DOING BUSINESS IN AUSTRALIA

TAXATION, STAMP DUTY AND CUSTOMS DUTY

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Chapter 11

Taxation, Stamp duty and Customs duty

In Australia, taxes are imposed by the Australian Government, state and territory governments, and local government bodies. Australia's taxation laws are complex and various general and specific anti-avoidance rules may apply to structures or transactions. Various tax issues may arise from an investment in Australia depending on the circumstances of that investment. You should seek specific taxation advice before committing to any investment or transaction in Australia.

Introduction

The principal taxes in Australia are set out below.

Australian Government:

- income tax;
- capital gains tax (**CGT**);
- fringe benefits tax (**FBT**); and
- indirect taxes, such as the goods and services tax (**GST**), customs duties, petroleum resource rent taxes and various natural resource royalties.

State and territory governments:

- payroll tax;
- stamp duty; and
- land tax.

Local government bodies:

- rates imposed on property owners.

Income tax rates and withholding tax rates that apply to non-resident taxpayers are set out below.

Tax	Rates
INCOME TAX (also applies to capital gains)	
Income tax – individuals	Marginal tax rates start from 32.5% and progressively increase to 45%. There is no tax free threshold.
Income tax – companies	27.5% for companies with annual turnover of less than A$10 million; or 30% otherwise.
WITHHOLDING TAX	
Interest income	10%, unless an exemption applies.
Unfranked dividends	15% for residents of a country with which Australia has entered into a Double Tax Agreement (DTA country), unless an exemption applies; or 30% otherwise, unless an exemption applies.
Royalty income	10% (or in some cases 5%) for residents of a DTA country; or 30% otherwise.
Investment in an Australian managed fund	Rental income or capital gains referable to Australian real property: 15% for residents of a DTA or exchange of information country; or 30% otherwise.
Sale of interest in Australian property	12.5% non-final withholding tax on proceeds of sale.

Income tax

Income tax is imposed on ordinary income (salary and wages, business profits, rent, interest, dividends and royalties) and certain non-income amounts (for example, capital gains). Income tax is assessed under the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) (together, in this Chapter 11, the Act). Income tax is levied on both the income and the capital gains of all individuals, companies and other entities.

Two key elements which give rise to a liability to Australian income tax are:

- residence of the taxpayer; and
- source of the income derived by the taxpayer.

Residents of Australia must pay tax on their income derived from all sources whether in or out of Australia (their worldwide income). Non-residents of Australia generally pay tax only on income derived from sources within Australia, subject to the application of any applicable double tax treaty.

Residence

Individuals

An individual is a resident of Australia for tax purposes if they reside in Australia within the ordinary meaning of that word. Some of the things that are taken into account when determining whether an individual is a resident are:

- the length of time the individual has remained in Australia;
- the family and business ties which the individual has in Australia; and
- the degree of permanence of the circumstances surrounding the stay.

A person who is domiciled in Australia is deemed to be a resident of Australia unless the person's permanent place of abode is outside Australia.

Expatriates will be deemed to be residents if they are present in Australia for more than one half of the income year, unless they:

- have their usual place of abode outside Australia; and
- do not intend to take up residence in Australia.

Special rules exist to relieve some of the tax consequences that would otherwise arise for expatriates, who are only temporarily residents of Australia.

Companies

A company is a resident of Australia for tax purposes if:

- it is incorporated in Australia; or
- where it is not incorporated in Australia, it carries on business in Australia and either:
  - its central management and control is in Australia; or
  - its voting power is controlled by Australian resident shareholders.

The place of a company's central management and control will usually be where the company's directors meet to do the business of the company, although regard must always be had to where the real control of the company's operations is located.

The Australian Tax Office (**ATO**) has recently released a ruling and practical compliance guide expanding its view on when a company may be considered to be carrying on business in Australia for these purposes.

Source of income

The source of income depends on the particular facts and circumstances and the principles developed by the courts.

The source rules are modified by the withholding provisions of the Act.

The operation of the Act with respect to income derived by both residents and non-residents is subject to the provisions of any bilateral double tax treaty. Australia's double tax treaties typically contain sourcing rules that usually override the general source rules in domestic law.

