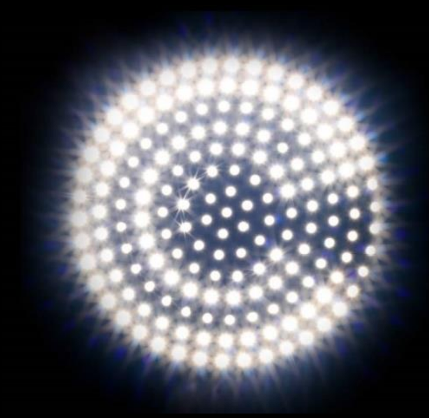
International Tax
Australia Highlights 2018



Investment basics:

Currency – Australian Dollar (AUD)

Foreign exchange control – No

Accounting principles/financial statements – The Australian equivalent of IFRS (A-IFRS) applies. Financial statements must be filed annually.

Principal business entities – These are the public company ("Limited" or Ltd), private company ("Proprietary Limited" or Pty Ltd), partnership, corporate limited partnership, trust, superannuation fund and branch of a foreign corporation.

Corporate taxation:

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 there or has its voting power controlled by shareholders that are residents of Australia.

Basis – Resident companies are taxed on worldwide income. A nonresident company generally pays taxes only on income derived from Australian sources. The tax rates and treatment are the same for companies and branches of foreign companies. However, there are exceptions for special types of companies such as cooperative firms, mutual and other life insurance companies and nonprofit organizations, which are taxed at slightly different rates.

Taxable income – To calculate taxable income, a company generally computes assessable income and subtracts allowable deductions. Assessable income derived by a company carrying on business usually would include gross income from the sale of goods, the provision of services, dividends, interest, royalties and rent. Assessable income excludes exempt income (e.g. certain dividends received from pooled development funds and income derived by certain entities, such as charities, etc.). Income characterized as nonassessable nonexempt income also is excluded from assessable income (e.g. income derived by certain foreign branches). Foreign equity distributions received (directly or indirectly through one or more interposed trusts and partnerships) from a foreign company in which an Australian corporate tax entity holds a 10% participation interest also are nonassessable nonexempt income.

Taxation of dividends – Australia operates a full imputation system for the avoidance of economic double taxation of dividends. Under this system, the payment of company tax is imputed to shareholders, in that domestic shareholders are relieved of their tax liability to the extent profits 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 a tax offset for the corporate tax paid.

Capital gains – Assessable income includes any capital gains after offsetting capital losses. Net capital gains derived by companies are taxed at the 30% corporate rate. Australian tax residents (generally excluding temporary residents) are liable for tax on worldwide capital gains (subject to double tax relief). Where a company holds a direct voting interest of 10% or more in a foreign company for a certain period, any capital gain or loss on the sale of the shares in the foreign company may be reduced (see under "Participation exemption"). Foreign investors include capital gains in assessable income only for assets that are "taxable Australian property" (e.g. the business assets of Australian branches of nonresidents and direct and indirect interests in Australian real property).

Losses – Tax losses (reduced by exempt income) may be utilized and carried forward indefinitely to offset future assessable income, provided a "continuity of ownership" (more than 50% of voting, dividend and capital rights) or a "same business" test is satisfied. Capital losses are subject to the same tests, but may be offset only against capital gains.

Rate – The corporate tax rate is 30%, or 27.5% for companies with an aggregate annual turnover of less than AUD 25 million in the 2017-18 income year (increased from AUD 10 million in the 2016-17 income year, and scheduled to further increase to AUD 50 million in the 2018-19 income year). Legislation has been enacted to reduce the corporate rate for companies with less than AUD 50 million of annual turnover to 25% by the 2026-27 income year.

Surtax – No

Alternative minimum tax – No

Foreign tax credit – The foreign income tax offset (FITO) rules allow taxpayers to claim a credit or tax offset against Australian tax in respect of assessable income that is foreign income or on which they have paid foreign income tax. The amount of the tax offset is equal to the foreign income tax paid, subject to a cap. The offset may be used only in the income year to which the foreign tax relates; unused FITO offsets may not be carried forward to future income years.

Participation exemption – Capital gains or losses on the disposal of shares in a foreign company, at least 10% of which is held by an Australian resident company for a certain 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. Furthermore, foreign equity distributions received (directly or indirectly through one or more interposed trusts and partnerships) from a foreign company in which an Australian corporate tax entity holds a 10% participation interest are nonassessable nonexempt income.

