income years commencing on or after 1 July 2013) and the retroactive rules in subdivision 815-A of the ITAA 1997 (applying as from income years commencing on or after 1 July 2004 to 30 June 2013) may apply to any international transaction and do not necessarily require common ownership between the two transacting parties (i.e. "any connection" between the parties is all that is required). The rules apply to separate legal entities, as well as to PEs. Covered cross-border dealings may include transactions involving tangible or intangible property, the provision of services and financing.

The transfer pricing rules apply where an entity receives a transfer pricing benefit, which is essentially a lesser income tax or withholding tax outcome due to the cross-border conditions (commercial or financial relations) with another entity that differ from "arm's length conditions". Where this is the case, the law substitutes arm's length conditions for the actual conditions, and therefore negates (or adds back to taxable profit) the transfer pricing benefit. "Arm's length conditions" are the conditions (including the price, gross margin, net profit and the division of profit) that might be expected between independent entities dealing wholly independently with one another in comparable circumstances.

The rules stipulate that the "most appropriate and reliable" arm's length pricing method should be applied. Commonly applied arm's length pricing methods in Australia include the comparable uncontrolled price method, the resale price method, the cost plus method, the profit split method and the transactional net margin method.

The following table summarizes the key provisions of Australia's transfer pricing rules.

<b>Purpose</b>	The laws aim to modernize the transfer pricing rules and bring them into line with international standards and best practices.
<b>Profit focus</b>	The laws focus on arm's length conditions and profit allocation, as opposed to simply the arm's length pricing of transactions. In practice, this may give the ATO wider powers to attack loss-making companies, given the ability to inquire into whether profit outcomes are commercially realistic.
<b>Reconstruction</b>	The law includes "reconstruction powers" that may apply where the substance of international transactions do not accord with the form, or where conditions between international related parties are not consistent with those that would have been in place between independent entities in comparable circumstances.
<b>Self-assessment</b>	<p>Public officers must determine that their company is in compliance with the transfer pricing rules before signing and filing the company's tax returns.</p> <p>Where non-arm's length pricing has led to insufficient Australian taxable income, "upward" transfer pricing adjustments must be self-assessed, either through the accounts before year end, or in the tax return. Where non-arm's length pricing has led to excessive Australian taxable income, "downward" transfer pricing adjustments cannot be self-assessed post-year end in the tax return.</p>



<b>Documentation</b>	Failure to prepare transfer pricing documentation with the appropriate content by the time the tax return is filed means a “reasonably arguable position” (RAP) cannot exist for penalty mitigation purposes.
<b>Financing arrangements</b>	Arm’s length interest rates on inbound related party debt must be based on the rates that would have applied to notional arm’s length debt amounts.
<b>Time limit</b>	There is a seven-year time limit on the ability to amend assessments to give effect to transfer pricing adjustments.
<b>OECD guidance</b>	The laws must be applied to best achieve consistency with the OECD’s transfer pricing guidelines.

Subdivision 284-E of the TAA 1953 sets out the documentation/records that an entity should prepare to demonstrate that it has complied with subdivision 815-B. To satisfy the rules, this documentation must be prepared before filing the relevant tax return. While the legislation does not mandate the preparation or maintenance of transfer pricing documentation, failure to prepare this documentation prevents an entity from establishing a reasonably arguable position for penalty reduction purposes. The ATO has issued guidance on its expectations regarding transfer pricing documentation, which can be found in Taxation Ruling TR 2014/8 – Income Tax: transfer pricing documentation and subdivision 284-E.

Where an Australian taxpayer’s international related party dealings exceed AUD 2 million during a tax year, it must file details of these transactions in a schedule accompanying the annual income tax return, known as the International Dealings Schedule (IDS). The IDS details the countries with which transactions have been completed, the types of transaction and dollar values for the year, the extent to which the taxpayer has prepared transfer pricing documentation in relation to its related party transactions and the pricing method(s) applied.

The IDS provides the ATO with detailed information regarding an entity’s cross-border related party dealings, including information on derivative transactions, debt factoring and securitization arrangements, share-based employee remuneration recharges, cost contribution arrangements, business restructures and branch operations. These additional disclosure requirements are used by the ATO in its risk profiling and case selection activities.

## Country-by-country (CbC) reporting

For income years commencing on or after 1 January 2016, SGEs must provide additional information to the ATO as part of Australia’s CbC reporting requirements. Subdivision 815-E of the ITAA 1997 implements the OECD’s new transfer pricing documentation standards (under action 13 of the BEPS action plan), so that a multinational that is a SGE is required to provide the following three annual statements to the ATO:

- **CbC report:** This report provides information in relation to the location of economic activity and the jurisdictions where profits are reported by the multinational group;
- **Master file:** This report provides a high-level description of the group’s global business operations, including the corporate structure, the use of intangibles and intercompany financial activities; and
- **Local file:** This report provides information about the local entity’s management structure and business strategy, specific cross-border related party transactional data, including information about how transfer pricing decisions have been made, and financial information, including the local entity’s annual financial accounts.

The above statements must be filed electronically with the ATO in the approved form within 12 months of the end of the income year; however, an exemption may be granted for filing of the master file and CbC report in certain circumstances. If an entity wishes to apply for an exemption from providing one or more statements, it should provide the ATO with a written request outlining the grounds for which it considers the exemption should apply.

For Australian entities, there are two “tiers” of the local file, depending on the SGE’s business operations, complexity and perceived level of risk—the short-form local file and the full local file. A

SGE may file a short-form local file if certain strict criteria are met; otherwise a full local file will be required.

A short-form local file must include the following:

- Details of the Australian entity's organizational structure;
- A description of the Australian entity's business and strategy;
- A description of any business restructures affecting the Australian entity;
- A description of any transfers of intangibles; and
- A list of key competitors.

A full local file must include the above, plus:

- Detailed information for all international related party dealings, including counterparties' names and countries of tax residence, the type and quantum of transactions, the transfer pricing method relied upon, whether transfer pricing documentation has been prepared and whether the international related party dealing is covered by the exclusions list (which includes transactions covered by a simplified documentation option, certain employee secondment arrangements, low value/low risk service arrangements or trading stock transactions and issues of ordinary shares).
- If not covered by the exclusions list, the full local file also must include, for each transaction, the transfer pricing method relied upon by the counterparty to the transaction, an indication of whether a written intercompany agreement is in place, a copy of the agreement (if the ATO does not already have it), and details of any foreign advance pricing arrangements (APAs) or rulings provided by another jurisdiction.

It is important to note that preparing the annual statements will not constitute a RAP for the purposes of penalty mitigation; to achieve a RAP, taxpayers still need to comply with the transfer pricing documentation requirements of subdivision 284-E of the TAA 1953.

## Transfer pricing administration

The ATO has the authority to undertake a review or audit of a company in relation to its transfer pricing. In practice, the ATO typically will initiate a "client risk review" including a component reviewing transfer pricing arrangements to determine the risk to Australian tax revenue that may arise from non-arm's length dealings. Where the ATO views a taxpayer's dealings as being of sufficiently high risk, the ATO may proceed to a transfer pricing audit.

