



DOING BUSINESS IN AUSTRALIA

APRIL 2021





AUSTRALIA

GEOGRAPHY AND CLIMATE

Australia is situated in the Asia-Pacific region, with neighbouring countries including Indonesia to the north and New Zealand to the south-east. The capital city of Australia is Canberra and its largest city by population size is Sydney. It has a land area of 7,682,300 Km².

Australia has a variety of climates, ranging from tropical areas in the north to desert areas in the centre and temperate areas along the south-east.

POPULATION

Australia's population is estimated at 25.7 million, with 33% residing in Sydney or Melbourne.

The majority of Australia's population is of British or Irish origin, although significant levels of immigration following World War II and in recent decades have resulted in many inhabitants with Italian, German, Chinese, Indian, Greek and Dutch origins. Australia's Indigenous population comprises around 3% of the total population. Australia is one of the most multicultural countries in the world, with around 20% of the country's population speaking a language other than English.

Similar to many other developed countries, Australia has an ageing population.

POLITICAL AND LEGAL SYSTEM

Australia's political system is based on a constitutional monarchy with a separation of powers at the federal level between the legislature, the executive and the judiciary. The head of state is Queen Elizabeth II, who is represented by a Governor-General at the federal level and Governors at the state level.

Both federal and state parliaments are bicameral and democratically elected, with federal parliament consisting of the House of Representatives and the Senate. The Federal Parliament is based in Canberra, Australian Capital Territory.

There are three levels of government in Australia, with the federal government being responsible for areas such as income tax, goods and services tax, defence, foreign affairs, foreign investment, immigration, trade and commerce. The state and territory governments are responsible for property taxes, payroll taxes, infrastructure, water, education, utilities and emergency services, while local governments focus primarily on local services, community facilities, town planning and development applications.

Australia's legal system is largely based on a common law system adopted from the United Kingdom. Legislation is made by federal and state parliaments and is supplemented by regulation made by various government bodies. An extensive court system also exists at the federal, state and local levels.



LANGUAGE AND CURRENCY

Australia's official language is English and its official currency is the Australian dollar. Its currency is based on a floating exchange rate system and the Australian dollar is one of the most traded currencies in the world. The Reserve Bank of Australia (RBA) is the country's central bank and the Australian Securities Exchange (ASX) is the primary securities exchange.

EDUCATION AND WORKFORCE

Australia provides a comprehensive education system through a diverse range of educational institutions. It has a literacy rate of over 99% and is the world's third largest provider of educational services to foreign students.

Australia's workforce is highly educated, skilled and diverse, with almost 60% of Australia's working age population having completed either tertiary or vocational education.

ECONOMY AND FOREIGN INVESTMENT

Australia has one of the highest levels of GDP per capita in the world. Australia's political, legal and tax systems present a high degree of transparency.

Along with a sound financial system, a high degree of economic freedom and market stability, Australia is an attractive destination for business and investment.

TRADE

Australia is a strong supporter of reductions to trade barriers as well as the concept of open and multilateral trading systems. The Federal Government actively supports the General Agreement on Tariffs and Trade (GATT).

Australia has entered into free trade agreements with a number of countries. The Foreign Investment Review Board (FIRB) is responsible for approving certain types of foreign investment in Australia, including property, significant investments in agricultural businesses and other businesses that affect the national interest.

REGULATORY ENVIRONMENT

Australia has a very transparent and efficient regulatory environment. A number of regulatory bodies oversee various functions in Australia, including:

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)

ASIC is an independent Government body responsible for enforcing company and financial laws to ensure market integrity and consumer protection. It administers the *Corporations Act 2001* and its function is to ensure fair play in the corporate and financial services industry, protecting investors and consumers and preventing corporate crime.

AUSTRALIAN STOCK EXCHANGE (ASX)

The ASX was formed in 1987 when six independent stock exchanges amalgamated. The ASX has five regional branches, situated in Sydney, Melbourne, Brisbane, Adelaide and Perth. In 1998 it was floated and listed on itself—the world's first. It is Australia's primary national stock exchange for equities, derivatives and fixed interest securities. All trading of shares between ASX members is conducted by electronic trading using comprehensive, high quality, information technology systems.

AUSTRALIAN TAXATION OFFICE (ATO)

The ATO is the statutory authority responsible for administering Australia's federal taxation system.

The ATO administers the process of annual self-assessment and conducts random audits to verify assessments. The ATO also collects excise on tobacco, petrol and alcohol, administers the Higher Education Contribution Scheme and the Private Health Insurance Rebate, and has responsibility for the fiscal regulation of Australia's superannuation system.

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)

Banking regulation is split between ASIC and APRA. All financial institutions are regulated by APRA and have to report to it on a periodic basis. Financial intermediaries on the other hand have to obtain licenses under the *Corporations Act 2001* or other Commonwealth or State legislation. Most investment or merchant banks are registered under the *Financial Corporations Act 1974*.

APRA supervises the functions of the RBA as well as being responsible for prudential supervision of the other deposit taking institutions. This includes banks, building societies, credit unions and friendly societies, as well as life and general insurance companies and superannuation funds.

AUSTRALIAN COMPETITION AND CONSUMER COUNCIL (ACCC)

The ACCC is an independent statutory authority dealing with competition matters and responsible for enforcing the *Trade Practices Act 1974* and the *Prices Surveillances Act 1983* and associated legislation. Consumer protection measures are aimed at prohibiting unfair trade practices such as misleading or deceptive conduct, false representation and various advertising practices. These measures also cover conditions and warranties, product safety standards and information.

THE TRADE PRACTICES ACT 1974

This act prohibits and restricts business practices which may lessen competition in trade and commerce and applies to virtually all businesses in Australia. The *Trade Practices Act 1974* covers anti-competitive and unfair market practices, mergers or acquisitions of companies, product safety/liability and third party access to facilities of national significance.

BANKING AND FINANCE SECTOR

The central bank in Australia is the RBA. It is responsible for setting Australia's official interest rate and for maintaining a stable and efficient monetary policy and framework. It is responsible for foreign exchange control, maintaining a general oversight of dealers in the foreign exchange market and setting conditions and prudential standards.

Until the mid-1980s, the RBA exercised greater powers over the activities of banks, limiting the range of financial intermediaries and services on offer. Deregulation of the financial markets has removed barriers between classes of institutions and enabled integration into world capital markets. This was accompanied by the virtual abolition of exchange controls and the floating of the Australian dollar.

The four major Australian trading banks are:

- Australia and New Zealand Banking Corporation (ANZ Bank)
- Commonwealth Bank of Australia (CBA)
- National Australia Bank (NAB)
- Westpac Banking Corporation (Westpac)

Collectively these banks have a majority share of banking business in Australia.

In addition to the trading banks, there is a comprehensive range of other sources of finance. These include smaller regional banks, merchant or investment banks, finance companies, building societies, credit operatives or unions, development banks and venture capital companies.

EXCHANGE CONTROL

Almost all restrictions on foreign currency have been removed since the floating of the Australian dollar.

TYPES OF STRUCTURES

COMPANIES

Companies are an attractive option for many wishing to conduct business because they provide limited liability for their shareholders. This means that, in general, shareholders are only liable to the extent of their investment in the company. Once formed, a company is a separate legal entity with the same powers as an individual. The principal regulator of companies in Australia is ASIC.

There are essentially four types of companies:

- a company limited by shares (public or proprietary)
- a company limited by guarantee
- a company with unlimited liability
- a no liability company (only available to mining companies).