Holding company regime – No

Incentives – Expenditure on eligible R&D activities is entitled to beneficial treatment. Under the R&D tax incentive program, 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 on expenditure up to AUD 100 million.

Investors of an Australian early stage innovation company (ESIC) are eligible for 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 of the list of specified exclusions (and capped at AUD 200,000). There also are capital gains tax concessions for eligible shares.

There are special rules for the taxation of a Managed Investment Trust (MIT), which is a type of collective investment vehicle. Certain MITs and Attribution Managed Investment Trusts (AMITs) are subject to a concessional final withholding tax of 15% levied on fund payments made to foreign investors resident in countries that have concluded an exchange of information (EOI) agreement with Australia. Broadly, a fund payment represents the Australian-source net income (other than dividends, interest and royalties) of the trust.

An Investment Manager Regime (IMR) provides concessional taxation treatment in certain circumstances where foreign-managed funds invest in Australia using Australian resident fund managers. Various other incentives also are available (e.g. film tax incentives).

Withholding tax:

Dividends – Dividends paid by Australian-resident companies from profits already taxed at the corporate rate may carry franking credits for the 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 distributions to foreign residents are unfranked distributions, they are subject to withholding tax at the statutory rate of 30%, which may be reduced under a tax treaty.

Australia has conduit foreign income rules, under which certain foreign-source income derived by an Australian resident company can be distributed to foreign resident shareholders free of dividend withholding tax under Australian domestic law.

Interest – Interest paid by an Australian company to a foreign resident generally is subject to a 10% withholding tax. There are some exemptions, including for certain publicly offered debentures and limited nondebenture debt interests. An interest withholding tax exemption applies for interest paid to unrelated foreign financial institutions or government bodies under specific tax treaties.

Royalties – Royalties are subject to a withholding tax of 30%, unless the rate is reduced under a tax treaty.

Technical service fees – Australia does not levy withholding tax on payments of technical service fees that fall outside the definition of royalties.

Branch remittance tax – No

Other – Fund payments made to foreign residents by an MIT are subject to withholding at 15% when made to a foreign resident in a country that has an EOI agreement with Australia; otherwise, withholding is required at a rate of 30%.

Other taxes on corporations:

Capital duty – No

Payroll tax – Payroll tax is levied on employers by the states and territories, with the amount based on salaries, wages and benefits paid to employees.

Real property tax – See under "Stamp duty" for property transfers. Land tax also is levied by all but one of the states and territories on entities owning land within their borders. Rates of up to 3.7% apply, depending on the jurisdiction. In some states, a land tax surcharge may be applied to foreign or absentee owners.

Social security – Employers are required to contribute to a complying superannuation fund or retirement savings account on behalf of their employees, at a rate of 9.5% of the employee's "ordinary time earnings," up to a maximum earnings base of AUD 52,760 per quarter in 2017/18. Exemptions from the superannuation requirement apply in limited circumstances.

Stamp duty – The states and territories impose stamp duty at rates of up to 5.75% on the transfer of real property and some other business property. Rates vary depending on the state/territory and class of business property transferred. Stamp duty also is imposed on the indirect transfer of real property held by certain companies and unit trusts, at rates of up to 5.75%. In some states, extra stamp duty may be imposed by way of a surcharge (for foreign buyers of residential property) and premium duty rates (for high-value residential property).

Transfer tax – See under "Stamp duty."

Other – A petroleum resource rent tax is levied on profits generated from all onshore and offshore Australian petroleum projects, excluding the Joint Petroleum Development Area (as defined in the Timor Sea Treaty).

Employers are required to pay fringe benefits tax (FBT) on the value of fringe benefits (e.g. motor vehicles, low-interest loans and school fees) provided to their employees, at a rate of 47% (from 31 March 2017–31 March 2018) on the grossed-up value of each benefit. FBT is deductible for income tax purposes.

State legislation requires employers to insure employees against work-related injuries and compensate them for injury, disability or death arising from, or in the course of, employment.

