

Australia



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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. Additionally, from 1 July 2015, the tax rate was reduced to 28.5% for companies with an aggregate annual turnover of less than AUD 2 million.

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.

Investment basics

Currency

Australian Dollar (AUD)

Foreign exchange control

No

Accounting principles/financial statements

Australian equivalent of IFRS (A-IFRS). 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.



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 (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

30%, or 28.5% for companies with an aggregate annual turnover of less than AUD 2 million

Surtax

No

Alternative minimum tax

No

Foreign tax credit

Under the foreign income tax offset (FITO) rules, taxpayers are not required to divide assessable foreign income amounts into separate classes. The rules allow taxpayers to claim a tax offset against Australian tax in respect of assessable income that is foreign income or on which they



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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.

There are special rules for the taxation of a managed investment trust (MIT), which is a type of collective investment vehicle. A MIT enjoys a concessional 15% withholding tax rate on distributions from the MIT to certain nonresident investors. A MIT also can make an irrevocable election to treat gains and losses on certain assets as being on capital account. 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 taxes on corporations

Capital duty

No

Payroll tax

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

Real property tax

See under “Stamp duty.”

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 times earnings,” up to a maximum earnings base of AUD 50,810 per quarter in 2015/16. Exemptions from the superannuation requirement apply in limited circumstances.

Stamp duty

The states and territories impose stamp duty at rates of up to 7% on the transfer of real property and other business property. Rates vary depending on the state/territory and

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class of business property transferred. Stamp duty also is imposed on the indirect transfer of real property held by certain companies and unit trust schemes, at rates of up to 7%.

Transfer tax

See under "Stamp duty."

Other

A petroleum resource rent tax is levied on income from the recovery of all petroleum products from certain offshore areas.

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 49% 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 transactions and 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 Tax 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 enacted a first stage of transfer pricing reforms into Australian law in 2012 to ensure that the transfer pricing provisions in Australia's tax treaties can be applied as a separate assessment power. Further reforms applied as from 1 July 2013 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 generally is determined by applying one of the following tests:

- For both inward and outward investors, under the safe harbor test, 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;
- For both inward and outward investors, under the arm's length debt test, the prescribed level of debt is the maximum amount of debt the entity reasonably could have borrowed from commercial lending institutions; and
- Separate worldwide gearing tests 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 who, 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.



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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.

Disclosure

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).

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 return

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 entity 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 generally is 15 January for large/medium-size companies (annual turnover exceeding AUD 250 million, or between AUD 2 million and 250 million, respectively) 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 Australian Taxation Office (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 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 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.

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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. Temporary Australian residents are taxable on their worldwide employment income and on Australian-source investment income.

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 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 applies only to taxable Australian property disposed of by foreign investors as from 12 December 2006.

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 49% apply. A tax-free threshold of AUD 18,200 applies only for resident taxpayers.

Other taxes on individuals

Capital duty

No

Stamp duty

The states and territories impose stamp duty at rates of up to 7% on the transfer of real property and other business property. Rates vary between states and territories and between classes of business property transferred. Stamp duty also is imposed on the indirect transfer of real property held by certain companies and unit trust schemes, at rates of up to 7%.

Capital acquisitions tax

No

Real property tax

See under "Stamp duty."

Inheritance/estate tax

No

Net wealth/net worth tax

No



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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 times earnings," up to a maximum earnings base of AUD 50,810 per quarter in 2015/16. Exemptions from the superannuation requirement apply in limited circumstances.

In addition to income tax, a 2% levy is payable on the taxable income of 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 applies to taxable income exceeding AUD 180,000 in 2015/16.

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 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 lodgment 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 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 and stamp duty acts of the six states and two territories

Tax treaties: Australia has concluded nearly 50 tax treaties.

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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