Doing Business Guide - Australia

M2K Advisors

Australia

1. About Australia

Australia is a sovereign country, comprising the mainland of the Australian continent, the island of Tasmania, and numerous smaller islands. Australia is the largest country by area in Oceania and the world's sixth-largest country. Its common languages are English, Mandarin and Arabic, and the official currency is Australian Dollar (AUD).

Australia is a federal parliamentary constitutional monarchy, comprising six states and ten territories. Australia's population of nearly 27 million is highly urbanized and heavily concentrated on the eastern seaboard. Canberra is the nation's capital, while its most populous cities are Sydney, Melbourne, Brisbane, Perth and Adelaide.

2. Incorporation & registration requirements

A person who is carrying on business in Australia will have to register its business with the Australian Securities and Investments Commission ('ASIC'). Companies incorporated in Australia will be issued a unique nine-digit Australian Company Number ('ACN').

A proprietary company (commonly used term for private companies) is the most common vehicle used by foreign corporation for setting up business in Australia. A company is a separate legal entity and has its own identity for tax and legal requirements. It is mandatory for a proprietary company to have "Pty" in its name.

3. Secretarial compliances

All proprietary companies must have **at least one resident director in Australia** at all times. All public companies (i.e., non-proprietary companies) must have at least two resident directors of Australia. Further, it is mandatory for a public company to have at least one secretary who resides in Australia whereas no such requirement exists for a proprietary company.

It is mandatory for the public companies with more than one member to hold Annual General Meeting ('AGM') at least once a calendar year but however, the law does not impose a mandatory requirement on the proprietary companies to conduct AGM. The proprietary companies may choose to hold an AGM if the constitution of the company mandates the same.

Key aspects relating to proprietary companies:

- **Paid-up share capital** – There is no minimum prescribed share capital or concept of authorized share capital. A company can be incorporated with a nominal share capital of 1 AUD.
- **Shareholders** – A proprietary company must have minimum 1 shareholder and can have maximum of 50 non-employee shareholders. There is however no limit on the maximum number of shareholders in case of public companies. The shareholder can be an individual or a legal entity and 100% foreign shareholding is allowed.
- **Registered address** – An Australian company must have a registered office in Australia to receive correspondence and it cannot be a post office box. The registered address need not be the same as that of the company's principal place of business.

4. Accounting and Audit

All Australian companies are required to maintain proper accounting and financial records duly reflecting the true financial position of the company and explaining the transaction undertaken during the period in accordance with the Australia's Accounting Standards. The Corporations Act imposes an obligation on the companies to retain financial records for a period of 7 years from the end of the relevant financial year for which they were prepared.

- **Audit & audit report**: Every company must have the financial report for a financial year audited in accordance with provisions of Division 3 of the Corporations Act and must obtain an auditor's report unless it qualifies for the audit exemption.

- **Audit exemption**: Small proprietary companies and companies limited by guarantee which satisfies certain conditions prescribed under the Corporations Act are exempt from audit or are given an option to get their financial reports **reviewed** alone instead of getting them audited.

- **Financial report:** All companies, other than those qualified for audit exemption, are required to file their financial reports within 4 months after the end of the financial year. Lodgement of paper financial reports is mandatory whereas lodgement of digital financial reports (i.e., using XBRL or iXBRL) is on a voluntary basis.

5. Corporate Taxation

Australian resident companies are subject to corporate income tax on all its non-exempt worldwide income whereas Australia non-resident companies are subject to Australian tax only on Australian sourced income.

- **Corporate residence:** A Company is a resident of Australia for tax purpose if it is incorporated in Australia (or) not incorporated in Australia but carries on business in Australia wherein its Central Management and Control ('CMAC') is in Australia, or the voting power is controlled by shareholders who are tax residents of Australia. The Australian Taxation Office ('ATO') has set out guidelines for determining the location of CMAC of a Company.

  The **standard corporate tax rate is 30%**. Certain entities (known as "base rate entities") are subject to a **lower rate of 25%** provided the aggregate turnover for the subject year is less than AUD 50 million and its passive income is not more than 80% of their assessable income.

Snapshot of tax rate (domestic law):

Particulars	Rate
Corporate tax rate (Standard)	30%
Capital Gains tax rate	30%
Goods and Services Tax	10%
Withholding tax rate on payments to Australian residents (Dividend / Interest / Royalty)	Nil
Withholding tax rate on payments to Australian non-residents * - Dividend ** - Interest - Royalty ** Under the domestic law of Australia without giving effect to Tax Treaty.* *** 0% in case of franked dividends & 30% in case of unfranked dividends*	 0%/30% 10% 30%

- **Tax Incentives**: There are tax incentives available for early-stage investors and venture capital investors. The said incentives are available in the form of non-refundable carry forward tax offsets, modified capital gains tax treatment (i.e., specifically exempt in certain scenarios), etc.,

- **Tax losses**: Companies can carry forward a tax loss indefinitely and the same can be set-off against assessable income of future years, provided the Company satisfies "**the same majority ownership and control**" test (i.e., there is no change in the persons beneficially holding shares carrying not less than 50% of the voting power).

