

# Setting up your Business in Australia

## Issues to consider



Australia is amongst the wealthiest countries in the world. With an educated and skilled workforce, it presents great opportunity for expansion. Australia welcomes and encourages foreign investment, and while the government has the power to block proposals that are contrary to the national interest, the screening process is transparent and liberal.

However there are a number of issues which you must consider when you are looking to set up your business in Australia. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

### **What type of Business Structure should we use?**

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. A brief overview of the main structures is below:

#### **Australian Branch**

- Not a separate legal entity but an extension of the overseas parent company
- No limited liability or ring-fencing of the Australian operations
- If have a permanent establishment (PE) in Australia then profits from this PE are liable to Australian Corporation tax
- The foreign parent company must register with the Australian Securities and Investment Commission (ASIC). This requires the company to have an Australian registered office (usually an accountant or lawyer's office), and must appoint a local agent and public officer to take responsibility for ASIC and Australian Taxation Office (ATO) reporting obligations.
- Once registered, the parent company must file its annual accounts, prepared in accordance with the Australian Corporations Act with the ASIC, even if these are not made publically available overseas.

#### **Proprietary Company:**

- Provides limited liability and ring-fencing to Australia operations
- Gives a perception of a local business, with longevity
- Corporation tax to be paid on company profits
- Tax returns must be lodged with the Australian Taxation Office annually. The standard Australian tax year ends on 30 June.
- Accounts generally require auditing if two of the following are satisfied:
  - Consolidated revenue for the company and the entities it controls is \$25 million or more
  - Consolidated gross assets of the company and any entities it controls at the end of the financial year is \$12.5 million or more
  - The company and any entities it controls have 50 or more employees at the

end of the financial year.

- The accounts of proprietary companies that are wholly owned by a foreign corporation are also required to be audited regardless of their size, but may apply for relief from this requirement where they do not satisfy two of the above tests.

### How much Corporation Tax will the business pay?

Companies in Australia pay tax at a flat rate on taxable income for the year. The rates are:

Tax rate (%)	
Small business company (turnover < \$2 million*)	28.5%
Other companies	30.0%

(NB: rates are for the tax year to 30/06/2016. As at 22 February 2017, legislation is before parliament to reduce the small business company tax rate for the 2017 tax year to 27.5%, with the turnover threshold increasing to \$10 million.)

### What if we use Australia to set up our holding company?

Australia's Conduit Foreign Income (CFI) rules make it an attractive location for regional headquarters in the Asia Pacific region. These rules allow CFI to be distributed from an Australian company to a non-resident in the form of an unfranked dividend without attracting any Australian tax.

CFI is basically foreign income that is not assessable in Australia when derived by an Australian company. This includes income derived from a foreign branch and dividends from wholly owned foreign subsidiaries. Such income is able to pass through an Australian company to its foreign parent with no Australian tax arising.

Australian tax is payable on earnings that are not CFI.

Australia operates a dividend imputation system, meaning the tax paid by the company is imputed to Australian resident shareholders by way of tax credit when dividends are paid. Where a fully franked dividend is paid to a foreign shareholder however, no withholding tax is payable. To the extent that a dividend is unfranked, withholding tax applies at a rate of 30% (although this rate is often lower where an international agreement applies).

### What if we make cross-border transactions between group companies?

Australia follows internationally recognised **Transfer Pricing** (TP) rules where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties.

Typical transactions between affiliated entities that are covered by TP regulations are:

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- Sale and purchase of goods
- Provision of management services
- Property rental charges
- Transfer of intangible assets e.g. trademarks, patents
- Sharing of knowledge, expertise, business contacts etc.
- Provision of financial support e.g. inter-group loans and charging a “market” interest on loans

A business will need to prepare a Transfer Pricing Report proving the arm’s length basis of transactions. The report will include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm’s length basis.

There is no threshold below which the TP rules would not apply, however the ATO currently allows simplified transfer pricing recordkeeping for small business taxpayers (with turnover below \$25 million) and distributors (with turnover below \$50 million).