A foreign enterprise looking to conduct business in Australia through a company would generally do so through a company limited by shares for liability purposes and ease of set up.

BRANCH OF A FOREIGN COMPANY

As an alternative to incorporating a company in Australia, a 'foreign company' which meets the requirements of the *Corporations Act 2001* can be registered in Australia which is commonly referred to as a 'branch'. A branch is not a separate legal entity from the foreign entity and the foreign entity is liable for activities conducted by the branch in Australia. A branch needs to be registered with ASIC to carry on a business in Australia.

Branches must lodge financial statements of the foreign company with ASIC annually unless they meet the requirements for an exemption. They must also appoint a local agent in Australia.

The reason a branch operation is often not chosen is the lead time for registration with ASIC due to identification requirements.

TRUSTS

A trust is a relationship that exists where property or assets are held on trust by a trustee for the benefit of others, the beneficiaries. Trusts may be public or private with the most common types of trust being discretionary, unit or hybrid trusts. Discretionary trusts can distribute income and capital to the trustee's choice of beneficiary as set out in the trust deed, whereas a unit trust distributes its income and capital to unitholders in proportion to their unit holdings. A hybrid trust is a combination of a unit trust and discretionary trust.

A trust generally does not pay income tax, it is a flow-through entity with the beneficiaries or unitholders being taxed on the trust income. The trustee of the trust may be required to withhold tax in certain circumstances such as where distributions are paid to foreign resident beneficiaries. Trust structures may result in additional tax in some cases and may help to eliminate the incidence of double taxation in other cases. Whether a trust structure will be appropriate depends on factors such as the country of residency of the trust beneficiary or unitholder, the type of entity of the beneficiary or unitholder, and the type of income derived by the trust.

PARTNERSHIPS

A partnership is a relationship between two or more parties carrying on a business in common. Profits, losses and liability do not remain in the business but pass through to the partners themselves, which is also where the income is taxed. Laws relating to the establishment of a partnership are found in the various State Acts.

JOINT VENTURES

A joint venture results when two businesses combine together for a particular outcome. The joint venture agreement specifies each participant's proportional share in the assets, liabilities and results. There are no specific regulations governing the establishment of a joint venture.

ESTABLISHING AND RUNNING A COMPANY

A foreign enterprise can establish an Australian subsidiary by registering a new company with ASIC.

Australian companies are governed by the *Corporations Act 2001*, their constitution and common law. Each company will also have its own 'review date' which requires confirmation of corporate secretarial details and solvency. An annual review fee is payable to ASIC.

Companies must notify ASIC when company details change (such as a change in officeholders or registered address). ASIC must also be notified in circumstances where the foreign company ceases to carry on business in Australia, is wound up, dissolved or deregistered in its place of origin.

All Australian companies are required to disclose their ACN (Australian Company Number) or ARBN (Australian Registered Body Number) on all official documents.

Branches must be registered with ASIC and must appoint a local agent within Australia.

APPOINTMENT OF OFFICERS AND OTHER PARTICULARS

The establishment of an Australian proprietary company requires the following:

- the appointment of at least one Australian resident director who is over 18 years of age
- the establishment of a registered office address (usually an accountant's or lawyer's office) which acts as the contact address for all statutory correspondence
- the establishment of a registered business address (can be same as registered office) and
- the issue of shares to shareholder(s)

A company's director can be personally liable for company obligations incurred at a time when the company is insolvent or there are reasonable grounds for suspecting it is insolvent, or would become insolvent by incurring a particular obligation.

Furthermore, company directors may be personally liable for certain unpaid debts to the ATO including GST, PAYG withholding and superannuation guarantee and the ATO can issue directors with a Director Penalty Notice (DPN) for these amounts.

In addition, the company must appoint a public officer, who is a resident of Australia, and acts as the company's representative to the ATO.

ASIC AGENTS AND TAX AGENTS

Foreign companies will usually appoint their Australian accountants (or legal advisors) as their agent for electronic lodgements and dealings with ASIC.

It is also common to appoint a tax agent for the lodgement of monthly, quarterly and annual tax filings such as Business Activity Statements, Fringe Benefits Tax Returns and Income Tax Returns.

DIRECTOR IDENTIFICATION NUMBERS

Company directors will be required to apply for a director identification number (DIN) by 30 November 2022. The DIN is a unique identifier for each person who consents/continues to be a company director. It is underpinned by an online identity verification process. Once a person obtains a DIN, it can then be linked to a director's role on the companies register. The DIN will be a permanent number tied to the director's name even if the person thereafter ceases to be a director.

REPORTING REQUIREMENTS

Companies must keep sufficient records of their operations. *The Corporations Act 2001* requires these records to be kept for seven years from the date of the transaction. The Act also states that these records must be maintained in English.

All companies (other than small proprietary and foreign companies that satisfy certain ASIC conditions of relief) must appoint auditors to have their annual financial statements audited. The directors of the company are responsible for the preparation and lodgement of the financial statements with ASIC within four months after the end of the company's financial year. The auditors must be 'registered company auditors', authorised to practice by ASIC.

The reporting requirements for proprietary (private) companies differ between small and large proprietary companies. A proprietary company is classified as 'large' if at least two of the following conditions are satisfied:

- The consolidated gross operating revenue for the financial year of the company, and the entities it controls is greater than \$50 million.
- The value of the consolidated gross assets at the end of the financial year of the company, and the entities it controls is greater than \$25 million.
- The company and the entities it controls have more than 100 employees at the end of the financial year.

Large proprietary companies must prepare and lodge annual audited financial statements with ASIC. The lodgement of the accounts with ASIC are on the public record and are available on request. A large proprietary company may apply for audit relief if certain conditions are satisfied.

Small proprietary companies (other than those which are foreign controlled) are not required to prepare and lodge annual audited financial statements with ASIC.

Foreign controlled Australian companies are generally required to prepare and lodge audited financial statements with ASIC. However, relief from preparation and lodgement of audited financial statements may be available if the Australian company is a small proprietary company which is controlled by foreign companies that are not part of a large group.

For the purposes of accounts presentation all companies must determine whether they are 'reporting entities' or 'non-reporting entities'. Generally, this is determined on the basis of segregation of ownership and control. Where the owners are not actively involved in the management and control of a company, it is likely that the company will be regarded as a 'reporting entity'.

Other factors affecting whether a company will be a 'reporting entity' include the scale of the company's operations and the existence of users dependent on the financial reports.

A reporting entity must comply with the Australian Accounting Standards and will be subject to the provisions of the Corporations Act where the entity is a company. Non-reporting entities are not required to comply with every accounting standard (so long as this is adequately disclosed in the notes to the financial statements). Family type businesses where the owners (shareholders) are also the directors are the most common type of non-reporting entities.

Australian Accounting Standards are based on International Financial Reporting Standards.

FUNDING ISSUES

START-UP (EQUITY) FUNDING

The initial funding for new companies in Australia is generally provided by the initial shareholders of the company. This can be by way of share capital or by shareholder loan. It is common business practice for initial funding to consist of a small amount of share capital and the balance as a loan from shareholders. This is in part due to the potential adverse tax consequences when returning capital to shareholders.

It may be more appropriate to fund by way of share capital in situations such as where a number of arm's length investors are providing funding or where a stronger balance sheet is required.