Anti-avoidance rules:

Transfer pricing – The transfer pricing rules may apply to any international transaction. The rules do not necessarily require direct ownership between the two transacting parties (i.e. "any connection" between the parties is all that is required). The rules apply to international transactions/dealings between separate legal entities, as well as permanent establishments. Covered cross-border transactions include those involving tangible or intangible property, the provision of services and financing. The commonly accepted transfer pricing methods in Australia are the comparable uncontrolled price, resale price, cost plus, profit split and transactional net margin methods, out of which the most appropriate and reliable method should be applied. The Australian Taxation Office (ATO) has powers to adjust the pricing of transactions that are considered not to be at arm's length. See also "Disclosure requirements" and "Rulings," below.

The government has enacted transfer pricing reforms into Australian law to ensure that the transfer pricing provisions in Australia's tax treaties can be applied as a separate assessment power. The transfer pricing rules are designed to be applied to situations where a party obtains a transfer pricing benefit, and require the substitution of arm's length conditions for actual conditions.

Thin capitalization – Interest deductions claimed against Australian assessable income for both foreign controlled Australian investments (inward investors) and Australian entities investing overseas (outward investors) are restricted where an entity's debt exceeds a certain prescribed level. The maximum allowable debt for inward and outward investors generally is determined by applying one of the following tests:

- The safe harbor test, under which the prescribed debt-to-equity ratio is, broadly, 60% of total assets less nondebt liabilities and certain related party investments/receivables, as disclosed in the accounts. A separate test applies for financial institutions;
- The arm's length debt test, under which the prescribed level of debt is the maximum amount of debt the entity reasonably could have borrowed from commercial lending institutions; or
- Separate worldwide gearing tests that are available to inward and outward investors.

The rules apply to total debt, rather than just related-party foreign debt, and cover Australian multinational companies, as well as foreign multinational investors. Taxpayers that, together with their associates, have interest deductions of less than AUD 2 million per annum or outward investing entities with 90% or more of their total average value of assets consisting of Australian assets are exempt from the rules.

Controlled foreign companies – Qualifying Australian shareholders are subject to taxation on an accruals basis on their proportionate share of a CFC's "attributable income." For a foreign company to be a CFC, either: (1) five or fewer Australian residents must hold 50% or more of the company; (2) (subject to additional considerations) a single Australian entity must hold no less than 40% of the company; or (3) five or fewer Australian entities (including associates) effectively must control the company. Where the CFC rules apply, the Australian shareholder includes in its assessable income its share of the attributable income at the end of the CFC's statutory accounting period. Dividends subsequently paid out of attributable profits are treated as nonassessable nonexempt income.

Disclosure requirements – All taxpayers in Australia must maintain adequate records to document their tax affairs, including transfer pricing. While there is no requirement to submit documentation by a certain date, contemporaneous tax and transfer pricing documentation is a prerequisite to having a reasonably arguable position for penalty mitigation purposes.

Australian taxpayers are required in certain circumstances to file an International Dealings Schedule (IDS) with their annual income tax return. The IDS requests various details in respect of a taxpayer's cross-border related party dealings, including specific disclosures in relation to areas that the ATO considers high risk (i.e. certain types of transactions and dealings with related parties in favorable tax jurisdictions). The IDS also requires disclosure of information related to the application of the CFC and thin capitalization rules (see above).

In addition, for income years commencing on or after 1 January 2016, significant global entities (SGEs) (i.e. companies that are members of groups with annual global income of at least AUD 1 billion) must provide additional information to the ATO as part of Australia's country-by-country (CbC) transfer pricing reporting requirements. Three annual statements (a CbC report, a master file and a local file) must be filed with the ATO in the approved form within 12 months of the end of the income year; however, an exemption may be granted in certain circumstances.

For financial periods beginning on or after 1 July 2017, the ATO expects economic groups with turnover in excess of AUD 250 million to file a Reportable Tax Position (RTP) Schedule with their tax returns. The RTP Schedule requires taxpayers to disclose their contestable and material tax positions.

A Voluntary Tax Transparency Code encourages the disclosure of more tax and accounting information from businesses with at least AUD 100 million of turnover.

An SGE also is required to file general purpose financial statements with the ATO in certain circumstances.

Other – Australia operates a general anti-avoidance rule (GAAR) that supplements other specific anti-avoidance rules. The GAAR is a provision of last resort and can be applied by the taxing authority where there is a scheme, the sole or dominant purpose of which is to obtain a tax benefit.