Where the ATO imposes a transfer pricing adjustment, the Australian penalty regime may apply to any shortfall in tax. As from 1 July 2015, penalties for SGEs typically are calculated as an additional amount of 50% of the tax shortfall arising from an adjustment (or up to 100%, where a taxpayer does not have a RAP and enters into a scheme with a dominant purpose of obtaining a transfer pricing benefit). In addition to penalties, the ATO also can apply an interest charge to the tax shortfall on a daily compounding basis. The ATO has the discretion to reduce penalties and interest (e.g. where it considers the taxpayer has a reasonably arguable position through appropriate transfer pricing documentation, penalties can be reduced to 10%).

The ATO maintains an APA program covering unilateral, bilateral and multilateral APAs. Under an APA, taxpayers can obtain certainty on the application of the arm's length principle to their cross-border dealings with related parties.

## Thin capitalization

Thin capitalization rules operate to limit interest deductions claimed against Australian assessable income for both foreign-controlled Australian investments (inward investors) and Australian entities investing overseas (outward investors), where an entity's debt exceeds a prescribed level.

Taxpayers that, together with their associates, have interest deductions of less than AUD 2 million, or outward investing entities with 90% or more of the total average value of assets consisting of Australian assets, are exempt from the thin capitalization rules.

Taxpayers are able to determine their maximum allowable debt by choosing one of the following tests:

- *"Safe harbor" test*: This test effectively applies a prescribed debt-to-equity ratio of 60%. Different ratios apply to financial institutions;

- *Worldwide gearing test*: This test allows taxpayers to use debt levels equivalent to those of its worldwide group, broadly determined by reference to the group's consolidated accounts; or
- *Arm's length debt test*: This test requires an analysis of the maximum amount of debt the entity could reasonably have borrowed from commercial lending institutions subject to specific assumptions and conditions set out in the law.

The thin capitalization rules generally follow the approach of accounting standards in valuing assets, liabilities and equity capital (even if an entity is not otherwise required to prepare accounts). For income years commencing on or after 1 January 2009, taxpayers are required to prepare accounts based on the Australian equivalent of IFRS (AIFRS), with some modifications.

## Controlled foreign companies

Under the CFC rules, "attributable" Australian shareholders of a CFC are subject to taxation on an accruals basis on their proportionate share of the CFC's attributable income. "Attributable income" generally refers to passive-type income, such as dividends, interest, rent and royalties. It also includes tainted sales income, which broadly refers to income arising from sales transactions between the CFC and its related entities, and tainted services income, which broadly refers to services provided to Australia. Tainted sales and services income are intended to target the deflection of income from the Australian tax base. The general policy intention is to exclude active business income from attributable income.

For a foreign company to qualify as a CFC, one of three control tests must be satisfied: (1) five or fewer Australian residents (including associates) must hold 50% or more of the company; (2) a single Australian entity (including associates) must hold at least 40% of the company, with no other group controlling the company; or (3) five or fewer Australian entities (including associates) must effectively control the company.

If the CFC rules apply, the Australian shareholder will include in its assessable income its share of attributable income from the CFC, calculated at the end of the CFC's statutory accounting period. The calculation of attributable income is similar to branch-equivalent calculations, except that specific modifications are made to the Australian tax rules. Various exceptions to attribution apply. If passive income and tainted sales and services income comprise less than 5% of gross turnover, the CFC does not need to attribute any income. If the CFC is tax resident in any of seven listed countries (Canada, France, Germany, Japan, New Zealand, the UK and the US), only specific types of passive income subject to concessional taxation in these foreign countries are attributable.

## Transferor trust regime

Under the transferor trust regime, an Australian resident is subject to taxation on an accruals basis on the attributable income of a foreign trust to which the Australian resident has transferred property or services. The Australian resident is subject to attribution if it has transferred property or services to either: (1) a nonresident, nondiscretionary trust for inadequate or no consideration; or (2) a nonresident discretionary trust. Where the transferor trust rules apply, the Australian resident transferor includes its share of the net income of the trust (with some modifications) in its assessable income for the period in which it was a resident.

## General anti-avoidance rule

Australia has a GAAR (referred to as Part IVA) directed at schemes entered into for the purpose of obtaining tax benefits. The following requirements generally must be met for Part IVA to apply:

- There must be a "scheme;"
- A taxpayer must have obtained a "tax benefit" in connection with the scheme; and
- The sole or dominant purpose of any person who entered into or carried out the scheme, or any part of the scheme, must have been to enable the taxpayer to obtain that tax benefit.

Part IVA gives the Commissioner of Taxation the power to cancel the tax benefit arising from a scheme, as well as to impose interest and penalties.

The determination of a tax benefit requires a comparison between the scheme itself and an alternative scenario. There are two bases that can demonstrate the existence of a tax benefit:

- 1) The first basis requires a comparison of the tax consequences of the scheme with the tax consequences that "would have" resulted if the scheme had not occurred (the "annihilation approach"), i.e. the alternative scenario involves the deletion of the scheme.

- 2) The second basis requires a comparison of the tax consequences of the scheme with the tax consequences that “might reasonably be expected to have” resulted if the scheme had not occurred (the “reconstruction approach”). The alternative scenario under this basis requires speculation about the state of affairs that would have existed if the scheme had not been entered into or carried out.

The maximum administrative penalty that can be imposed on SGEs that enter into tax avoidance and profit shifting schemes is up to 120% of the primary tax if the taxpayer’s position is not “reasonably arguable.”

## Multinational Anti-Avoidance Law (MAAL)

The MAAL is Australia’s unilateral response to arrangements aimed at avoiding PE status in Australia. The MAAL amends the Australian GAAR and is applicable to income derived on or after 1 January 2016.

For the MAAL to apply, the gateway tests and the principal purpose test both must be satisfied. The gateway tests are as follows:

- The multinational group has global gross income of AUD 1 billion or more (i.e. it is an SGE);
- A foreign entity (the principal) derives income from making a supply of goods or services (including by digital means) to an Australian customer that is not a member of the global group to which the principal belongs;
- An entity in Australia that is associated with or commercially dependent on the principal undertakes activities in Australia directly in connection with the supply; and
- Some or all of the income derived by the Principal from the supply is not attributable to an Australian PE of the Principal.

The purpose test is met if it would be concluded, based on a number of prescribed factors, that a principal purpose for entering into the relevant arrangements (“the scheme”) was to obtain:

- An Australian “tax benefit” (as generally defined in the Australian GAAR); or
- An Australian tax benefit and to reduce or defer foreign tax liabilities.

The MAAL requires the ATO to identify a hypothetical alternative arrangement that might reasonably be expected in the absence of the actual arrangement. Based on this alternative, the ATO will then consider whether an Australian tax benefit exists. This could be the case where, broadly, the income for Australian tax purposes under the alternative arrangement exceeds the income for Australian tax purposes under the actual arrangement.