It is important that any loans are appropriately documented and classified in the accounts of the company. Of particular note are the thin capitalisation and debt/equity rules which may apply to deny tax deductions for interest payments, and reclassify funding between debt and equity for taxation purposes.

Broadly, the thin capitalisation rules apply where debt deductions exceed \$2 million and the debt/equity rules apply where turnover exceeds \$20 million.

Care should also be taken to ensure that any interest paid on loans to related parties overseas complies with the transfer pricing rules and withholding tax obligations where applicable.

EARLY STAGE FUNDING

Funding may be sourced from the issue of shares to seed capital investors. Obtaining seed capital often involves professionals such as those at Moore Australia providing an introduction to high net worth individuals who like to invest in early stage businesses.

Funds may also be raised by issuing shares to venture capital (VC) firms. VC funding will often be sourced at a later stage than seed capital investors and often involve an exit strategy such as a business sale or listing on a stock exchange.

BANK FUNDING

Australian banks and other financial institutions provide foreign investors with access to credit in the same way as they do for domestic investors. Types of financial institution funding include overdrafts, fixed-term loans, bank bills, letters of credit, guarantees, and leases.

EQUITY FUNDING

Listed public companies are able to raise substantial levels of equity funding either via a placement or entitlement offer (once listed). Australia's main stock exchange, the ASX, is an attractive place to list a company due to its comparably low threshold requirements, short time frame to list, time zone and proximity to Asia and Australia's credible regulatory and governance regime.

Unlisted companies with good cashflow, growth business plans and strong management teams are able to raise capital from a well-evolved Australian private equity investment market. This is supported by local and international banks. Key licensed professionals at Moore Australia know these funds, the banks, and other alternate funding sources established in Australia.

GOVERNMENT FUNDING

Government programs include incentives for research and development, support for small businesses, tax and duty concessions, and assistance for industries in transition. It supports invention and technology development in businesses by fostering collaboration between industry and researchers.

OTHER FUNDING

There are numerous other sources of funding which can be utilised if bank funding is not preferred or available. These include debt factoring, crowdfunding, mezzanine debt and peer to peer lending. All these alternatives have their advantages and disadvantages and are generally more expensive alternatives to bank funding.

FOREIGN INVESTMENT

Australia actively welcomes and encourages foreign investment and has a strong commitment to business development.

It is widely recognised that foreign investment fosters higher levels of economic activity and employment, bringing access to new technology and skills, and introduces new markets for trade and commerce.

To encourage foreign investment, Australia has introduced a number of facilitating schemes including trade incentives, Government grants and tax concessions.

Foreign investors are generally held to be:

- A natural person not ordinarily resident in Australia.
- Any corporation, business or trust in which there is substantial foreign interest, regardless of whether such an entity is foreign controlled.

REASONS FOR INVESTING IN AUSTRALIA

There are a large number of sound reasons for investing in Australia:

- Long term political stability.
- Sound economic management and growth.
- Low inflation rates.
- Favourable location within the Asia Pacific region.
- Highly skilled, diverse workforce.
- Technologically advanced with a rapid uptake of communications technology.
- Innovative culture with a high proportion of research and development expenditure.
- Open and efficient regulatory systems.

LEGISLATION AFFECTING FOREIGN INVESTMENT

While it recognises the importance of foreign investments, Australia is also keenly aware of the importance of looking after its own affairs.

There is a natural apprehension about Australian assets being owned and controlled by foreign concerns, particularly in sensitive sectors such as the media and developed residential real estate.

Australia's foreign investment policy is accordingly designed to:

- encourage foreign investment
- ensure that foreign investment enhances Australia's economic development
- ensure that foreign investment is consistent with Australia's needs.

To ensure foreign investment proposals are consistent with Australia's national interest, the Australian Government reviews major foreign investment proposals on a case-by-case basis through the Foreign Investment Review Board (FIRB).

The FIRB examines significant foreign investment applications that fall within the scope of Australia's foreign investment policy and the *Foreign Acquisitions and Takeovers Act 1975* and makes recommendations to the Treasurer, on behalf of the government, on those proposals.

Detailed information on Australia's Foreign Investment Policy can be found on the FIRB website.

AUSTRADE

The Australian Trade Commission (Austrade) encourages foreign investment by helping to provide practical advice, market intelligence and ongoing support in the development of export markets. This includes putting overseas investors in contact with Australian businesses as well as providing advice and guidance for joint venture opportunities.

BUSINESS EFFICIENCY AND ENVIRONMENT

Australia's political and regulatory system provides a sound foundation for foreign investment. Each year the World Bank Group releases a list of 'Doing Business' statistics on the ease of doing business in each country analysed. Per the table below, Australia is ranked 14 out of 190 economies as far as ease of doing business is concerned.

Key indicators of ease of doing business - 2020

	Starting a Business			Dealing with Construction Permits			Getting Credit			Enforcing Contracts			
	Overall Ranking Out of 190 Economies	Rank	Procedures (number)	Time (days)	Rank	Procedures (number)	Time (days)	Rank	Strength of Legal Rights Index (0-12)	Depth of Credit Information Index (0-8)	Rank	Time (days)	Quality of Judicial Processes Index (0-18)
New Zealand	1	1	1	0.5	7	11	93	1	12	8	23	216	9.5
Singapore	2	4	2	1.5	5	9	35.5	37	8	7	1	164	15.5
Hong Kong SAR	3	5	2	1.5	1	8	69	37	8	7	31	385	10.0
Denmark	4	45	5	3.5	4	7	64	48	8	6	14	485	14.0
Korea	5	33	3	8	12	10	27.5	67	5	8	2	290	14.5
USA	6	55	6	4	24	16	81	4	11	8	17	444	14.6
UK	8	18	4	4.5	23	9	86	37	7	8	34	437	15.0
Malaysia	12	126	8	17	2	9	41	37	7	8	35	425	13.0
Australia	14	7	3	2	11	11	120.5	4	11	8	6	402	15.5
Taiwan	15	21	3	10	6	10	82	104	2	8	11	510	14.0
UAE	16	17	2	3.5	3	11	47.5	48	6	8	9	445	14.0
Thailand	21	47	5	6	34	14	113	48	7	7	37	420	8.5
Germany	22	125	9	8	30	9	126	48	6	8	13	499	12.5
Canada	23	3	2	1.5	64	12	249	15	9	8	100	910	11.0
Japan	29	106	8	11	18	12	108	94	5	6	50	360	7.5
China	31	27	4	9	33	18	111	80	4	8	5	496	16.5
France	32	37	5	4	52	9	213	104	4	6	16	447	12.0
Italy	58	98	7	11	97	14	189.5	119	2	7	122	1120	13.0
India	63	136	10	17.5	27	15	106	25	9	7	163	1445	10.5
Vietnam	70	115	8	16	25	10	166	25	8	8	68	400	7.5
Indonesia	73	140	11	13	110	18	200	48	6	8	139	403	8.9
South Africa	84	139	7	40	98	20	155	80	5	7	102	600	8.5
Philippines	95	171	13	33	85	22	120	132	1	7	152	962	7.5

Source: Austrade, 2020 'Why Australia Benchmark Report 2020', retrieved from www.austrade.gov.au/International/Invest/Resources/Benchmark-Report

FOREIGN DIRECT INVESTMENT INFLOWS

Below is a table from the Austrade 'Why Australia Benchmark Report 2020' which details the main sources of Foreign Direct Investment (FDI) stock in Australia 2009 - 2019.