  In case where the same majority ownership and control test is not satisfied, the Company can still carry forward the tax losses only if it satisfies the "**same business test or the similar business test**" which applies to losses incurred in an income year beginning on or after 01 July 2015.

- **Tax consolidation**: Consolidation allows a wholly owned group of entities to be treated as a single entity for income tax purposes, i.e., Australian resident holding company and its wholly owned Australian resident subsidiary companies are taxed on a consolidated basis wherein the resident holding company would be regarded as the taxpayer.

  Tax consolidation is also available for Australian subsidiaries that are wholly owned by a foreign company. Tax consolidation is **optional** but once exercised, is **irrevocable**.

- **Capital Gains/ Losses**: Capital Gains Tax ('CGT') is levied on the net capital gains, i.e., sale proceeds less cost of acquisition (including incidental expenses) less brought forward capital losses if any. Capital gains are taxed at the relevant corporate tax rate.

  Capital losses are deductible only from taxable capital gains and are not deductible from ordinary income. However, ordinary or trading losses are deductible from net taxable capital gains.

- **Taxation of Dividends:** Dividends paid by Australian resident companies carry an imputed tax credit (**'Franking Credits'**) to the extent the Company declaring dividends has paid corporate tax on the distributed profits. The income of the shareholders receiving the dividends shall be increased by the amount of imputed tax paid by the Company and the same shall be available as a credit against their final tax liability.

  However, if dividends are paid out of profits of the company which was not subject to corporate tax in Australia (by virtue of exemptions / deductions etc.,), then the same shall be termed as "**Unfranked Dividends"** and it shall be fully taxed in the hands of the shareholders.

- **Foreign tax credit:** Resident taxpayers are entitled for Foreign Income Tax Offset ('FITO') for the tax paid in a foreign country. To claim foreign income tax offset, taxes must have actually been paid or deemed to be paid in the foreign country and such foreign income, on which tax was paid or deemed to be paid, should be included in the Australian assessable income.

  A separate computation mechanism has been provided for computing the maximum tax offset that can be claimed. The excess of foreign tax paid over the foreign tax offset shall be ignored and cannot be refunded/ carried forward to future years.

- **Deductions or expenses**: Deductions or expenses are generally allowed if the same are incurred for business purposes. Expenses in the nature of capital nature, private expenses and those incurred in the production of exempt income are not tax deductible. Further, there are specific provisions with respect to deduction of depreciation, research and development expenses, etc.

- **Transfer Pricing**: Australia 's transfer pricing rules adopt the concept of arm's length price for cross-border transactions. The rules however do not prescribe any particular methodology or preference to arrive at an arm's length outcome and the same is kept open for the taxpayer to choose the method best suited to the facts & circumstances of the case. Where a taxpayer has cross border related party dealings exceeding **AUD 2 million**, then details with respect to the said dealings is required to be disclosed in the "International Dealings Schedule" of the tax return.

- **Tax administration**:
  - **Taxable period**: The Australian tax year is the period commencing from 1st July of a year to 30th June of the succeeding year. However, corporates may adopt an accounting period other than the one mentioned above, known as Substituted Accounting Period ('SAP').
  - **Tax returns**: The tax return for a corporation is due to be lodged with the ATO by the 15th day of the seventh month following the end of the relevant income year (for example – 15 January 2024 for the financial year ending on 30 June 2023). If the due date falls on a Saturday, Sunday or a public holiday, then the return can be lodged on the next business day without any interest or penalty.
  - **Payment of tax**: Australia has a concept of "**Pay As You Go**" ('PAYG') (generally referred to as "advance tax") under which the businesses is required to make the tax payment for the current income year on an instalment basis. PAYG is applicable if the Company satisfies any one of the following conditions:

    1. Instalment income (i.e., the gross business and investment income, excluding GST) as per the latest tax return is AUD 2 million or more;
    2. Estimated Notional tax of AUD 500 or more;
    3. It is the head company of the consolidated group.

    Alternatively, a Company can voluntarily opt for PAYG if it estimates that the above thresholds would be satisfied.

- **Time limit for assessment:** The standard time period in which the ATO can amend an assessment is four years from the date of notice of assessment. However, there is no time limit where the Commissioner is of the opinion there has been fraud or evasion or to give effect to a decision on a review or appeal, or as a result of an objection made by the taxpayer or pending a review or appeal.

6. Goods & Services Tax (GST)

Australia currently levies GST at the rate of **10%** on the taxable value of most of the goods and services, excluding GST-free sales (i.e., goods and services on which GST is not leviable).

- **Exports of goods and international services** are "**GST-free"** (generally referred as "zero-rated supplies"). **Other GST-free supplies** includes supply of basic food, education and childcare services, medical and health care services, precious metals etc.