Where the MAAL applies, it could result in a potential PE income tax liability at 30% of the attributable profit; a withholding tax liability on upstream royalties or interest (in a worst-case scenario, at 30% of the gross amount); and a potential penalty of up to 120% of the income tax and withholding tax liabilities. Thus, where MAAL is applied, the consequences potentially are significant.

## Diverted profits tax (DPT)

The government released exposure draft legislation in November 2016 that would introduce a DPT with effect from 1 July 2017. The DPT would apply to SGEs and would impose a 40% rate of tax (compared to the normal tax rate of 30%) on profits transferred offshore through related party transactions (the “diverted profit”).

## BEPS

The following table summarizes the steps Australia has taken to implement the BEPS recommendations:

Action	Notes on local country implementation	Expected timing of implementation
VAT on business to customers digital services (Action 1)	The law imposing GST on supplies of digital products	Taxable supplies attributable to tax periods starting on or after 1 July 2017

	and other imported services by nonresidents to Australian customers has been enacted.	
Hybrids (Action 2)	Australia has announced that it will introduce anti-hybrid measures (broadly consistent with action 2). The intention is for these rules to apply as from 1 January 2018. However, the start date will be deferred if the new rules are not legislated by 30 June 2017. No legislation has yet been introduced.	Payments made on or after 1 January 2018 or six months after the relevant law is enacted, whichever is later
CFCs (Action 3)	The Australian CFC rules are considered to be stronger than the OECD standards. No action is expected.	N/A
Interest deductions (Action 4)	The government has indicated that it is unlikely to change the existing thin capitalization rules at this time (the rules were tightened in 2014).	N/A
Harmful tax practices (Action 5)	The ATO already has started exchanging rulings with other jurisdictions.	Occurring
Prevent treaty abuse (Action 6)	The government has indicated that Australia will include G20/OECD recommendations in all future bilateral tax treaty negotiations.	Occurring
Permanent establishment status (Action 7)	Australia has taken unilateral action on PE issues through the enactment of the MAAL.	1 January 2016
Transfer pricing (Actions 8-10)	The OECD's transfer pricing guidelines are incorporated in Australia's transfer pricing law (currently referring to the 2010 guidelines). The government confirmed in the May 2016 federal budget that it intends to give effect to the 2015 OECD transfer pricing recommendations with effect from 1 July 2016. However, legislation has not yet been drafted.	Once enacted, the law would apply as from 1 July 2016
Disclosure of aggressive tax planning (Action 12)	A government consultation is underway on the implementation of mandatory disclosure rules for taxpayers and tax advisers.	Not yet known
Transfer pricing documentation (Action 13)	Laws requiring CbC reporting and master and local file reporting have been enacted.	1 January 2016
CbC reporting (Action 13)	Australia has signed the multilateral competent authority agreement for the automatic exchange of CbC reports.	1 January 2016
Dispute resolution (Action 14)	Australia is committed to binding arbitration	Not yet known

## 3.7 Administration

### Tax year

Taxable income generally is determined by reference to a year of income, which typically runs for the 12 month period from 1 July to 30 June. A different year of income may be adopted by companies in certain circumstances, with approval from the ATO.

### Filing and payment

Australia operates a self-assessment system, under which companies self-assess their tax liability.

Under the pay-as-you-go (PAYG) collection system, most businesses make quarterly payments comprising company income tax, FBT, GST and personal income tax withheld from employees' wages. The quarterly payments generally are due four weeks after the close of each quarter. With effect from 1 January 2014, some large entities are being transitioned into a monthly PAYG installment system over a four-year period, depending on the size and type of the entity.

Sole traders and partners, small businesses with low tax obligations and companies and superannuation (pension) funds with turnover of less than AUD 2 million may elect to have the ATO calculate their quarterly PAYG installments from the previous available year's income, adjusted for movements in GDP for the period. Any balance due is payable with the annual income tax return.

Tax returns generally must be filed on an annual basis, based on taxable income for a year of income. The due date for filing the annual tax return for companies with 30 June year-ends is 15 January for large/medium-size companies (annual turnover exceeding AUD 10 million) and 28 February for all other entities, following the end of the year of income. Extensions to file the return may be granted in certain circumstances.

### Consolidated returns

A tax consolidation regime allows wholly owned groups of companies, trusts and partnerships to elect to be taxed as a single consolidated entity ("tax consolidated group"). The regime focuses on the tax consolidated group as the tax entity and disregards intragroup transactions for income tax purposes. The law reduces impediments to group restructuring, allows for the pooling of losses within the group and allows tax-free movement of assets within the group without any formal rollover requirements. The regime generally allows the group to buy back shares without triggering a capital gain or loss and to liquidate a member entity without triggering deemed dividends or capital gains or losses. It also eliminates double taxation, where gains are taxed when realized and again on the disposal of equity.

There also are rules allowing certain Australian resident, wholly owned subsidiaries of a foreign company to form a tax consolidated group, known as a multiple entry consolidated group or MEC group.

The election to form a tax consolidated group or an MEC group is optional. However, once made, the election is irrevocable.

### Statute of limitations

The amendment period for Australian income tax purposes is four years for large business taxpayers, taxpayers with complex tax affairs and certain "high risk taxpayers." For corporate taxpayers, this period commences from the date the taxpayer files its income tax return (deemed assessment). For other taxpayers (generally small business entities and individuals), the time limit for reviewing an assessment is two years from the date the Commissioner of Taxation issues the notice of assessment. However, as noted above, the commissioner has seven years to make a transfer pricing adjustment, and there are no time limits in certain situations (e.g. in the case of fraud or evasion or to give effect to a court order). In addition, the commissioner may amend an assessment after the four-year (or two-year) period if, before the expiration of the period, the taxpayer applied for an amendment in the approved form or successfully requested a private ruling. If the commissioner starts to examine a taxpayer's affairs in relation to an assessment and has not completed this process by the end of the limited amendment period, that period may be extended with the consent of the taxpayer or if a court order is granted.

### Tax authorities

The ATO, headed by the Commissioner of Taxation, administers federal tax laws and collects revenue arising from income tax, GST (collected on behalf of state/territory governments), superannuation and

excise tax. The ATO also administers a range of benefits and refunds, including income tax and GST refunds, excise grants, family tax benefits and superannuation guarantees.

Each state/territory has its own revenue office, which collects a range of state/territory taxes and duties, including payroll tax, land tax and stamp duty.

## Rulings

The ATO may issue public or private rulings. Rulings generally are binding on the ATO where they apply to a taxpayer and the taxpayer relies on the ruling by acting in accordance with the ruling. Public rulings may apply to all entities or a class of entities, either generally or in relation to a particular arrangement. The ATO will issue a private ruling on the tax consequences of a specific scheme at a taxpayer's request. However, only the taxpayer requesting the private ruling can rely on the ruling. As mentioned above, the ATO also operates an APA program, under which taxpayers can obtain certainty on the application of the arm's length principle to their cross-border dealings with related parties.

## Tax transparency

Generally, companies with income of AUD 100 million or more and Australian private companies with income of AUD 200 million or more will have certain tax information published by the ATO for the 2013-14 income year and onward. The tax information published is the total income, taxable income and income tax payable for the income year.