		A\$ billion								
		2009	2017	2018	2019	% Share 2019	% CAGR 2009–2019	Growth (\$b) 2009–2019	% of Australian GDP, 2019	
1	US	98.2	199.2	219.5	205.2	20.1	7.6	107.0	10.3	
2	UK	61.0	89.4	98.8	127.1	12.5	7.6	66.2	6.4	
3	Japan	45.6	97.9	109.1	116.1	11.4	9.8	70.5	5.8	
4	Netherlands	31.4	55.9	52.0	54.8	5.4	5.7	23.4	2.7	
5	Canada	12.2	32.6	40.4	47.1	4.6	14.4	34.9	2.4	
6	China (excludes SARs and Taiwan)	9.1	38.4	41.8	46.0	4.5	17.6	36.9	2.3	
7	Bermuda	9.5	42.2	44.5	41.6	4.1	15.9	32.1	2.1	
8	Singapore	16.7	27.7	32.7	36.1	3.5	8.0	19.3	1.8	
9	Germany	18.1	24.0	24.3	22.0	2.2	2.0	3.9	1.1	
10	Virgin Islands, British	np	20.8	22.0	21.9	2.1	np	np	1.1	
11	Hong Kong (SAR)	5.4	15.9	17.9	16.1	1.6	11.5	10.7	0.8	
12	Malaysia	4.5	13.5	14.1	14.7	1.4	12.7	10.3	0.7	
13	France	13.0	6.3	27.5	12.6	1.2	-0.3	-0.4	0.6	
14	Switzerland	17.8	9.7	11.3	10.5	1.0	-5.1	-7.2	0.5	
15	Luxembourg	3.2	9.4	8.4	8.1	0.8	9.6	4.8	0.4	
16	Korea	1.3	5.4	6.8	7.5	0.7	19.3	6.2	0.4	
17	Other economies	143.1	208.5	223.2	239.5	23.5	5.3	96.3	12.0	
FDI stock - All economies		490.2	896.9	994.3	1,019.5	100.0	7.6	529.3	51.1	
OECD		327.4	547.4	618.6	630.8	61.9	6.8	303.4	31.6	
APEC		200.6	442.0	494.6	500.7	49.1	9.6	300.1	25.1	
EU		144.8	196.0	224.5	238.1	23.4	5.1	93.3	11.9	
ASEAN		22.1	46.6	52.6	56.6	5.6	9.9	34.5	2.8	
FDI stock – All countries % GDP		38.9	49.6	52.3	51.1					

Source: Austrade, 2020 'Why Australia Benchmark Report 2020', retrieved from www.austrade.gov.au/International/Invest/Resources/Benchmark-Report



BUSINESS MIGRATION TO AUSTRALIA

Australia has a strongly controlled migration regime with migration mainly regulated by the *Migration Act 1958* and the *Migration Regulations 1994*.

At present approximately 160,000 permanent migrants are permitted into Australia each year. This total includes skilled and business migrants, refugees and family reunions. Each category of migrant has a relevant visa.

VISA REQUIREMENTS

Australia actively encourages skilled and business migrants who make up the largest proportion of migrants. Skilled migrant visas are normally based on a points system with most points being awarded for occupation, education, age and English language ability.

Business migrant visas are granted to applicants with skills gained from working in their own business or to those who have been executives of large and non-government institutions.

On 1 July 2012 a new program for business skills was introduced, known as the Business Innovation and Investment Program. There are four streams in relation to the Business Innovation and Investment (Provisional) visa (subclass 188), each having particular requirements and all of which are State sponsored.

BUSINESS VISAS

A permanent residence visa, known as a 'Business Talent Visa' (subclass 132), can be granted to migrants who meet particular business skills and qualifications. This visa has two streams:

- Significant Business History stream
- Venture Capital Entrepreneur stream

The Significant Business History stream is preferred by many business migrants. Applications are by invitation only and require the applicant to submit an expression of interest (EOI). In general, the following eligibility requirements must be met to obtain this visa:

- the business must have attained a minimum level of net assets and turnover
- the applicant must be under 55 years of age
- the applicant must be able to bring to Australia at least \$1 million and purchase a residence in Australia

Alternatively, the Venture Capital Entrepreneur stream can be applied for by nomination and in addition to other requirements, the applicant must have secured at least \$1 million for a high-value business idea and entered into an agreement with an Australian VC firm for the funding.



The other business visas are provisional and are granted to prospective business migrants who are unable to meet the Business Talent Visa requirements, or to those who would prefer to take a Provisional to Permanent visa pathway due to (e.g. tax planning opportunities). For the Provisional pathway, the migrant is required to meet a reduced set of criteria both before arriving and once in Australia. This usually includes bringing a certain amount of capital into Australia and starting or purchasing a business (Business Innovation Stream). Once these criteria have been met, the migrant can then apply for a permanent visa with lower requirements than the Business Talent Visa.

INVESTOR VISAS

The Investor stream is for migrants willing to make a designated investment of at least \$1.5 million in an Australian State or Territory, and maintain business and investment activity in Australia. The Significant Investor stream requires the migrant to make a complying investment of at least \$5 million. Both streams require the migrant to maintain business and investment activity in Australia. The Premium Investor stream requires the migrant to make a complying investment of at least \$15 million.

The Significant Investor and Premium Investor streams have reduced English language and residency requirements. With regard to the Premium Investor stream, permanent residency can be applied for after 12 months.

Business visa requirements are complicated. The choice of business structure and how it is applied may have a critical impact on residency, taxation and commercial issues.

STATE AND TERRITORY SPONSORSHIP

The criteria and requirements vary from State to State with some States' requirements more onerous than others.

The areas that will impact most on the business migrant are the business proposal requirements, the amount of Australian dollars to be transferred to Australia, and employment requirements of the migrant's new Australian business.

Prospective migrants should be aware of the employment requirements as they may well determine the migrant's ability to conduct a successful business.

Prospective business migrants should investigate the requirements of the State they intend migrating to.

SUBMITTING THE APPLICATION

Prospective migrants can choose to use a migration agent or opt to submit their visa applications themselves. However, because of the complexities of the different visas, it is recommended that business and skilled migrant applicants go through a reputable registered migration agent based either overseas or in Australia.

Applicants should ensure the migration agent is registered with the Migration Agents Registration Authority (MARA). This body was appointed to regulate the migration advice industry.

Visa approvals are often delayed or even refused due to minor errors made when completing the application form.

TAXATION - GENERAL

Australia has a comprehensive tax system consisting of various taxes, duties and levies.

Income tax and Goods and Services Tax (GST) are collected and administered at a federal level by the ATO. State and territory government bodies are responsible for the collection and administration of various indirect taxes and duties including transfer duty, payroll tax and land tax.

RESIDENCE AND SOURCE

Australia imposes tax on the worldwide income of Australian resident taxpayers and the Australian sourced income of foreign resident taxpayers. There are different tests for residency depending on the type of taxpayer (i.e. individuals, companies and trusts).

Income will be considered Australian sourced income if it satisfies the source rules. There are different source rules for different types of income. For example, income derived from real property located in Australia will generally be considered Australian sourced income. The source of income from trading businesses will depend on all of the circumstances relating to the income. Salary and wages in respect of services performed in Australia will generally be Australian sourced.

The operation of the residence and source rules will be affected in some cases by the application of a double tax agreement (DTA).