When is tax paid?

Taxable income is assessed on an annual basis at the end of each financial year: that is, the year of income ending on 30 June. The due date for payment depends on the type of entity. Taxpayers may apply to the ATO for permission to adopt a year of income which ends on another date. Permission is usually granted where the taxpayer is an Australian subsidiary or branch of an overseas parent company that has an accounting year that does not end on 30 June.

Who must pay tax?

Individuals

Resident individuals who receive above A$18,200 in a financial year must lodge an income tax return with the ATO and pay tax, unless otherwise exempted.

Non-residents who receive income from Australia must also lodge a return and pay income tax. The only income which is considered for this purpose is that received from sources within Australia. However, a tax return is not required and income tax is not payable to the extent the income is subject to a final withholding tax, such as dividend or interest withholding tax (see section on Non-residents below).

Resident individuals (and some trustees) must pay the Medicare levy as part of their income tax payment. The Medicare levy is currently 2% of the total taxable income for the financial year. In addition, a Medicare levy surcharge of up to 1.5% is generally payable by higher income earners who do not hold adequate private health insurance.

Income tax is imposed at progressive rates, with higher rates applying to higher levels of taxable income. Resident individuals are taxed at more favourable rates than non-residents. Special rates apply to persons under the age of 18 years depending upon the nature of their income.

Marginal tax rates for resident individuals for the 2018-19 income year

TAX RATE (%)	INCOME LEVEL (A$)
0	0 – 18,200
19	18,201 – 37,000

32.5	37,001 – 87,000
37	90,001 – 180,000
45	180,001 and above

Marginal tax rates for non-resident individuals for the 2018–19 income year:

TAX RATE (%)	INCOME LEVEL (A$)
32.5	0 – 90,000
37	90,001 – 180,000
45	180,001 and above

Companies

The taxable income of most companies is taxed at a flat rate of 30%. Companies with annual turnover less than A$50 million are taxed at a flat rate of 27.5%. These rates apply to both resident and non-resident companies. The relevant double tax agreement may eliminate this tax for a non-resident company with no permanent establishment or real property in Australia.

The time of recognition of income and expense items for tax purposes varies depending upon the particular circumstances. Financial accounting rules and outcomes have limited use in the Australian tax system, except in those areas (such as the regime for taxing financial arrangements) where they are explicitly incorporated.

Each company must appoint a public officer who is responsible for lodging the company's tax return. Directors of the company are responsible for ensuring that appropriate accounting records are kept and returns are lodged. Permanent establishments in Australia are required to keep separate accounting records if their Australian turnover exceeds A$2 million.

Companies generally pay quarterly instalments toward their eventual tax liability. This is calculated by applying the instalment rate (given by the Commissioner of Taxation based on the previous year) to the company's turnover for the quarter. Instalments are generally payable on the 21st day after the end of the quarter. Certain small companies may elect to pay a single annual instalment.

Dividend imputation

The dividend imputation system allows Australian resident taxpayers a credit for company tax already paid by Australian resident companies on the profits out of which dividends are distributed. While dividends to Australian resident individuals are assessable, residents are generally allowed a credit for company tax paid which attaches to the dividend. Dividends to which tax credits are attached are called franked dividends. Dividends may be franked, partly franked or unfranked.

The franked part of dividends is not subject to dividend withholding tax for dividends paid to non-residents.

Losses

A company makes an income tax loss if its deductions exceed assessable income. Subject to special carried forward loss rules, a tax loss may be carried forward and claimed as a deduction against assessable income of future years, including capital gains. Capital losses may also be carried forward, but may only be used to offset capital gains. There is no provision in the Australian tax system for the carry back of any kind of loss.

In order to utilise an income or capital loss, a loss company must demonstrate that shares carrying more than 50% of the voting, dividend and capital distribution rights are beneficially owned by the same persons during the whole of both the loss year and the claim year (and any intervening years). Concessional tracing rules are available for widely held companies which make it easier to demonstrate the required continuity of ownership.