The Multinational Anti-Avoidance Law (MAAL) targets the avoidance of permanent establishment status in Australia by foreign entities. Broadly, the MAAL will apply to SGEs where a foreign entity supplies goods or services to Australian customers, an Australian affiliate performs activities in Australia directly in connection with those supplies and there is a relevant "principal purpose" to obtain a tax advantage.

As from 1 July 2017, a 40% diverted profits tax (DPT) applies to SGEs, on profits transferred offshore through related party transactions (the "diverted profit"). All Australian cross-border related-party transactions where the relevant income is subject to foreign tax at a rate less than 24% potentially are within the scope of the DPT.

Broadly, the DPT can apply in certain circumstances if a tax benefit is obtained in connection with a scheme and it can be concluded that the scheme, or any part of it, was entered into for the principal purpose of enabling a tax benefit to be obtained. There are limited carve-outs for nonapplication of the DPT.

Compliance for corporations:

Tax year – The tax year is 1 July to 30 June, although a substituted year of income may be adopted in certain circumstances, with approval from the ATO.

Consolidated returns – A tax consolidation regime allows wholly owned Australian groups to elect to be taxed as a single consolidated entity for income tax purposes ("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 pooling of losses within the group and allows tax-free movement of assets within the group without any formal rollover requirements. There also are rules allowing certain Australian-resident wholly owned subsidiaries of a foreign company to form a consolidated group known as a multiple entry consolidated (MEC) group.

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

Filing requirements – 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 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 others, following the end of the year of income.

Extensions to file the tax return may be granted in certain cases.

Penalties – Penalties and interest may be imposed for late filing, failure to file, failure to exercise due care and tax avoidance and evasion.

Rulings – The ATO can issue public and 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 it. 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 it. The ATO also operates an advance pricing arrangement program, under which taxpayers can obtain certainty on the application of the arm's length principle to their cross-border dealings with related parties.

Personal taxation:

Basis – Resident taxpayers generally are taxed on worldwide income, with a tax offset for foreign tax paid on foreign income, up to the amount of Australian tax payable on that income. Foreign residents are taxable only on Australian-source income. Residents who qualify as "temporary Australian residents" are taxable on their worldwide employment income, and on Australian-source investment income and capital gains from "taxable Australian property."

Residence – For tax purposes, an individual is a resident if he/she ordinarily "resides" in Australia or satisfies one of the following statutory tests: (1) is domiciled in Australia (unless the Commissioner of Taxation is satisfied that the individual's permanent home is elsewhere); (2) has spent more than half the tax year in Australia (unless the Commissioner of Taxation is satisfied that the individual's home is elsewhere 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. A "temporary resident" for tax purposes is an individual who meets all of the following criteria: (1) holds a temporary visa granted under the Migration Act 1958; (2) is not an Australian resident within the meaning of the Social Security Act 1991; and (3) does not have a spouse who is an Australian resident within the meaning of the Social Security Act 1991.

Filing status – Each taxpayer must file a separate return; joint returns are not permitted.

Taxable income – Taxable income for personal income tax purposes includes income from employment, business income, certain capital gains and passive income such as dividends, interest and rental income.

Capital gains – Net capital gains derived from the disposal of assets acquired after 19 September 1985 are included in assessable income. For assets held for more than one year, individuals are taxed on half of the capital gain ("capital gains tax discount") at their marginal rate. Nonresidents and temporary residents are ineligible for the capital gains tax discount in respect of gains arising after 8 May 2012. For assets acquired before 21 September 1999, individuals may choose between applying the discount and the former system under which they are taxed at their marginal rate on the entire gain, indexed for inflation. Indexation of the cost base of existing assets was frozen at 30 September 1999.

Capital gains tax applicable to nonresidents and temporary residents is now limited to "taxable Australian property" disposed of by foreign investors. A creditable withholding tax may apply where certain assets (such as Australian real estate) are sold by foreign residents.

Deductions and allowances – Business expenses may be taken as tax deductions if they are necessarily 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 generally are not tax deductible. Tax residents of Australia are allowed some tax offsets, including offsets for dependents. Many government offsets are available only to Australian citizens or permanent residents.

Rates – Progressive rates up to 47% apply (including a Medicare levy of 2%, see under "Social security," below). A tax-free threshold of AUD 18,200 applies for full-year resident taxpayers (a reduced threshold applies to part-year residents).