SELF ASSESSMENT

The Australian tax system is based on self-assessment and taxpayers are responsible for disclosures made to the ATO. The onus of accuracy on any disclosures made to the ATO rests with the taxpayer. Penalties and interest charges may apply for failure to lodge documents on time, or if incorrect disclosures are made to the ATO.

DOUBLE TAX AGREEMENTS

Australia has signed DTAs with numerous countries with the aim of preventing the double taxation of taxpayers whose income would otherwise be taxable in both Australia and the foreign country.

These countries comprise the majority of Australia's major trading partners, including China, Japan, Canada, New Zealand, the United States, the United Kingdom and various countries in South-East Asia and Europe. The existence of a DTA may impact on the residency status of a taxpayer in certain circumstances.

DTAs may also override the tax treatment of certain income under domestic tax rules and allocate taxing rights over certain types of income to either Australia or the foreign country depending on the circumstances relating to the income.

CAPITAL GAINS TAX (CGT)

Australia has a comprehensive system for the taxation of capital gains. Capital gains resulting from the disposal of assets, including land, business assets and intangible assets are generally subject to CGT. However, capital gains can also result from many transactions that do not involve the disposal of an asset, including certain trust distributions and the granting of options.

Non resident taxpayers are generally only subject to CGT on disposals of taxable Australian property which includes (but is not limited to) direct holding in taxable Australian real property (TARP), certain indirect Australian real property investment, and CGT assets used in carrying on a business through a permanent establishment in Australia

TAX COMPLIANCE

All taxpayers that earn income and satisfy Australia's residence and source rules are generally required to lodge an annual income tax return.

The income year for most taxpayers runs from 1 July of each calendar year to 30 June of the following calendar year.

By application to the ATO, certain taxpayers can elect to adopt another accounting period which is referred to as a 'substituted accounting period'.

Taxpayers require approval from the ATO to lodge their income tax returns based on a substituted accounting period. Approval may be granted in circumstances where a foreign parent company prepares its financial statements based on a different accounting period.

All taxpayers require a Tax File Number (TFN) in order to lodge an income tax return.

Most taxpayers are required to pay income tax progressively throughout the income year by way of income tax instalments on a monthly or quarterly basis. Taxpayers receive a credit on their income tax return for any withholding tax or instalments paid during the income year.

TAX COMPLIANCE

Employers are required to withhold tax from payments made to employees and taxpayers receiving other forms of income are required to pay tax instalments, usually on a quarterly basis. In addition to withholding tax, employers are required to make contributions into their employee's superannuation funds (the Australian equivalent of retirement/provident funds) at 9.5% of gross wages.

Taxpayers may also be required to lodge quarterly or monthly Business Activity Statements (BAS) for GST collected and paid, income tax instalments and tax withheld from employee wages. Self-employed and business taxpayers will usually be required to lodge a BAS.

FOREIGN TAX CREDITS

Australia allows a foreign income tax offset (FITO) for foreign tax paid overseas for the purpose of preventing double taxation on income that is taxed in both Australian and a foreign country. A taxpayer will be entitled to a FITO where they have paid foreign tax on income that is also taxed in Australia.

The offset cannot result in the taxpayer receiving a tax refund and generally cannot be carried forward to later income years.

TAX CONSOLIDATION

Where companies, partnerships and trusts are wholly-owned by the same corporate owner, the group may elect to consolidate for tax purposes.

When a group elects to consolidate, the group will be assessed as a single entity for tax purposes and will lodge a single income tax return. Consequently, any transactions occurring between the group members will be disregarded for tax purposes. Additionally, losses incurred by a group member can generally be offset against income derived by other group members subject to certain loss rules.

Once a consolidated group is formed, there are complex rules which apply to determine the cost of each asset held by the group members. Furthermore, all group members are jointly and severally liable for the group's income tax liabilities in the event that the head company fails to satisfy these liabilities. A tax sharing agreement is often implemented to allocate tax liability amongst group members.

TRANSFER PRICING

Australia has strict transfer pricing rules that apply when an Australian taxpayer has transactions with international related parties. The rules are designed to prevent Australian taxpayers from artificially shifting profits from Australia to its related foreign entities offshore. The rules require that all transactions between Australian taxpayers and related foreign entities, such as payments to a foreign parent company for goods, services, intellectual property or financing transactions take place on an arm's length basis.

The ATO has provided extensive guidance on the methodologies and documentation that it will accept in determining and supporting the terms and conditions of an arm's length transaction.

If the ATO deems a transaction to have taken place on terms that do not reflect an arm's length basis, it has the power to adjust the transaction to assess the Australian taxpayer for tax as if the transaction did take place on an arm's length basis. Importantly, there are onerous contemporaneous documentation requirements in relation to the transfer pricing rules, such that Australian entities that have transactions with related foreign entities are required to maintain (in order to obtain penalty protection in the event of a transfer pricing adjustment), and provide evidence that the arm's length requirement is satisfied. Concessional documentation rules are available for SME's that are considered low value or low risk.

Taxpayers with international related party dealings that exceed an aggregated \$2 million in an income year, are also required to complete an International Dealings Schedule (IDS) as part of their income tax return. The IDS discloses the transfer pricing methodology used and the level of documentation in place for each item of income and expenditure.

Significant global entities (SGE) are required to meet additional reporting and documentation requirements with the ATO and ASIC. In simplistic terms, an SGE is an entity whose income is in excess of \$1 billion or is a member of a group of entities where the parent entity has consolidated income in excess of \$1 billion globally.

Affected entities may be required to lodge general purpose financial statements, Master File, Local File and may also be required to comply with other country by country reporting (CbCR) obligations. With the ATO/ASIC significant penalties apply to SGEs for late or non-lodgement of each of the requisite documents. This can be up to \$555,000 per document per year. Recently enacted legislation has extended the definition of an SGE. The definition of an SGE now includes individuals and trusts and these entities are also subject to the penalty regime mentioned above.

THIN CAPITALISATION

Taxpayers are generally allowed a deduction for interest paid on loans and others debts if they relate to income producing purposes. However, the thin capitalisation rules will limit a taxpayer's allowable interest deductions where the taxpayer is a foreign entity operating in Australia, an Australian subsidiary of a foreign parent or an Australian resident with foreign investments.

The thin capitalisation rules need to be considered where an entity and its associates have debt deductions of greater than \$2 million in income a year.

Debt deductions are not restricted to interest deductions and can include other expenses such as loan establishment fees, filing fees etc.

The rules are complex and there are a number of different methods for calculating the maximum level of debt allowed.

TRUSTS

A discretionary trust is considered an Australian resident if the Trustee of the trust was tax resident at any time during an income year or if the central management and control (CMC) of the Trust was in Australia at any time during the income year.

A unit trust is considered an Australian resident if any property of the Trust is situated in Australia or the trust carries on a business in Australia. In addition to this, the CMC of the trust must be in Australia or more than 50% of the unitholders must be Australian residents for the unit trust to be considered a tax resident of Australia.

Trusts are generally required to lodge an income tax return, but are not liable to pay tax on their taxable income. Unitholders, beneficiaries, or the trustee will be liable to pay tax on their share of the trust income. In certain instances, the Trustee of the trust may be liable to pay tax on trust income.



CORPORATE TAX

RESIDENCE AND SOURCE

Australian resident companies are generally taxable on worldwide income (subject to certain exclusions and exemptions).