If the loss company cannot satisfy this test, it will only be permitted to deduct its losses if it can satisfy the 'same business test'. The same business test requires a company to have carried on, throughout the whole of the claim year, the same business that it carried on immediately before the relevant change in ownership or control. The ATO has in the past taken a very strict approach to this test, and 'same' was interpreted as 'identical'. However, these rules have been recently amended to supplement the current same business test with a potentially more flexible 'similar business test'.

Where a significant interest in a company with an unrealised loss is sold, special rules can prevent multiple recognition of the loss – that is, both by the company and by shareholders selling interests in the loss company.

Consolidation of wholly-owned groups

Wholly-owned groups of Australian resident companies (and in some circumstances, trusts and partnerships) are permitted to consolidate with the effect that they are treated as a single entity for income taxation purposes. As a result of being treated as a single entity, intra-group transactions (including asset transfers, interest and dividend payments) are generally ignored. The head company of the group lodges a single income tax return on behalf of the group. The profits and losses of all group members are automatically consolidated, as are other tax attributes such as franking accounts.

Resident subsidiaries of a foreign parent entity may be eligible to consolidate, even if they do not have a single head company resident in Australia. This is done by way of a multiple entry consolidated (**MEC**) group. A MEC group is generally treated in the same way as a consolidated group.

Partnerships

Under Australian taxation law, a partnership is not subject to tax, with the exception of limited partnerships. Rather, the individual partners are taxed on their share of the net income of the partnership, calculated after subtracting allowable deductions from assessable income.

If the partnership makes a loss rather than a profit, each partner is generally entitled to a share of the partnership loss.

Limited partnerships are generally taxed as companies, though there are exceptions for venture capital and some Australian controlled foreign partnerships.

The concept of a partnership extends to any relationship in which income is jointly received by taxpayers, even if the parties are not partners as that term is understood in commercial law. To overcome this result, taxpayers often form unincorporated joint ventures which lack the essential elements of ordinary partnerships and do not involve the joint receipt of income.

Even though a partnership is not itself taxed, it is required to lodge an income tax return detailing its income and expenditure and indicating its resulting net income or loss.

Unincorporated joint ventures

As outlined previously, some taxpayers may form a relationship which does not meet the criteria for a partnership. Unlike a partner in a partnership, a participant in a joint venture is entitled to account for its interest in the joint venture (both as to income and expenditure) on an item-by-item basis in its own tax return, and not merely as a share of net partnership income. Unincorporated joint ventures do not file a separate tax return. They are commonly used in the mining and construction industries.

Trusts

Under Australian commercial law, a trust is not a separate legal entity. Rather it is a relationship between a person (the trustee) who holds property, or in whose name property is registered, and the person (the beneficiary) on whose behalf the property is held.

If the trust property produces income, or is sold for a capital gain, the trustee will hold that income or gain not for its own benefit but for the benefit of the beneficiary. Trusts are used extensively in Australia in the managed funds industry and for private (closely held) businesses.

In general, income and gains to which a beneficiary is entitled are taxed in the hands of the beneficiary and are not taxed separately in the hands of the trustee. However, if there is income or there are gains of the trust to which no beneficiary is entitled, the trustee becomes liable to pay tax in respect of the income or gains in its representative capacity of trustee generally at 47%. This liability is separate from any liability to tax which the trustee may have in relation to its own income or capital gains.

The trustee of a trust is liable to tax in respect of any trust income to which a non-resident beneficiary becomes entitled under the trust.

A special regime operates for the non-resident beneficiaries of trusts that qualify as a Managed Investment Trust (see section 11.6).

Special rules apply to certain public trading trusts, whether publicly listed or otherwise widely held. Broadly, public trading trusts are taxed in a similar manner to companies, and the beneficiaries are treated as if shareholders. These rules discourage the use of trusts for conducting active business operations but do not prevent other collective investments being taxed on a transparent basis.

Trust losses are trapped in the trust (that is, losses are not available to be claimed directly by beneficiaries) and are subject to special rules which usually deny the loss if the control or ownership of the trust changes.

Other types of trusts and companies

There are special taxation rules for certain types of trusts (such as pension funds) and special types of companies (such as life insurance companies).