Australia also has a Voluntary Tax Transparency Code, applicable as from 1 July 2016, which encourages the disclosure of additional tax and accounting information from businesses with at least AUD 100 million of turnover.

## 3.8 Other taxes on business

### Petroleum resource rent tax (PRRT)

PRRT is a profits-based tax levied at a rate of 40% on profits generated from all onshore and offshore Australian petroleum projects, excluding the joint petroleum development area (JPDA) (as defined in the Timor Sea Treaty). The profits are taxed on the sale of marketable petroleum commodities.

Broadly, the taxable profit of each petroleum project that is subject to the PRRT is the amount of assessable receipts derived, less eligible deductible expenditure incurred and transferred exploration expenditure. A petroleum project effectively becomes liable to pay the PRRT once its aggregate assessable receipts exceed all accumulated eligible project expenditure. Undeducted amounts are "uplifted" at prescribed rates and carried forward to be applied against assessable receipts derived in later years. PRRT payments generate income tax deductions, while royalties and other government resource charges are, in effect, creditable against assessable receipts of petroleum projects to avoid double taxation.

# 4.0 Withholding taxes

## 4.1 Dividends

Dividends paid by Australian resident companies out of profits already subject to Australian tax at the company income tax rate may carry franking credits for the Australian corporate income tax paid. Dividends are referred to as “fully franked,” “partially franked” or “unfranked,” depending on the extent to which a company has chosen to use its franking credits. To the extent that distributions to nonresidents are unfranked distributions, they are subject to withholding tax at the statutory rate of 30%. This rate may be reduced under the provisions of a tax treaty.

Australia’s tax treaties provide for a withholding tax rate of between 0% and 15% on dividends paid to nonresident shareholders. Australia and New Zealand have extended their respective domestic dividend imputation systems to include companies resident in the other country (referred to as “Trans-Tasman imputation”).

Unfranked dividends may be paid to nonresident shareholders free of Australian withholding tax where the dividends are paid out of “conduit foreign income.” Amounts considered to be conduit foreign income generally are amounts of foreign income and gains that are earned by or through an Australian company and not taxed in Australia at the entity level. Some examples of conduit foreign income include certain eligible foreign equity distributions received by an Australian company and capital gains on the disposal of shares in a foreign company with an underlying active business.

Amounts will be withheld from unfranked dividends paid to resident shareholders if the shareholder has not provided its tax file number (TFN) to the payer.

## 4.2 Interest

Interest paid by an Australian company to a nonresident generally is subject to a 10% withholding tax. There are some exemptions from interest withholding tax, including for certain publicly offered debentures.

Australian interest withholding tax may be reduced under an applicable tax treaty, although typically the treaty rate also is 10%. In some cases, an interest withholding tax exemption applies for interest paid to foreign financial institutions or government bodies under specific treaties.

Interest paid to residents is subject to PAYG withholding if the resident has not provided its TFN to the payer.

## 4.3 Royalties

Royalties are subject to withholding tax at 30%. Royalties paid by Australian businesses generally may be deducted in computing taxable income. The rate of royalty withholding tax typically will be reduced under a tax treaty.

## 4.4 Branch remittance tax

Australia does not levy a branch remittance tax.

## 4.5 Wage tax/social security contributions

Under Australia’s compulsory superannuation legislation (Superannuation Guarantee (SG) legislation), employers are required to contribute 9.5% of each employee’s “ordinary time earnings” (up to a quarterly salary cap of AUD 51,620 for 2016/2017) to an Australian complying superannuation fund or retirement savings account (RSA). There are certain limited exemptions from these requirements. Contributions must be made quarterly, based on the salary payments made to the employee in the relevant quarter.

Many employees have the option to choose the superannuation fund/RSA that the employer pays into. Whether an employee is eligible to choose his/her superannuation fund/RSA generally depends on the type of award or industrial agreement under which the employer employs the employee. Where an employer is required to offer its employee superannuation choice, the employer must provide the employee with the relevant documentation to enable the employee to make a choice. If the employee does not make a choice, the employer can pay the SG contributions for that employee into a default



fund nominated by the employer. Since 1 January 2014, if the employee does not choose a fund, the employer has been obliged to pay the contributions into a fund with a "MySuper" account.

If an entity uses individual contractors wholly or principally for their labor, and pays them for hours worked rather than to achieve a result, the entity must pay superannuation contributions for those individual contractors as if they were employees.

The minimum required SG contribution is scheduled to increase progressively to 12% by 1 July 2025. The current rate of 9.5% applies up until the income year commencing on 1 July 2021 (increased rates progressively will apply as from this date).

The SG legislation sets out the minimum superannuation obligations of an employer. Some employers are required to satisfy other employment/award obligations, which may include additional superannuation requirements. If an employer has additional employment/award obligations to make superannuation contributions into a specified fund or RSA, these contributions usually will count toward meeting the employer's SG obligations, as will "salary sacrifice" contributions.

## **4.6 Distributions from MITs**

MITs and attribution managed investment trusts (AMITs) are required to withhold tax from "fund payments" made directly to foreign residents (regardless of whether the recipient is an individual, a company or an entity acting in the capacity of a trustee).

Certain MITs and AMITs are subject to a final withholding tax of 15% levied on fund payments made to foreign residents. The reduced withholding tax rate applies only to investors resident in eligible countries, i.e. countries that have concluded an exchange of information (EOI) agreement with Australia.

For investors resident in non-EOI countries, there is a 30% final withholding tax.

# 5.0 Indirect taxes

## 5.1 Goods and services tax

GST is a broad-based consumption tax on supplies of goods and services in Australia. GST is charged at each step in the supply chain, with entities that are registered for GST including GST in the price of taxable goods and services they sell. There also are supplies that are nontaxable, where GST is not included in the price. These include “input taxed” supplies (e.g. financial supplies, leasing of residential premises and the sale of residential premises that are not “new,” and “GST-free” supplies (e.g. the sale of going concerns, and certain exports of goods and services). The standard rate of GST is 10%.

An entity that is registered for GST generally is able to claim an input tax credit (a GST refund) for any GST included on business inputs. The major exception to this principle is where the business inputs relate to the making of input taxed supplies (see above). As a general rule, an entity will be restricted from claiming input tax credits for the GST incurred on business inputs that relate to the making of input taxed supplies. However, there are several concessions available to reduce the impact of this rule (e.g. the financial acquisitions threshold test; a borrowings concession; and reduced input tax credits, equal to 75% or 55% of the input GST incurred, for certain outsourced services).

An entity is required to register for GST if it is carrying on an enterprise and its turnover for GST purposes exceeds the registration turnover threshold. The registration turnover threshold is exceeded where an entity's GST turnover (i.e. the sum of the value of the taxable and GST-free supplies the entity has made in the current and previous 11 months, or intends to make in the current and next 11 months) is equal to or greater than AUD 75,000 (AUD 150,000 for nonprofit entities). However, entities may choose to register for GST even if their GST turnover is below the registration threshold. Nonresident entities may choose to register for GST for the purpose of claiming a refund of GST on business inputs (input tax credits) incurred in Australia.