A company will be considered a tax resident of Australia if:

- it is incorporated in Australia
- it carries on a business in Australia and either:
 - has its CMC exercised in Australia; or
 - more than 50% of its voting power controlled by Australian resident shareholders.

CMC of a company will usually be where the director meetings take place and where the high-level decisions in relation to the operation of the company are made. The ATO has released taxation ruling (TR) 2018/5 which states their views in relation to the CMC of a company. The ATO's view is that if a company carries on a business and its CMC is present in Australia, it will be carrying on a business in Australia making it a tax resident of Australia (even if the business is carried out in a foreign jurisdiction). Practically, this may lead to situations of 'dual residency' where a company may be tax resident under the domestic legislation of two countries and consideration will need to be given to the relevant DTA.

In cases of dual tax residency, the taxpayer must apply for a Competent Authority determination with the relevant tax authority to determine their country of residence for the purposes of the DTA. In the absence of this determination, the taxpayer cannot rely on the treaty benefits allowed under the DTA. Administrative concessions are available for dual residents of Australia and New Zealand where the authorities continue to allow certain eligible taxpayers the option to self-determine their residency status based on where the place of effective management of the company is located.

In the 2020-21 Federal Budget, the Government announced its intention to clarify the residency status of entities incorporated offshore. Companies that are incorporated offshore will be treated as Australian tax residents where there is a 'significant economic connection to Australia'. The test will be satisfied where both the company's core commercial activities are undertaken in Australia, and its CMC is in Australia. This announcement is yet to be legislated.

BRANCHES

If a foreign company is not a tax resident of Australia, the branch operations will be subject to corporate taxation if the company has a taxable presence (which is defined broadly) in Australia.

Foreign resident companies with a taxable presence in Australia are referred to as a 'permanent establishment' in Australia and are taxed similarly to resident Australian companies limited by shares. However, permanent establishments are generally only taxable on Australian source income and certain capital gains. In most of Australia's DTAs, business profits derived by a foreign entity that carries on business in Australia will only be taxable in Australia if the foreign entity carries on its business in Australia through a permanent establishment.

Certain payments to non-resident permanent establishments are not subject to withholding taxes in Australia as would normally apply to foreign resident companies.

FOREIGN RESIDENT COMPANIES

Foreign companies are generally taxable on Australian sourced income and income derived by a foreign company with no taxable presence in Australia (for example, holding companies of Australian subsidiaries) may be subject to withholding taxes in Australia on certain types of income e.g. royalties, interest, dividends. Fully franked dividends (explained below) are not subject to further taxation in Australia.

TAXATION OF COMPANIES

A company is treated as a separate entity for tax purposes and pays tax on its taxable income at the relevant corporate tax rate.

As of 1 July 2020, the tax rate for companies that are base rates entities (BRE) is 26%. BREs are entities that have an aggregated turnover of less than \$50 million and receive less than 80% of their income from passive sources – base rate entity passive income (BREPI). BREPI includes (but is not limited to) interest income, certain dividends, net capital gains, rent, royalties etc. For all other companies, the tax rate is 30%.

Tax losses incurred by a company cannot be distributed to shareholders. However, they may be used to offset the company's future taxable income provided the company satisfies the continuity of ownership test or failing this test, one of the business continuity tests.

DIVIDENDS AND FRANKING

The payment of Australian corporate tax by a company will generate franking credits which may be passed on to shareholders through the payment of dividends. Franking credits prevent double taxation of income that has already been taxed at the company level and is then distributed to shareholders as a dividend.

Where dividends are distributed by a company to Australian resident shareholders, those dividends will constitute assessable income of those shareholders. A company can frank a dividend by allocating franking credits to the dividend. There are rules that limit the amount of franking credits that can be allocated to each dividend. If a company allocates the maximum allowable franking credits to a dividend, then that dividend is considered a fully franked dividend.

In the event that the dividend is fully or partially franked, the amount of the dividend to be included in the assessable income of the shareholder is grossed up to include the franking credit attaching to the dividend. Tax payable is then calculated based on the grossed up amount. Shareholders will also be entitled to a refundable tax offset equal to the amount of the franking credit included in the shareholder's assessable income.

A company shareholder receiving a franked dividend will pay tax on the dividend at the applicable corporate tax rate. However, as a company shareholder will also receive a tax offset equivalent to the franking credit, a company shareholder will pay no further tax on the dividend if the dividend is fully franked. Franking credits are not refundable for company shareholders. Company shareholders will also include a credit in their franking account for the franking credit attached to franked dividends received.

Foreign resident shareholders are generally not entitled to franking credits on Australian dividends received, however, fully franked dividends are exempt from withholding tax.

Unfranked dividends distributed to foreign resident shareholders may be subject to withholding tax. The withholding tax rate will depend on whether a DTA applies.

For private companies, there are rules that deem loans and other payments made from a company to shareholders and related parties to be dividends in certain circumstances.

CAPITAL GAINS TAX (CGT)

Companies pay tax on capital gains at either 26% or 30% depending on whether the entity is a BRE or not. Foreign resident companies are generally only subject to CGT on disposals of taxable Australian property which includes (but is not limited to) direct holding in taxable Australian real property (TARP), certain indirect Australian real property investment, and CGT assets used in carrying on a business through a permanent establishment in Australia.

CONDUIT FOREIGN INCOME

Where an Australian resident company receives foreign sourced dividend income which is then on-paid to a foreign resident shareholder as an unfranked dividend, the dividend is generally not assessable to the Australian resident company and the dividend paid by the Australian resident company is not subject to withholding tax, provided the Australian resident company declares the unfranked dividend to be Conduit Foreign Income. Australian shareholders would generally be assessed on the unfranked dividend.

CONTROLLED FOREIGN COMPANIES (CFC)

The CFC rules are in place to impose tax on 'tainted' income earned by foreign companies owned or controlled by Australian resident taxpayers. The rules ensure that tainted income earned overseas is attributed to the Australian shareholder and is taxed accordingly in Australia. Through attribution, the rules ensure that income is taxed at the shareholder level without the need for the foreign company paying the amounts out as a dividend. The taxation of CFCs differs depending on whether the foreign country is resident in a listed or unlisted country.

Listed countries include countries like the US or UK and other countries which have comparable taxation rules to Australia and amounts taxed in these countries are generally not subject to attribution in Australia (subject to some exceptions). Unlisted countries are simply those which are not listed countries and if the foreign company receives more than 5% of its income which is considered 'tainted' under the CFC provisions, the amounts may be attributed to the Australian resident shareholder.

There are various categories of tainted income and these rules are anti-avoidance provisions put in place to ensure taxpayers do not benefit by setting up corporations in lower tax paying jurisdictions to carry out their passive investments. Certain business income may be considered tainted as well depending on the circumstances.

RESEARCH AND DEVELOPMENT TAX INCENTIVE

Australia provides a tax incentive for eligible companies that incur expenses as part of eligible research and development (R&D) activities. Eligible companies include Australian resident companies and foreign resident companies that are resident in a country that has signed a DTA with Australia and carries on business in Australia through a permanent establishment. Taxpayers are required to submit their R&D claim within 10 months following the end of the income year.

Eligible taxpayers with annual turnover less than \$20 million can claim a 43.5% refundable tax offset for R&D expenses.

Eligible taxpayers with annual turnover of greater than \$20 million can claim a 38.5% non-refundable tax offset for R&D expenses. The tax offset can be carried forward to future income years if they are unable to be utilised in the current income year.