However even if an entity qualifies for simplified recordkeeping in Australia, it may fall under the scrutiny of the other international tax jurisdictions where it transacts.

### **What Employment Taxes and Social Security will need to be paid?**

If an individual is resident in Australia then they are subject to Australia tax laws. The primary test of tax residency is the “resides test”, which says that if you reside in Australia under ordinary principals (generally accepted by the ATO as being an intended stay of more than 6 months in one location), you are considered Australian resident for tax purposes. If you don’t satisfy the resides test, you will still be considered Australian resident if you satisfy one of the following:

1. Domicile test – if your permanent home is in Australia
2. 183 day test – you are actually present in Australia for more than half the year
3. Superannuation test – this test is designed to ensure that Australian government employees stationed overseas are treated as Australian residents.

Australia also has a class of residents called “temporary residents”, who are tax resident in Australia under the above rules, but are here on a temporary visa. Temporary residents are exempt from tax in Australia on foreign sourced investment income and capital gains (other than on Australian real property).

We would advise any new entrant to Australia or person who spends time working in Australia to take professional advice to determine whether they are Australia tax resident.

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### Current Personal Income Tax rates in Australia are:

#### Australian Residents

Band of income	Tax rate (%)
0 – 18,200	nil
18,201 – 37,000	19.0%
37,001 – 87,000	32.5%
87,001 – 180,000	37.0%
\$180,001 and over	45.0%

The above rates do not include:

- Medicare levy of 2%
- Temporary Budget Repair Levy of 2% for taxable incomes over \$180,000

#### Foreign Residents

Band of income	Tax rate (%)
0 – 87,000	32.5%
87,001 – 180,000	37.0%
\$180,001 and over	45.0%

Foreign residents are not required to pay the Medicare levy.

The above rates do not include:

- Temporary Budget Repair Levy of 2% for taxable incomes over \$180,000

(NB: rates are for the tax year to 30/06/2017)

To provide for retirement benefits, employers have to make superannuation contributions for their employees. These contributions must be at least 9.5% (for the tax year to 30 June 2017) of the employee's ordinary times earnings.

Under the Australian Pay As You Go Withholding (PAYGW) system, it is the employers' legal responsibility to withhold employee's tax and pay it to the ATO.

Superannuation contributions are an employers responsibility, and must be remitted to a Complying Superannuation Fund of the employee's choice at least once per quarter.

Australia has a Reciprocal Agreement with the USA, EU countries and many others whereby when an overseas national of those countries is seconded to the Australia for a defined period of time and continues to pay social security in their home country, then the employer is exempt from making superannuation contributions in Australia.

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### **What is Goods and Services Tax (GST) and should the business be registered?**

GST is a tax on supplies made, the standard rate of which is 10%. If a business makes taxable supplies in excess of \$75,000 in any 12 months then it **MUST** be registered for GST, but a business can voluntarily register with lower turnover.

There are three types of supply

- Taxable – GST applies to the supply, can reclaim input GST
- GST Free – no GST on supplies, can reclaim input GST
- Input Taxed – no GST on supplies, cannot reclaim input GST

The supply of most types of goods and services in Australia would be classed as Taxable supplies. However when these supplies are made to companies which are outside of Australia advice needs to be sought as to whether GST applies.

### **Can we provide Employee Share Schemes to our staff?**

Some companies see Employee Share Schemes as being an important way of attracting, motivating and retaining key staff.

In some circumstances, the Australian tax system offers concessional treatment to Employee Share Schemes, such as partial tax exemption or deferral of tax.

However this is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in Australia.

### **How else can we compensate our employees?**

Benefits provided to employees that are not salary or superannuation are generally subject to Fringe Benefits Tax (FBT) in Australia. FBT is payable by the employer, not the employee. There are, however, some items that are either exempt or concessionally treated under the FBT rules. These include relocation costs, temporary accommodation, and living away from home allowance. As a result, there are often opportunities for employee's to "salary sacrifice" to take advantage of those concessions.

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**To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or [email](#) us directly.**

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