Entities registered for GST must account for GST obligations on a Business Activity Statement (BAS) submitted to the ATO at the end of each tax period. If an entity has annual turnover of less than AUD 20 million, it will have quarterly tax periods, unless it has elected to have monthly tax periods. If an entity has an annual turnover of AUD 20 million or more, it will have monthly tax periods and be required to electronically file its monthly BAS. Small businesses voluntarily registered for GST are allowed to report and pay GST annually rather than quarterly, to reduce compliance costs.

## 5.2 Capital tax

Australia does not levy capital duty.

## 5.3 Real estate tax

Municipal councils within the states and territories levy rates and other charges on land owners to fund various local services, facilities and infrastructure (e.g. local roads, parks, community facilities and activities, waste collection, etc.).

Council rates for a property are calculated by reference to the property's valuation.

All but one of the states and territories levy land tax on the land owned within their jurisdiction. Some exemptions apply to certain categories of land. Land tax generally is calculated by reference to the site (or “unimproved”) value of the land. Graduated rates of land tax apply, depending on the value of land, with the rates and thresholds varying between the states and territories that levy the tax (top rates range between 1.23% and 3.7%).

A number of states recently have introduced foreign-owner land tax surcharges, which have resulted in increased rates at an additional 0.75% in New South Wales (i.e. a top rate of 2.75%) and 1.5% in Victoria (i.e. a top rate of 3.75%) for certain land owned by foreign persons. The definition of “foreign person” differs across jurisdictions. While the surcharge applies only to residential land in New South Wales, in Victoria it applies to all land.

Queensland already applies a land tax surcharge for absentees (at a 2% top rate).

Municipal council rates and charges and state or territory land tax generally are deductible for income tax purposes (see also under Stamp duty).

## 5.4 Transfer tax

See under Stamp duty.

## 5.5 Stamp duty

The states/territories impose stamp duty at rates of up to 5.75% on the transfer of real property and other business property (although New South Wales levies premium residential property duty at rates of up to 7%). Rates vary between states/territories and between classes of property transferred. Stamp duty also is imposed on the indirect transfer of “land” held by certain companies and unit trust schemes, at rates of up to 5.75%, depending on the number of shares/units transferred. These land-rich/landholder duty provisions generally have an extended definition of land to cover mining rights and interests in land, such as fixtures and buildings.

A number of states also have introduced foreign-purchaser duty surcharges (similar to the land tax surcharge) in respect of direct and indirect acquisitions of residential land by foreign persons. This has resulted in increased rates of an additional:

- 4% in New South Wales (i.e. a top rate of 9.5% generally, and 11% for premium properties worth more than AUD 3 million);
- 7% in Victoria (i.e. a top rate of 12.5%); and
- 3% in Queensland (i.e. a top rate of 8.75%).

It is important to bear in mind that the definition of “foreign person” and “residential land” differs across each of these jurisdictions.

## 5.6 Customs and excise duties

Customs duty is payable on goods imported into Australia, although there are many tariff lines that are duty free. The most common duty rate applied to dutiable goods is currently 5%. Duty concessions are available for equipment imported for large-scale capital projects, where there is no manufacture of substitutable products in Australia, and under various bilateral and multilateral free trade agreements.

GST-registered entities can register to claim “fuel tax credits” for the excise duty or customs duty (fuel tax) included in the price of various fuels used for eligible business activities in machinery, plant, equipment and certain vehicles. Fuel tax credits are claimed in the entity’s periodic BAS.

Excise duty is a tax on alcohol, tobacco and petroleum products produced or manufactured in Australia. An entity may not manufacture, store and/or deal in these goods before excise duty has been paid unless the entity has an excise license.

## 5.7 Environmental taxes

A carbon pricing mechanism, which commenced on 1 July 2012 to create incentives to reduce Australia’s carbon pollution and invest in renewable and clean energy technologies, was repealed with effect from 1 July 2014.

The government has implemented a direct action plan designed to provide financial incentives for businesses and others to reduce emissions, the main feature of which is the creation of the emissions reduction fund. Broadly, businesses apply and submit tenders for projects that will reduce or offset their emissions.

Once registered, project proponents can participate in auctions to sell their emission reductions. Successful bidders enter into contracts with the clean energy regulator, which agrees to purchase the bidder’s Australian carbon credit units (ACCUs). The projects are then undertaken and emissions reductions reported to the clean energy regulator, which issues credits to the project proponents. The project proponents receive payment from the clean energy regulator for credits at the contract price, per the schedule in the contract. The proceeds of selling an ACCU will be “assessable income on a revenue account” in the income year the ACCU is sold or surrendered.

## 5.8 Other taxes

Employers are required to pay FBT on the value of fringe benefits (such as motor vehicles, low-interest loans and entertainment) provided to their employees, at a rate of 49% from 31 March 2016-

31 March 2017 (reducing to 47% from 31 March 2017-31 March 2018) on the grossed-up value of each benefit. FBT is deductible against assessable company income.

Payroll tax, a state and territory tax levied on employers, is calculated based on salary or wages, allowances and bonuses/commissions paid to employees. It also includes superannuation contributions, FBT (grossed up at the "type 2" rate), certain contractor payments, directors' fees, share plans, etc. The taxable base is reduced by certain exemptions and allowances. Depending on the state or territory, the payroll tax rate ranges from 4.75% to 6.85%.

The wine equalization tax is a value-based tax applied to wine consumed in Australia. It applies to assessable dealings involving wine (unless an exemption applies) including wholesale sales, untaxed retail sales and applications for own use. The rate is 29% of the wholesale sales value, or on an equivalent value when there is no wholesale sale.

State and territory governments levy royalties on most mineral production.

# 6.0 Taxes on individuals

Individuals in Australia are subject to various types of tax such as income tax, withholding tax, the Medicare levy (and levy surcharge), the temporary budget repair levy and real property tax (levied by the states). The income tax rates progressively increase with taxable income. The rates of tax differ for resident and nonresident individuals.

## Australia Quick Tax Facts for Individuals

Income tax rates	Progressive to 47% (inclusive of the temporary budget repair levy)
Capital gains tax rates	Progressive to 47% (inclusive of the temporary budget repair levy)
Basis	Worldwide (residents)/Australian-source (nonresidents)
Double taxation relief	Yes
Tax year	1 July-30 June
Return due date	31 October (unless the taxpayer engages a tax agent)

## Domestic withholding tax

• Dividends	0% (residents, where TFN provided)/30% (unfranked dividends paid to nonresidents where no treaty relief is available)
• Interest	0% (residents, where TFN provided)/10% (nonresidents)
• Royalties	0% (residents)/30% (nonresidents)
Net wealth tax	No
Superannuation contribution	9.5% of earnings
Medicare levy	2% of taxable income (residents only) (plus a surcharge in some cases)
Inheritance tax	No
Real estate tax	See stamp duty
Stamp duty	Varies, up to 7% (plus a surcharge in some cases)
GST	10%

## 6.1 Residence

For tax purposes, an individual is a resident if he/she ordinarily resides in Australia or satisfies one of three statutory tests: (1) is domiciled in Australia (unless the Commissioner of Taxation is satisfied that the individual's permanent place of abode is outside Australia); (2) has spent more than half the tax year in Australia (unless the Commissioner of Taxation is satisfied that the individual's usual place of abode is outside Australia and he/she does not intend to take up residence in Australia); or (3) is a contributing member (or the spouse or child younger than 16 years of such a member) to the superannuation fund for officers of the Commonwealth government.