There is a limit of \$100 million on expenses that can be claimed in an income year.

Eligible R&D activities must qualify as either core R&D activities or supporting R&D activities. Core R&D activities are experimental activities whose outcome is not known or cannot be determined in advance and can only be determined by applying a systematic progression of work based on scientific processes. Supporting R&D activities are activities that are directly related to core R&D activities and are usually necessary in order for the core R&D activities to be carried out.

From 1 July 2021, the following changes to the R&D program have been legislated:

- The refundable R&D tax offset will be fixed at a rate of 18.5% above the claimant's company tax rate.
- The intensity threshold for the non-refundable R&D tax offset will now introduce two levels of R&D tax offset rate:
 - 8.5% above the claimant's company tax rate for R&D expenditure between 0% and 2% of total company expenditure; and
 - 16.5% above the claimant's company tax rate for R&D expenditure above 2% of total company expenditure.
- The R&D expenditure threshold has been increased to \$150 million (from \$100 million), showing increased Government support for large industry investment in innovation.

TAX INCENTIVES FOR INNOVATION

Several tax measures, designed to encourage investment in eligible startup companies, were introduced on 1 July 2016, including:

- A 20% non-refundable tax offset for investment in an early stage investment company (ESIC), capped at \$200,000 per investor per year.
- A capital gains tax exemption for investment in an ESIC held for between one and 10 years.

A company will qualify as an ESIC if it satisfies the following criteria:

- Had expenditure of \$1,000,000 or less in the prior income year.
- Had assessable income of \$200,000 or less in the prior income year.
- Is not listed on any securities exchange.
- Was incorporated in Australia in the last three years, unless certain other criteria are satisfied.
- Is involved in innovation by satisfying certain criteria.

Tax incentives are also provided to eligible investors that invest in certain venture capital funds.

Investors in an Early Stage Venture Capital Limited Partnership (ESVCLP) will receive a 10% non-refundable tax offset on capital invested.

Distributions of profit or gains from the ESVCLP are exempt from tax. In order to qualify as an ESVCLP, approval is required from Innovation Australia and there are several requirements to be satisfied. Some of the requirements include being structured as a limited partnership, having committed capital of between \$10 million and \$200 million and only investing in Australian businesses with total assets of less than \$50 million.

HYBRID MISMATCH PROVISIONS

Australia has anti-hybrid mismatch provisions in place to prevent taxpayers from gaining benefits through certain arrangements. These rules are in place to prevent taxpayers from:

- Claiming a deduction in one jurisdiction where the amount is not assessable in the other jurisdiction.
- Claiming one payment from being a tax deduction in two jurisdictions.
- Sheltering amounts from tax in a group of entities or through a chain of transactions.
- Financing through low-taxed jurisdictions.

PERSONAL TAX

RESIDENCY

Australian tax residents are generally taxable on worldwide income. Individuals are considered tax residents of Australia if they pass any of the following tests:

- the individual resides in Australia according to ordinary concepts
- the individual spends more than 183 days in Australia unless their usual place of abode is elsewhere
- the individual's domicile is in Australia unless they have a permanent place of abode elsewhere
- the individual is a member of certain government superannuation schemes.

Special rules apply to temporary residents of Australia who hold a temporary visa and are not married to or in a de-facto relationship with an Australian permanent resident or citizen. Temporary residents are only subject to tax on Australian sourced income and certain types of foreign employment income. Temporary residents are not taxable on most types of foreign income including (but not limited to) overseas dividends, overseas interest, overseas rental income etc.

Foreign residents are generally only taxable on Australian sourced income and certain capital gains (discussed below). Foreign residents receiving Australian sourced dividends, interest and royalties will generally have tax withheld from their payments. The rate of withholding will depend on whether the foreign resident entity is a resident of a country that has signed a DTA with Australia.

For residents of countries that have not signed a DTA with Australia, the withholding rates are 10% for interest, 30% for unfranked dividends and 30% for royalties. For residents of countries that have signed a DTA with Australia, the withholding rates will depend on the DTA but are generally nil to 10% for interest, 15% for unfranked dividends and 15% for royalties.

CAPITAL GAINS TAX

Australian tax residents are taxable on capital gains from worldwide sources (subject to the provisions of any DTA that may apply). Exemptions are available from CGT and for example, a taxpayer's main residence is generally not subject to CGT on disposal.

Gains in relation to CGT assets that have been held for 12 months or longer receive a 50% CGT discount and the taxable amount of the gain will generally be reduced by 50%. However, the CGT discount is not available for assets that are held by temporary residents or foreign residents in relation to assets acquired after 8 May 2012. Prior to this date, a portion of the discount percentage may be available.

The net amount of a capital gain after applying any applicable concessions and exemptions will be included in a taxpayer's assessable income for tax purposes. A taxpayer will pay tax on a net capital gain at their marginal rate of tax.

A taxpayer can also incur a capital loss if the disposal of an asset results in a loss for the taxpayer. A capital loss can only be offset against other capital gains made in the current year or future years and cannot offset income from other sources, such as trading income.

Individuals who are temporary residents or foreign residents are generally only subject to CGT on disposals of taxable Australian property which includes direct holding in taxable Australian real property (TARP) and certain indirect Australian real property investment.

As of 1 July 2016, purchasers of Australian property may need to withhold 12.5% from the sale proceeds on the disposals of certain assets by foreign residents. Foreign resident taxpayers can claim the amount withheld as a refundable tax offset on lodgement of their income tax return. Assets subject to these rules include Australian real property, lease premiums relating to Australian real property, mining, quarrying or prospecting rights and interests in Australian entities whose assets mainly consist of the above assets. Residential properties with a value of less than \$750,000 are not subject to these rules.

TAXATION OF INDIVIDUALS

Income tax is levied based on a taxpayer's taxable income, being assessable income less any allowable deductions. Most forms of income, including business income, wages and salary, dividends, interest and royalties, are taxable and are required to be declared on a taxpayer's income tax return.

Capital gains are also included in assessable income, although there are several exemptions and concessions which may apply.

Deductions are generally allowed for expenses incurred in the course of producing income or in carrying on a business. The final amount of tax payable will also be reduced by any available tax offsets, which are concessions available in specific circumstances, such as the foreign income tax offset.

The table below provides a summary of the income tax that will be payable by Australian resident individual taxpayers based on their total income for the 2020/21 income year. The Medicare levy has not been included but is payable by most Australian resident individual taxpayers at a rate of 2% of taxable income.

The table below provides a summary of the income tax that will be payable by foreign resident individuals based on their total income for the 2020/21 income year. Foreign resident individuals are not required to pay the Medicare levy.

Taxable income	Tax on this income
0 – \$120,000	32.5 cents for each \$1
\$120,001 – \$180,000	\$39,000 plus 37 cents for each \$1 over \$120,000
\$180,001 and over	\$61,200 plus 45 cents for each \$1 over \$180,000

EMPLOYEE SHARE SCHEMES

Employees are generally subject to tax on shares received from their employer where the issue of shares relates to their employment in Australia and the amount that they paid their employer for the shares is less than the market value of the shares.

The taxable amount of any discount on the shares issued will be included in the employee's assessable income and the employee will be taxed at their marginal tax rate.

Concessional rules apply to the issue of shares or options by 'start-up' companies under eligible plans.