Capital gains tax

A taxpayer’s assessable income includes net capital gains that a taxpayer derives when disposing of assets which the taxpayer acquired (or is deemed to have acquired) on or after 20 September 1985. The Act also includes other amounts in the net capital gain where the gain did not strictly arise as a result of the disposal of an asset. For example, the granting of a restrictive covenant under which one person agrees not to compete with another person may give rise to a capital gain if granted for monetary or other consideration.

Tax on capital gains is not administered as a separate tax. Instead, any net gain is included as assessable income for income tax purposes in the year of disposal.

If an asset is held for more than 12 months, only 50% of the net capital gain is taxable in the hands of individuals and two-thirds of the net capital gain is taxable in the case of superannuation funds. This discount does not apply to companies.

A taxpayer will incur a capital loss where the sale proceeds are less than the cost of the asset (reduced by any amounts which have been allowed as deductions). Capital losses may be applied to reduce capital gains derived by the taxpayer in the same year of income. If there are no or insufficient capital gains to absorb the capital loss, the remaining capital loss may be carried forward indefinitely (subject to certain restrictions in the case of companies) and offset against capital gains in future income years. A capital loss cannot be used to offset against other assessable income.

There is relief against double taxation where the same gain may be assessable under both the capital gain provisions and as income.

Any gain (or loss) made on the sale of an individual taxpayer’s principal place of residence is generally exempt from CGT.

Non-residents are only liable to Australian CGT where the asset is classified by the Act as 'taxable Australian property'. Taxable Australian property includes:

- Australian real property;
- an indirect interest in Australian real property owned via an interest of 10% or more in a 'land rich' entity (that is, where the value of the Australian real property constitutes more than one-half of the value of the entity);
- assets used in carrying on business through a permanent establishment in Australia; and
- options or rights to acquire such assets or interests.

In the 2017 Federal Budget, the Government announced changes to the indirect interest test. The proposed changes will make clear that a 10% investment, regardless of whether it is held by a single entity or a group of 'associate' entities, will be subject to Australian CGT. Although the Government has introduced the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 2) Bill 2018* (Cth) to effect these changes, the bill has yet to be enacted.

A non-final 12.5% withholding tax applies to the sale of direct and indirect interests in Australian property.

Tax incentives

Capital allowances

The uniform capital allowances system allows deductions for the decline in value of depreciating assets. Generally the rate is based on effective life of the asset. However, certain long-life assets, such as aircraft and certain oil and gas assets, are given shorter lives for tax depreciation purposes.

Either straight-line or declining balance methods (based on 200% of the straight line rate) are available.

Intangible assets are subject to a more limited tax write-off than tangible assets.

Tax concessions

Tax concessions are available to encourage the development of certain industries or sectors of the economy. Some examples are:

- **Agriculture** — immediate deductions are allowed for expenses of fencing and water facilities.

- **Mining** — concessions are available primarily as capital expenditure deductions for the costs of exploration and prospecting; they are also available in relation to some capital expenditure in mining operations and costs of rehabilitating mine sites.

- **Research and development (R&D)** — expenditure on R&D is supported with:

    - 43.5% refundable tax offset to eligible entities with an aggregated turnover of less than A$20 million per annum; and

    - a non-refundable 38.5% tax offset to all other eligible entities.

- **Intellectual property** — concessions are available to encourage the development of Australian patents, copyrights and designs, and for investment in Australian films.
- **Environmental protection** — concessions are available for certain kinds of expenditure on environmental protection.
- **Early stage innovation companies** — there are 2 types of incentives:
    - concessional treatment of grants of employee option and share plans for qualifying start-ups; and
    - a 20% tax offset and capital gains tax exemption or reduction for investments into qualifying Early Stage Innovation Companies.

Tax treaties

Australia has entered into tax treaties with approximately 45 countries.

Australia's tax treaties prior to 2001 allow more source taxing rights than the Organisation for Economic Co-operation and Development (**OECD**) Model Tax Convention on Income and Capital. However, recent treaties have moved closer to the OECD Model, notably for dividends and capital gains. The definition of permanent establishment (for substantial equipment and processing activities) and the taxation of royalties (now typically 5%) are still more extensive than the OECD Model.