## 6.2 Taxable income and rates

Resident taxpayers generally are taxed on worldwide income, with an offset for foreign tax paid on double taxed income up to the amount of Australian tax payable on that income.

A "temporary resident" regime provides a tax exemption for most foreign-source income and capital gains on nontaxable Australian real property, and for interest withholding tax obligations associated

with foreign liabilities. A temporary resident for tax purposes is an individual who meets all of the following criteria:

- Holds a temporary visa granted under the Migration Act 1958;
- Is not an Australian resident within the meaning of the Social Security Act 1991; and
- Does not have a spouse who is an Australian resident within the meaning of the Social Security Act 1991.

A temporary tax resident is liable to Australian tax on worldwide employment income (earned and received after becoming a temporary resident) and other investment income or capital gains from Australian sources. Foreign investment income and capital gains or losses on foreign assets (that are not taxable Australian property) derived by a temporary tax resident generally are not subject to Australian income tax. Employee share scheme income may be subject to income tax if related to the taxpayer's Australian employment.

Nonresidents in Australia are taxable only on income sourced in Australia, excluding dividends, interest and royalties, which are subject to withholding tax at source. Nonresidents are exempt from the Medicare levy and do not qualify for certain tax offsets, such as the dependents tax offset and the net medical expenses offset. Similar to temporary tax residents, a CGT liability will arise on the disposal of assets that are considered taxable Australian property. Assets that are regarded as taxable Australian property, broadly, include:

- Direct or indirect interests in Australian real property;
- Nonportfolio interests (at least 10% holdings) in companies or trusts where the market value of the company's/trust's taxable Australian property exceeds the market value of its other assets;
- Rights or options to acquire Australian real property;
- Certain mining rights;
- CGT assets used in carrying on a business through an Australian PE; and
- Assets that the taxpayer has elected, at the time of ceasing residence, to be considered taxable Australian property (e.g. if electing to defer any CGT liability until actual sale).

## Taxable income

Taxable income includes employment income (salaries, wages, bonuses, etc.), business income, dividends, interest, rent and royalties, less other expenses incurred in producing assessable income and certain specific deductions that are allowable. Grants of shares, rights and options under employee share acquisition schemes also are assessable income.

Employers pay FBT on noncash benefits that may be provided to individual employees and, therefore, the individual employee is not subject to income tax on such benefits. A partial or full exemption from FBT may apply to certain benefits provided to expatriate employees, including relocation travel costs, removal expenses, child education costs and annual home leave travel.

Franked dividends paid by resident companies carry franking credits that shareholders who are tax residents of Australia may use to offset their personal tax liability. Imputation credits that exceed a tax resident individual's tax liability give rise to a refund.

Nonresidents are subject to withholding tax on dividends, interest, certain managed investment fund income and royalties from Australian entities. Where a dividend paid to a nonresident is a franked dividend carrying franking credits, it is exempt from withholding tax and is not subject to any further Australian tax. The franking credits are nonrefundable to the nonresident.

Capital gains on the disposal of assets acquired after 19 September 1985 are included in assessable income. Where assets have been held for less than 12 months prior to disposal, the entire capital gain is included in taxable income. Where an individual has held an asset for more than 12 months before disposal (and has been an Australian tax resident for the entire ownership period), the individual may be eligible for the 50% CGT discount, such that 50% of the capital gains from the disposal of the asset will be disregarded.

As from 8 May 2012, nonresidents and temporary residents are ineligible for the 50% CGT discount in respect of capital gains that accrue after this date. The 50% CGT discount may be available (in full or in part) for capital gains on taxable Australian property that accrued before this time, subject to the individual's residence status as of 8 May 2012. The CGT discount may be calculated using the

apportionment or market value calculation methods, subject to the individual meeting certain conditions as of 8 May 2012.

As noted above, temporary tax residents and nonresidents of Australia are subject to CGT only on the disposal of taxable Australian property. Individuals resident in Australia who become nonresidents are deemed to have disposed of some of their assets (generally those that are not considered taxable Australian property) when they depart Australia, for CGT purposes, which may mean that they become liable to pay CGT in the tax return for the year of exit. However, such departing residents can elect not to have this deemed disposal rule apply. If they do so, and eventually dispose of the assets, the entire period of ownership, including any period in which they were not an Australian resident, will be taken into account in calculating a gain or loss for CGT purposes, and the 50% CGT discount may be apportioned accordingly.

## Deductions and reliefs

Expenses may be taken as deductions if they are incurred in gaining or producing assessable income. Charitable donations to Australian-registered charities may be tax deductible. Expenses of a capital, private or domestic nature are not deductible.

Australian residents are allowed some tax offsets, including for dependents, low income earners and pensioners.

## Rates

Personal income tax rates are progressive up to 45%. A tax-free threshold of AUD 18,200 applies for resident taxpayers. From 1 July 2014 until 30 June 2017, the temporary budget repair levy is payable by individuals whose annual taxable income exceeds AUD 180,000, at a rate of 2% on the excess taxable income over this amount.

## 6.3 Inheritance and gift tax

There is no inheritance or gift tax in Australia.

## 6.4 Net wealth tax

There is no net wealth tax in Australia.

## 6.5 Real property tax

The states/territories impose stamp duty at rates of up to 7% on the transfer of real property and other business property (although the top rate in most of the states and territories does not exceed 5.5%). Rates vary between states and territories and between classes of business property transferred.

A stamp duty surcharge can apply for nonresidents buying residential property. The top rate including the surcharge can be up to 12.5%.

Municipal councils within the states and territories levy rates and other charges on land owners to fund various local services, facilities and infrastructure (e.g. local roads, parks, community facilities and activities, waste collection, etc.). Council rates for a property are calculated by reference to the property's valuation.

All but one of the states and territories levy land tax on the land owned within their jurisdiction. Some exemptions apply to certain categories of land, including a person's principal place of residence. Land tax generally is calculated by reference to the site (or "unimproved") value of the land. Graduated rates of land tax apply, depending on the value of land, with the rates varying between the states and territories that levy the tax (from 0.1% to 3.75%).

Depending on the use of the property, municipal council rates and charges and state or territory land tax may be deductible for income tax purposes.

## 6.6 Social security contributions

Employers are required to make mandatory superannuation contributions on behalf of their employees, currently at a rate of 9.55% of the employee's "ordinary time earnings" (up to a maximum earnings base, AUD 51,620 per quarter as from July 2016). An exemption applies for certain employees who remain covered by their home country social security systems, where Australia has a

bilateral social security agreement with that country and the employer obtains a certificate of coverage.