Taxable income	Tax on this income
0 – \$18,200	Nil
\$18,201 – \$45,000	19 cents for each \$1 over \$18,200
\$45,001 – \$120,000	\$5,092 plus 32.5 cents for each \$1 over \$45,000
\$120,001 – \$180,000	\$29,467 plus 37 cents for each \$1 over \$120,000
\$180,001 and over	\$51,667 plus 45 cents for each \$1 over \$180,000

OTHERS TAXES

GOODS AND SERVICES TAX (GST)

Most sales (supplies) of goods and services in Australia are subject to GST which is levied at a flat rate of 10%. Entities that have paid GST on purchases that are acquired in the course of making taxable supplies are able to claim back GST as credits. The system of allowing credits is designed to ensure that GST is only levied on the value added at the last stage of the supply chain.

An entity is required to register for GST if its turnover for GST purposes is greater than \$75,000 per year (\$150,000 for not for profits), but may choose to register if below this threshold.

In order for a supply to be taxable in Australia it must be connected with Australia. The sale of goods in Australia by a foreign entity will generally be connected with Australia where the entity imports the goods or where goods are assembled in Australia. Where the customer imports the goods, the GST obligation will fall on the customer.

Special rules apply that treat the supply of certain imported services and digital products as being connected with Australia. Broadly, GST may apply if these supplies are made to Australian consumers (purchasers who are resident in Australia and not registered for GST). GST will apply if the seller is required to register (i.e. the turnover from these sales that are connected to Australia exceeds \$75,000, or \$150,000 for not for profits) during an income year.

GST is payable on the importation of goods into Australia and is required to be paid before the goods will be released by Australian Customs. Importers that are registered for GST may be able to defer the payment of GST until the first BAS lodged after the goods are imported.

While the GST covers the majority of supplies made to both businesses and consumers, there are exceptions for supplies that are GST-free or input-taxed. If a supply is GST-free, the provider is not required to charge GST on the supply, but is able to claim credits on purchases acquired in the course of making the supply. Input-taxed supplies include certain financial services, renting of residential property and sale of residential property, excluding new residential premises.

If a supply is input-taxed, the supplier is not required to charge GST on the supply and cannot claim credits on purchases acquired in the course of making the supply.

GST withholding may apply to the sale of new residential premises and subdivided land. The purchaser pays the GST directly to the ATO on settlement of the new residential premises or subdivided land, and the seller must notify the buyer of the amount of GST, no longer than 14 days prior to settlement.

FRINGE BENEFITS TAX

Where non-cash benefits are provided by employers to employees that are not in the form of salary and wages or superannuation, the employer may be required to pay fringe benefits tax (FBT).

Employees themselves are not taxed on fringe benefits. Common examples of such benefits include the provision of motor vehicles used for private purposes, car parking, reimbursement of private expenses and entertainment. There are several concessions and exemptions that apply to fringe benefits.

Employers that are liable for FBT are required to lodge an FBT return for each year ending 31 March. The tax rate on fringe benefits is generally set at the highest marginal tax rate for individuals. Employers are able to claim a deduction for FBT that they have paid.

TRANSFER DUTY

Transfer duty is levied by most states and territories (subject to certain exemptions and concessions) on the acquisition of various assets including land, shares and business assets. The rate of duty varies amongst the different states and territories and is generally between 0.6% and 7% depending on the type and value of the asset being acquired.

Transfer duty on shares and business assets have been abolished in some states. Most of the remaining states are also in the process of doing so, although duty may apply to shares where the company owns significant interests in land.

Depending on the State or Territory, additional transfer duty may be levied on acquisitions of residential property by foreign buyers.

PAYROLL TAX

Payroll tax is levied by most states and territories on payments to employees and certain contractors that exceed the payroll tax threshold. The threshold amount and tax rate vary amongst the different states and territories, with the threshold amount generally being between \$650,000 and \$2,000,000, and the tax rate between 4.75% and 6.85%.

LAND TAX

Land tax is levied by most states and territories on the unimproved value of land holdings that exceed a threshold amount at a rate between 0% and 3.7%.

Exemptions may apply depending on the type of entity and the use of the land. Depending on the State or Territory, surcharges may apply if the land is owned by foreign persons.

EXCISE AND CUSTOMS DUTY

Customs duties are levied on the majority of goods imported into Australia. The rate of duty depends on the type of good imported but is usually 5%.

Customs duties may not apply if a free trade agreement has been signed between Australia and the country of origin.

VACANCY FEES

Foreign owners of residential dwellings in Australia are required to pay an annual vacancy fee if their dwelling is not occupied or rented out for more than 183 days (six months) in a year.

The vacancy fee is generally the same amount as the foreign investment application fee paid at the time of submitting the foreign investment application which is dependent on the purchase price of the land/dwelling.



INDUSTRY INFORMATION

Major industry sectors in Australia include services, mining, manufacturing and agriculture.

SERVICES

Australia's diverse services industry makes up the largest portion of the country's GDP. Significant segments of the services industry include business, finance and insurance, property and construction and health and community services.

Australia's services sector has steadily increased over time and is expected to increase further in the future.

MINING

Australia's mining industry forms a significant part of the economy and covers a range of minerals and resources, including iron ore, nickel, bauxite/aluminum, gold, uranium, opal, coal, petroleum and natural gas.

While mining activity occurs in all areas of Australia, large concentrations are located in Western Australia and Queensland.

MANUFACTURING

Major segments within Australia's manufacturing industry include food and beverage manufacturing, metals and machinery.

AGRICULTURE

Key product segments in Australia's agricultural industry include cattle, wheat, dairy, fruit and vegetables, wool, barley and poultry.

Proposed investments by foreign persons in agricultural land generally require approval from the FIRB.

All acquisitions of interests in agricultural land by foreign persons regardless of whether they require approval and regardless of value, must be notified to the ATO Register of Foreign Ownership.

A water license or other approval from the relevant state or territory regulator is generally required to extract water from rivers or aquifers to use for commercial purposes.

INTERNATIONAL TRADE

Australia's main export partners are China, Japan, the Republic of Korea, the United States and New Zealand.

Its main import partners are China, the United States, Japan, Singapore and Germany.

Australia's main exports include iron ore, coal, natural gas, education and tourism.

Its main imports are tourism, petroleum, motor vehicles and telecommunication equipment.

MOORE AUSTRALIA

At Moore Australia, it's not about us. It's all about you. When it comes to providing personalised and commercially astute audit, accounting, tax and business advisory services, it simply can't be anything else.

Our focus is about understanding you, your business, your needs, your challenges and most importantly, how you define success.

At Moore Australia, we're here to help you thrive in a changing world. We are mid-market specialists, so we truly understand your operating environment. What's more, all of our people are long-standing members of their local business communities and when we work with you, we immerse ourselves in your world. We treat your business like it's ours and we give you all the time you need when you need it. We share our skills, expertise and knowledge, examining every detail and leaving nothing unnoticed.

So when you think about Moore Australia, think of us delivering the personal service and local market knowledge that you want, backed by a leading national and international network of expertise, knowledge and advice that you need to succeed. It's that simple.



CONTACT US

Find your nearest member firm at
www.moore-australia.com.au

Or email:
ma@moore-australia.com.au



www.moore-australia.com.au

An independent member of Moore Global National Limited – members in principal cities throughout the world.
Liability limited by a scheme approved under Professional Standards Legislation.

The information provided in this document is for general advice only and does not represent, nor intend to be advice. We recommend that prior to taking any action or making any decision, that you consult with an advisor to ensure that individual circumstances are taken into account.