Recent treaties contain articles dealing with:

- more extensive exchange of information between countries;
- assistance in collection of taxation; and
- procedural rules relating to the resolution of tax objections and disputes based on recent OECD developments.

The Government intends to ratify the multilateral treaty to be implemented under the Base Erosion and Profit Shifting (**BEPS**) regime which will modify Australia's treaty network when it comes into effect (expected to be in 2019).

Australia's tax treaties are expressly subject to the general anti-avoidance rule in domestic law.

Australia has negotiated agreements for the exchange of tax-related information with more than 35 countries, including low-tax jurisdictions. Legislation giving effect to the US Foreign Account Tax Compliance Act and the Common Reporting Standard has also been enacted.

Australia is a signatory to the Multi-Lateral Instrument which modifies the operation of bilateral treaties. The dates on which the Multilateral Instrument has modified Australia's bilateral tax treaties can be found here: https://treasury.gov.au/tax-treaties/income-tax-treaties.

Non-residents

Transfer pricing

Australia has transfer pricing rules which apply to international transactions. The rules impose arm's length pricing requirements for international transactions. The ATO vigorously enforces its transfer pricing rules in relation to both residents and non-residents and has been emboldened by its victory in pricing intra-group debt against Chevron.

The transfer pricing rules apply where there is an international transaction and apply not only to related parties but also to unrelated parties that are not dealing at arm's length. Prices may be adjusted to the arm's length consideration where the consideration charged by the parties would lead to a reduction in Australian tax revenue.

Compensating adjustments can be made to other parties involved in the transaction.

Australian administrative practice generally follows the OECD Transfer Pricing Guidelines. The ATO has released several public rulings and compliance guides in relation to the operation of the transfer pricing rules. The ATO requires taxpayers to keep contemporaneous documentation in order to justify pricing methodologies.

Australia is a participant in Advance Pricing Arrangements whereby transfer pricing methodologies and practices are agreed with taxpayers and foreign tax administrations in advance.

Withholding tax

Interest, dividends and royalties paid to a non-resident by a resident of Australia are generally subject to withholding tax. Interest and royalties incurred by a resident in carrying on a business at a permanent establishment outside Australia are, however, not subject to withholding tax. In addition, interest or royalties which are incurred by a non-resident in carrying on business in Australia through a permanent establishment and which are paid to another non-resident are generally subject to withholding tax.

Withholding tax is imposed on the non-resident payee of the interest, dividends or royalties, but is collected (withheld) by the payer at the time of payment to the non-resident. The payer is required to remit the tax to the ATO.

Withholding tax is a final tax levied on a gross basis (that is, without deduction for foreign expenses incurred to gain the income).

Interest payments

Interest payments (or payments in the nature of interest) to non-residents are generally subject to 10% withholding tax, although this may be varied by any applicable tax treaty. Australia's tax treaties with the United States and the United Kingdom and other countries since 2001 can eliminate all Australian withholding tax on interest for loans from unrelated foreign financial institutions.

The liability to withholding tax depends on the type of security involved and the nature of the amount paid, as the term interest is widely defined. Exemptions may be available under domestic law in respect of interest paid on debentures issued by public offer by Australian resident companies or trusts or permanent establishments of non-resident companies or trusts in Australia. Foreign pension funds are generally exempt from dividend and interest withholding tax.

Dividends

The withholding tax rate of dividends depends on the nature of the dividend and whether it is paid to a resident of a country which has entered into a tax treaty with Australia. Generally, to the extent that a dividend is franked, no withholding tax is payable. Where the dividend is unfranked, 30% withholding tax is applicable unless the non-resident is from a country with which Australia has a tax treaty. In such cases, the withholding tax is (usually) limited to 15%, but depends on the specific provisions in the tax treaty. Australia's tax treaties with the United States and United Kingdom and some other treaties entered into since 2001 eliminate all Australian withholding tax on dividends paid to certain corporate shareholders (generally listed companies and their subsidiaries) that have held more than 80% of the Australian company's shares for at least 12 months.