Other taxes on individuals:

Capital duty – No

Stamp duty – The states and territories impose stamp duty at rates of up to 5.75% on the transfer of real property and some other business property. Rates vary between states and territories and between classes of business property transferred. In some states, extra stamp duty also may be imposed by way of a surcharge (for foreign buyers of residential property) and premium duty rates (for high-value residential property).

Capital acquisitions tax – No

Real property tax – See under "Stamp duty" for property transfers. Land tax also is levied by all but one of the states and territories on entities owning land within their borders. Rates of up to 3.7% apply, depending on the jurisdiction. In some states, a land tax surcharge may be applied to foreign or absentee owners.

Inheritance/estate tax – No

Net wealth/net worth tax – No

Social security – Employers are required to contribute to a complying superannuation fund or retirement savings account on behalf of their employees, at a rate of 9.5% of the employee's "ordinary time earnings," up to a maximum earnings base of AUD 52,760 per quarter in 2017/18. Exemptions from the superannuation requirement apply in limited circumstances.

In addition to income tax, a 2% levy is payable on the taxable income of most Australian residents to fund Medicare, a universal health program that provides basic medical and hospital care free of charge, and DisabilityCare. Relief is available to low-income taxpayers. Certain individuals on temporary visas are ineligible for Medicare benefits and can apply to the Minister of Health for a certificate of exemption.

A temporary budget repair levy of 2% also applied from 2015 to 2017 to taxable income exceeding AUD 180,000 in 2016/17 (the temporary budget repair levy ceased to apply as from 1 July 2017).

A further Medicare levy surcharge (up to 1.5%) may be imposed on taxpayers whose taxable income exceeds a certain threshold only if they do not hold appropriate private hospital insurance.

Compliance for individuals:

Tax year – The tax year is 1 July to 30 June.

Filing and payment – Resident taxpayers whose taxable income exceeds AUD 18,200 (or who have had Australian taxes withheld from lower salary amounts) are required to file an income tax return. Foreign residents must file an income tax return if they derive Australian-source income or gains. 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).

Penalties – Penalties and interest may be imposed for late filing, failure to file, failure to exercise due care and tax avoidance or evasion.

Goods and services tax:

Taxable transactions – The Goods and Services Tax (GST) is a transaction-based, value-added tax on the inputs and outputs of an organization's business activities. GST is charged at each step in the supply chain, with GST-registered entities including GST in the price of "taxable" goods and services they supply. There are other types of supplies where GST is not included in the price; these include "input taxed" supplies, such as financial supplies, and "GST-free" supplies, such as the sale of going concerns and exports of goods and services. Generally, entities that are registered for GST purposes can claim a credit for the GST paid on the inputs acquired for use in their enterprise. However, entities making input taxed supplies generally are unable to claim such credits, unless one of several concession measures applies.

Rates – 10%

Registration – An entity that carries on an enterprise must register for GST if its annual turnover is at or above the registration turnover threshold. The current threshold is AUD 150,000 per year for not-for-profit entities, and AUD 75,000 per year for all other entities. However, an entity that carries on an enterprise may choose to register even if its turnover is below the registration turnover threshold. A nonresident entity carrying on an enterprise whose turnover is below the turnover threshold can choose to register for GST to recover the GST it pays on its inputs.

Filing and payment – Each GST-registered entity must account for its GST obligations on a Business Activity Statement (BAS) at the end of each tax period. Entities with an annual turnover of AUD 20 million or more must file a monthly BAS. In general, entities with an annual turnover below AUD 20 million can choose to file a monthly or a quarterly BAS.

Small businesses voluntarily registered for GST are allowed to report and pay GST annually rather than quarterly, to help reduce compliance costs.

Source of tax law: Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997, as amended; Foreign Acquisitions and Takeovers Act 1975, as amended; A New Tax System (Goods and Services Tax) Act 1999, as amended; payroll tax acts, stamp duty acts, and land tax acts of the six states and two territories

Tax treaties: Australia has concluded nearly 50 tax treaties. Australia signed the OECD MLI on 7 June 2017.

Tax authorities: Australian Taxation Office, States and Territories Revenue Offices, Foreign Investment Review Board (FIRB assists the Australian Treasurer in regulating foreign investment into Australia, including intragroup transactions, and a transaction requiring FIRB approval can be unwound if such approval is not obtained)

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