A business is required to mandatorily register for GST if its annual GST turnover is equal to or greater than **AUD 75,000** (threshold for non-profit organisation is **AUD 150,000**).

Snapshot of GST

Particulars	Details
Date introduced	**1 July 2000**
• **StandardGST rate** • **Others (export & specified supplies)**	**10%** **GST-free (or) exempt**
Threshold for registration	**AUD 75,000 (AUD 150,000 for non-profit organisation)**
Return lodging period	**Depending on the GST turnover of business**

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- **Lodging of GST returns:** GST return [(commonly known as Business Activity Statement ('BAS')] filing requirement is bifurcated into the following 3 categories:

    - **Monthly** filing – If the GST turnover is **AUD 20 million** or more,
    - **Quarterly** filing – If the GST turnover is less than **AUD 20 million**
    - **Annual** filing – If the business is voluntarily registered under GST (i.e., cases wherein turnover threshold is not met).

- **Tax invoice:** If a customer asks for a tax invoice, then the supplier must provide it within 28 days, unless the sale amount is less than or equal to **AUD 82.50** (including GST). The information a tax invoice must contain depends on the sale amount, sale type and person issuing the invoice (some general information includes seller's identity, seller's Australian Business Number ('ABN'), date of invoice, description of the product/ service including quantity if applicable, price charged and GST amount). Further, a tax invoice must clearly provide the bifurcation between taxable and non-taxable supplies.

- **Input tax credit**: Registered businesses are entitled to claim input tax credit for the GST paid on purchases made for the purpose of business. The taxpayer should be in possession of a valid tax invoice to claim the GST credit. A time limit of four years is currently in place for claiming input tax credit. However, input tax credit cannot be claimed in certain circumstances such as GST-free supplies, input taxed supplies, supplies for personal use / consumption, time limit for claiming GST credit has expired, etc.

- **Input Taxed Supplies**: These supplies are generally referred to as "exempt" supplies. This consists of sale of goods and services that don't include GST in the price, for instance – selling or renting of existing residential premises, financial supplies such as lending or borrowing of money, purchase and sale of securities, etc.

- **Refunds:** A taxpayer is entitled to claim refund of GST in specific circumstances such as excess of input tax in a GST period over the output tax in the same period, excess GST payment for a tax period, etc.,

7. Other taxes & levies

- **Customs Duty:** The levy of customs duty in Australia is governed by The Customs Act, 1901. Import of tobacco, alcohol and fuels are subject to customs duty at a rate equivalent to the excise duty of such goods had they been manufactured in Australia.

- **Personal tax**: Australian individual residents are subject to tax on non-exempt worldwide income whereas non-residents are subject to tax only on the Australian sourced income. The tax rates for individual residents vis-à-vis individual non-residents are as follows:

<table>
<tr><th>Income range (AUD)</th><th>Rates for resident</th><th>Rates for non-resident</th></tr>
<tr><td>0 – 18,200</td><td>NIL</td><td rowspan="3">32.5%</td></tr>
<tr><td>18,201 – 45,000</td><td>19%</td></tr>
<tr><td>45,001 – 120,000</td><td>32.5%</td></tr>
<tr><td>120,001 – 180,000</td><td>37%</td><td>37%</td></tr>
<tr><td>180,001 and above</td><td>45%</td><td>45%</td></tr>
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In addition to the above tax rates, a Medicare levy of 2% is also levied (for Australian residents only).

- **Fringe Benefit Tax**: Fringe benefits tax ('FBT') is a tax paid by employers on certain benefits provided to their employees or to their employees' family or other associates. Fringe benefits include various facilities / benefits provided to the employees such as gym membership fees, car parking facility, discounted loans, entertainment facilities etc. FBT is levied at the rate of 47% of the 'grossed up' value of the fringe benefits given to the employees. Fringe benefits are not taxable in the hands of the employees. The employer can claim deduction of the value of fringe benefit and the amount of the FBT paid by him while computing his assessable income.

- **Payroll Tax**: Payroll tax is a state-based tax. It is levied on employers on payments made to the employees. The rates of payroll tax vary from state to state and it ranges between 4% to 6.85% once an employer's national payroll exceeds the respective state's agreed threshold.

- **Stamp duty**: Stamp duty is imposed on various transactions such as direct and indirect transfers of land and related assets, insurance policies, specific business assets, etc. Stamp duty is decided by the States and Territories of Australia. The stamp duty laws are constantly evolving in Australia. Of late, an additional surcharge is being levied for foreign buyers of residential properties in various states.

- **Land tax**: Land tax is levied in the hands of landowners on the "**unimproved capital value**" of land (excluding a person's principle place of residence). Varying rates of land tax apply across Australia and the tax rates increases with the value of land. Some states and territories in Australia also levy land tax surcharges which is applicable to foreign or absentee landowners.

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