Dividends paid by an Australian company from 'foreign conduit income' are not subject to dividend withholding tax even if unfranked.

Royalties

Royalty payments to non-residents are subject to 30% withholding tax unless an exemption applies. The payer of the royalty is required to deduct the tax at the source. Under Australia’s tax treaties, the withholding tax on royalties is generally limited to 10% of the gross royalty, reduced to 5% for treaties since 2001. Natural resource payments and equipment royalties are excluded from royalty withholding tax under more recent treaties. However, rental payments to non-residents under cross border hire-purchase arrangements continue to be subject to withholding tax.

Managed investment trust

Where a non-resident derives interest, dividend or royalty income by investing through a managed investment trust (**MIT**) or an attribution MIT (**AMIT**), the same rates outlined above apply.

Other kinds of income (particularly rental income) derived through an Australian MIT or AMIT may qualify for a reduced final withholding tax of 15% (or 10% for certain new ‘5 star rated green’ buildings), provided the investor is resident in a country with which Australia has negotiated either a bilateral tax treaty or an exchange-of-information-only agreement. For recipients who are residents of other countries, the final withholding rate is 30%.

Interest in Australian property

A non-final 12.5% withholding tax applies to proceeds of sales by non-residents of direct and indirect interests in Australian property (see section 11.3 above).

Limits on debt that can be used to finance Australian operations

There is a limit on the amount of financing costs (such as interest) that are allowed as deductions which are attributable to the Australian operations of both Australian and foreign investors. Individuals and all types of entities are covered by the rules.

The rules limit interest deductions (for inward and outward investors) on the amount of debt used to finance Australian operations. Generally, entities are allowed a 'safe harbour' debt-to-equity ratio for all interest, not just related party interest, of 1.5:1; or gearing in Australia of up to 100% of the overall group’s worldwide gearing. Special rules apply for securitisation vehicles and financial institutions.

There is a limited exception if the taxpayer can show that the excessive amount of debt satisfies the arm's length principle. Exemptions are also available to taxpayers with interest deductions of less than A$2 million and outward investors whose Australian assets make up 90% or more of their total assets.

Base erosion and profit shifting

Australia has implemented a number of measures directed to base erosion and profit shifting (**BEPS**). The 'Multinational Anti-Avoidance Law' (**MAAL**) has been enacted and extends Australia's general anti-avoidance law to schemes for the avoidance of Australian permanent establishments. The MAAL applies to members of groups with worldwide income of more than A$1 billion ('Significant Global Entities'). Significant Global Entities must also comply with 'Country-by-Country' reporting requirements.

New measures to increase tax transparency include:

- voluntary public disclosure of income and taxation information for taxpayers with an annual turnover of more than A$100 million; and
- the 'Automatic Exchange of Financial Account Information in Tax Matters (Common Reporting Standard)' which is intended to facilitate exchange of financial account information between 90 jurisdictions.

Draft legislation targeting hybrid mismatches was released in November 2017 for consultation.

Diverted profits tax

Australia has introduced a 'Diverted Profits Tax' (or **DPT**), which is similar to the second limb of the UK's diverted profits tax. Amounts subject to the DPT will be taxed at a rate of 40%.

Broadly, the DPT will apply if:

- a Significant Global Entity with Australian turnover of more than A$25 million;
- the Australian entity has entered into an arrangement with a foreign related entity for the principal purpose of obtaining an Australian tax benefit (or an Australian and a foreign tax benefit);
- this arrangement results in an effective tax mismatch (i.e. the increase in the foreign entity's tax liability is less than 80% of the reduction in the Australian entity's tax liability); and

- it is reasonable to conclude that this arrangement was designed to secure a reduced tax liability.

Fringe benefits tax

Where an employer provides certain benefits to employees other than salary or wages, share options or pension benefits, those benefits may be subject to fringe benefits tax (**FBT**).

Common employee benefits include the provision of motor vehicles for private use, low-interest loans, subsidised accommodation, entertainment, discounted goods and payment of private expenses.

The FBT year runs from 1 April to 31 March in the following year, and a FBT return must be lodged annually by the employer (who is liable for the tax). The FBT tax rate is 47%.