In addition to income tax, a 2% levy is payable for the 2016-2017 income year on the taxable income of Australian residents (who are eligible for Medicare benefits in Australia) to partially fund Medicare, a universal health program that provides basic medical and hospital care free of charge, and to fund the National Disability Insurance Scheme. Relief is available to low-income taxpayers. A further Medicare surcharge (up to 1.5%) may be imposed on taxpayers that have insufficient qualifying private hospital insurance.

## 6.7 Compliance

The tax year is 1 July to 30 June.

Broadly, taxpayers who paid tax under the PAYG withholding system or had tax withheld on payments made to them are required to file an income tax return. A tax-free threshold of AUD 18,200 applies for resident taxpayers. The return must be filed by 31 October for the income year ending on 30 June of the same calendar year (unless the individual is on a tax agent filing program and is eligible for an extended filing deadline).

Each taxpayer must file a return; joint returns are not permitted.



# 7.0 Labor environment

## 7.1 Employee rights and remuneration

The legal framework of Australia's employment system is a complex mixture of state and federal legislation, the case law of the common law courts, legally binding industrial instruments (including modern awards and enterprise agreements) and the decisions of state and federal industrial tribunals.

A complicated combination of federal and state legislation addresses various workplace issues, including maximum working hours, working conditions (such as occupational health and safety), leave entitlements, workers' compensation, equal employment opportunity and industrial rights.

Employees who are employed by incorporated entities (whether Australian or foreign) that carry on trade or commerce in Australia are covered by the federal workplace relations system. Most state jurisdictions signed an agreement in 2009 to refer their powers to the Commonwealth for the purpose of creating a truly national industrial relations system. A small number of employees who are employed, for example, by contractors or government bodies in certain states do not fall within the federal system.

Industrial disputes are regulated by federal legislation, which sets out a framework for taking protected industrial action in the course of workplace bargaining and recourse for employees in circumstances where industrial action is not protected. The Fair Work Commission has jurisdiction to hear and conciliate industrial disputes between employers, employees and registered trade unions.

Modern awards provide for minimum employment terms and conditions for employees in certain occupations or industries.

### Working hours

Under federal legislation, employees must not be required to work beyond a maximum of 38 hours per week, plus "reasonable" additional hours. If an employee is not covered by a modern award or enterprise agreement, the employer and employee may agree in writing to average these hours over a specified six-month period. If an employee is covered by a modern award or enterprise agreement, averaging may take place only in accordance with that industrial instrument. The National Employment Standards, set out in the Fair Work Act 2009 (Commonwealth) (FWA 2009), do not limit the period over which hours may be averaged under such an instrument. In determining "reasonable additional hours," a court will review a number of factors, including the nature of the employment, the employee's personal circumstances and operational requirements.

Overtime compensation may be payable to regulated employees, i.e. employees who are covered by an industrial award or collective workplace or enterprise agreement. Penalty rates also are payable to regulated employees for work performed outside ordinary working hours, including on weekends and public holidays. All overtime and penalty rates are dependent on the terms of the applicable industrial instrument or more generous contractual agreements entered into with the employee.

## 7.2 Wages and benefits

The Minimum Wage Panel of Fair Work Australia sets and reviews the federal minimum wage. The federal minimum wage from 1 July 2016 is AUD 17.70 per hour.

### Pensions

The SG is a compulsory, tax-deductible employer contribution to employees' accounts held by an Australian complying superannuation fund/RSA. To be eligible to receive SG contributions, employees must be paid AUD 450 or more per calendar month. There is no maximum SG age limit.

Companies that fail to make the required contribution must pay a nondeductible penalty. This penalty will be higher than the SG contributions that were payable for an employee, as the contributions are paid on the employee's "ordinary time earnings," while the levy is based on the SG rate applied to the employee's total salary/wage and includes an interest component and administration fee. Employers pay the SG contribution into employees' accounts on their behalf, at a rate of 9.5% of their ordinary time earnings (calculated on a maximum base of AUD 51,620 per quarter as from July 2016).

Employees also may make voluntary contributions either from their after-tax income or from their pre-tax income through a "salary sacrifice" arrangement concession. Employees may not access the funds

until they have reached their “preservation age” and have retired, usually at age 65 or older. A person who still is working may make contributions up to age 75.

An individual’s preservation age is based on their date of birth, as follows:

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960–30 June 1961	56
1 July 1961–30 June 1962	57
1 July 1962–30 June 1963	58
1 July 1963–30 June 1964	59
From 1 July 1964	60

Superannuation funds are required to pay tax on both the employer contributions and employees’ salary-sacrificed contributions, at a concessional rate of up to 15%. In some circumstances, the employer contributions and the employee’s salary-sacrificed contributions (referred to collectively as “concessional contributions,” which also include certain other amounts) are taxed a further 31.5% where those concessional contributions exceed the concessional contribution cap threshold, which is AUD 30,000 for the year starting 1 July 2016 (or AUD 35,000 where the individual was aged 49 or more as of 30 June 2016). Since 1 July 2013, employees have been taxed personally at their marginal tax rate on the excess contribution, rather than subject to an effective tax rate of 46.5%. If the employee does not elect to remove the excess contributions taxed to him/her personally from the fund, the excess concessional contribution is counted toward his/her nonconcessional contribution cap. Where the employee also has exceeded his/her nonconcessional contribution cap for a particular year, the excess contributions are taxed at a further 46.5%.

An additional 15% contributions tax surcharge applies to high-income individuals where a defined adjusted taxable income is greater than AUD 300,000.

Individuals temporarily in Australia from certain countries and who meet certain criteria may be eligible for exemption from the Australian compulsory SG contributions regime. Australia currently has bilateral social security agreements with Austria, Belgium, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, India, Ireland, Italy, Japan, Korea (ROK), Latvia, the Former Yugoslav Republic of Macedonia, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Switzerland and the US.

Departing nonresidents who have held certain temporary residence visas may take their superannuation with them; the government scales back the tax concessions provided.

Contributions may be made in children’s names, and spouses may split their concessional contributions.

The low income super contribution (LISC) is a government super payment of up to AUD 500 per financial year for low income earners. The contribution is the lesser of 15% of the concessional (before tax) contributions made by the employer or the employee, or AUD 500. Where eligible, the minimum contribution payment for a financial year is AUD 10. The LISC has been repealed with effect from 5 September 2014 but will continue to be payable in respect of concessional contributions made up to and including the 2016-17 year. Determinations of LISC will cease from 1 July 2019.

The government has a super co-contribution regime. For the year ending 30 June 2017, the maximum government co-contribution is AUD 500 to the superannuation savings of low income earners (AUD 36,021 threshold) that make personal after-tax contributions into superannuation. Where eligible, the minimum co-contribution payment is AUD 20.

Eligible employees may choose the fund into which their compulsory superannuation (pension) contributions are paid by their employer. Most commonly, contributions are paid into either company-sponsored funds, retail funds or “industry” funds, which usually are set up under the auspices of trade unions. An employee also may choose to have a self-managed superannuation fund (SMSF) where he/she is responsible for the investments, compliance and administration of the fund. If an employee on a temporary resident visa chooses an SMSF, the employee will need to consider a number of issues relating to the SMSF when he/she leaves Australia. If these issues are not addressed appropriately, the SMSF may not be subject to concessional tax treatment.

## Other benefits

As a consequence of the FWA 2009, there are 10 legislated National Employment Standards (NES) for all employees covered by the federal system:

- *Maximum weekly hours of work:* As noted above, employees must not be required to work more than 38 hours per week plus reasonable additional hours, although there are provisions for some flexibility.
- *Requests for flexible working arrangements:* An employee who is a parent or caregiver of a child under school age or a child under 18 with a disability, has a disability, is a carer (within the meaning of the Carer Recognition Act 2010), is 55 years or older or is experiencing domestic violence (or assisting an immediate family or household member experiencing domestic violence) may request a change in working arrangements from his/her employer (e.g. changes in hours, patterns or location of work). Employees must have worked for the employer for at least 12 months before making such a request (or must be long term casuals with an expectation of ongoing employment) and a request can be refused by the employer only on reasonable business grounds.
- *Parental leave and related entitlements:* Up to 24 months of unpaid parental leave (per employee) is available for the birth or adoption of a child. This entitlement applies to all full and part-time employees with 12 months of continuous service and to casual employees who have been employed on a regular and systematic basis for at least 12 months and who have a reasonable expectation of ongoing employment. Employees are entitled to return to their position following the period of the leave, or a position for which they are qualified and capable of performing (even if at a lesser salary) if their original position has ceased to exist. Employees also are entitled to request a return to part-time work after parental (or adoption) leave to assist in the care of the child.
- *Annual leave:* Employees are entitled to 20 days of paid annual leave (calculated pro rata for part-time employees) per year, plus an additional week for shift workers. Annual leave accumulates from year to year if not taken and accrues based on ordinary hours of work. Employers may require an employee to take a period of paid annual leave, but only if such requirement is reasonable. Certain employees are able to “cash out” annual leave by mutual agreement.
- *Personal leave and compassionate leave:* An employee is entitled to 10 days per year, which can be taken as sick or carer's (an employee taking leave to look after a member of the immediate family or household) leave. This leave is cumulative and is prorated for employees who have not completed 12 months of service. There is an additional two days of unpaid carer's leave available (once all paid personal leave has been exhausted) for unexpected emergencies. Two further days of paid compassionate leave are available for each occasion where an employee's immediate family or household member contracts an illness or sustains an injury that poses a serious threat to life, or dies.
- *Community service leave:* An employee is entitled to be absent from his/her place of employment if he/she is engaged in an eligible community service activity (e.g. jury service or volunteer emergency services activities).
- *Long-service leave:* Long-service leave in certain pre-reform industrial instruments (e.g. collective workplace agreements) is incorporated as part of the NES. Pre-existing state and territory long-service leave legislation generally continues to apply. There is no common system for long-service leave. State and territory legislation generally provides for paid long-service leave of two months after 10 years of service or 13 weeks after 15 years of service, with some pro rata entitlements (partial leave allocation based on the period of employment).
- *Public holidays:* Employees generally are entitled to be absent on prescribed public holidays (there are eight days prescribed as public holidays under the NES, and some additional days of public holidays are prescribed by individual states and territories).
- *Notice of termination and redundancy pay:* Employers must give employees a minimum period of prior notice in writing before terminating employment. This notice period depends on the employee's period of service. Employers must pay redundancy benefits to employees who are

terminated on the grounds of redundancy, in accordance with a scale that varies depending on the years of service.

- *Fair work information statement:* The statement (which sets out certain information, including information about the NES, awards, etc.) must be given to all new employees by the employer as soon as practicable after the employee starts employment.

## Workers' compensation

Legislation in each state requires employers to take out workers' compensation insurance in respect of their employees and certain contractors. Liability for injury to workers is strict, and failure to take out appropriate insurance constitutes an offense.

## 7.3 Termination of employment

Most Australian workplaces are governed by a system created by the FWA 2009, which imposes a number of requirements on employers relating to the termination of employment (among other areas).

An employer generally must not terminate an employee's employment unless certain conditions are satisfied, including giving the employee written notice of the day of the termination. Employees usually work during the notice period, although it is possible for the employer to pay the employee in lieu of notice for the hours the employee would have worked had the employment continued until the end of the notice period.

Where the FWA 2009 does not apply or the employer has additional contractual obligations, the employer should consider what other obligations may apply to terminating an employee. For example, employment contracts generally would consider the notice periods required for the employer to terminate the employee and for the employee to tell the employer of his/her resignation. Generally, this would be four weeks for either party, although the notice period may be longer for key employees (e.g. senior management).

On termination of employment, the employer is required to make certain payments to the employee, including:

- Any outstanding wages or other remuneration still owing;
- Any accrued annual leave and long-service leave entitlements;
- Any severance pay entitlements if the employee has been made redundant and the employee has an entitlement to redundancy under relevant commonwealth workplace laws, an industrial instrument, employment contracts or other arrangements; and
- Any other entitlements payable on termination under relevant employment contracts, commonwealth workplace laws, an industrial instrument or other arrangements.

An employee may be made redundant because the employer no longer requires the role of the employee to be filled by any employee or because of the insolvency or bankruptcy of the employer. Where the FWA 2009 applies, an employee generally is entitled to between four and 16 weeks of redundancy pay, depending on the length of service. The employer may choose to pay additional amounts. Where the FWA 2009 does not apply or the employer has additional contractual obligations, the employer must consider any other contractual obligations that may apply.

Tax concessions may apply to certain termination payments, mainly to redundancy payments, payments of unused leave entitlements and payments that qualify as employment termination payments. These concessions may include a tax-free amount and a lower tax rate. Some of these concessions for employment termination payments may not be available for individuals whose "whole of income" amount exceeds AUD 180,000 in a year.

## 7.4 Employment of foreigners

A foreign individual may be employed temporarily or nominated for permanent migration to Australia if he/she is performing a skilled role and if the pay and conditions are commensurate with Australian employees performing comparable roles.

Australian employers may nominate foreign personnel for migration when they are able to demonstrate that there is a genuine need for a foreign employee to fill a skilled position within the business. To nominate foreign personnel, an employer must be an approved business sponsor with the

Department of Immigration and Border Protection. Significant undertakings and obligations are made by the business at the time of application for sponsorship and for each individual visa application. The business sponsorship program is framed to ensure that overseas recruitment does not prevent the longer term improvement of employment and training opportunities for Australians. Accordingly, employers are obligated to demonstrate expenditure in relation to the employment, education, training and career opportunities of current Australian employees.

# 8.0 Deloitte International Tax Source

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach. DITS is accessible through mobile devices (phones and tablets), as well as through a computer.

## Connect to the source and discover:

**A database that allows users to view and compare tax information for different jurisdictions that includes:**

- Corporate income tax rates;
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