Superannuation guarantee scheme

The superannuation guarantee scheme requires all resident and non-resident employers to contribute a regular minimum amount to an approved pension plan for employees working in Australia, subject to limited exceptions. The aim of the scheme is to encourage employees to be self-sufficient upon reaching retirement age. The scheme is administered by the ATO on a self-assessment basis. Employer contributions to a superannuation fund are generally tax deductible.

The minimum level of superannuation support is 9.5% per annum of an employee’s regular earnings (increasing by 0.5% from the 2021-22 income year until it reaches 12% in the 2025-26 income year). There is also a cap to the contribution that is required, although employers can contribute more than this amount. Required contributions must be paid quarterly.

Employers who fail to provide the minimum level of superannuation are subject to a superannuation charge. This non-deductible charge comprises the shortfall, an interest component and an administration charge.

Goods and services tax

Australia has a 10% value-added tax, known as the Goods and Services Tax (**GST**). It is an indirect, broad-based consumption tax. It is levied on the supply of goods, services and other things such as property and rights. However, the supply of certain goods and services is GST-free (for example, exports) or input taxed (for example, financial services).

Offshore services or intangibles provided to Australian consumers are subject to GST, commonly referred to as the 'Netflix tax'. Digital currency (such as bitcoin) is not subject to GST.

GST will also be applied to ‘low value’ goods imported into Australia from 1 July 2018.

As with income tax, associated entities can elect to form a GST group. Generally, transactions within the group are ignored for GST purposes and the representative member is responsible for the groups reporting obligations.

Customs duty and excise

Customs duty

Customs duty is levied on most goods imported into Australia for domestic consumption. The classification of goods for customs duty purposes is a difficult matter, so expert advice should be sought. Concessional rates of duty may be obtained where there is no local manufacture of the item being imported, but the conditions for this are stringent.

Excise and royalties

Excise is levied on the production and importation of liquor and tobacco and on certain forms of petroleum. Mineral royalties are also payable to state governments for onshore mining (as the ownership of most minerals is reserved to the state).

State and territory stamp duty

Stamp duty can be a crucial consideration in business planning and costing because it applies to a wide variety of transactions, and it is often calculated by reference to the purchase consideration (inclusive of GST) or value of the property involved. We recommend that expert advice be obtained early in the decision-making process.

Stamp duty is a tax imposed by each of the 8 State and Territory governments. It is payable on certain transactions that have a relevant 'connection' with a State or Territory, as determined by the individual law of that State or Territory. If a transaction is dutiable, the taxpayer will be liable to pay the stamp duty and file a lodgement with the relevant government authority, regardless of where the taxpayer resides. It is possible for stamp duty to be payable on a particular transaction in more than one State or Territory.

Transactions that might be subject to stamp duty include:

- direct acquisitions of assets such as land and buildings, plant and equipment, leases, goodwill, intellectual property, customer contracts, securities and debts, and -motor vehicles;
- indirect acquisitions of assets by acquiring certain interests in trusts, companies and partnerships holding those assets; and
- insurance policies.

Stamp duty is generally calculated on the value (or purchase consideration if higher) of the transaction or underlying assets in question. The applicable rate will depend on the dutiable value, and will vary in each State and Territory. As at 1 May 2018, the rates for a dutiable transfer or acquisition are up to 5.95%. Higher duty rates apply to acquisitions of residential property in certain circumstances.

There is also additional duty (a surcharge) payable in a number of States, by foreign persons who acquire residential land, or certain indirect interests in residential land. The surcharge rate varies, and is up to 8%. In some cases, the surcharge is not imposed on property development meeting certain criteria and on various alternative asset classes (such as, potentially, retirement villages, hotels, and student accommodation).

Payroll tax

Payroll tax is imposed by the states and territories on employers at rates of up to 6.85% depending on the jurisdiction. It will apply to the extent that the wages, including fringe benefits, making up the payroll exceed thresholds from A$600,000 to A$1.1million depending on the jurisdiction.

Land tax

The states and the Australian Capital Territory (but not the Northern Territory) levy land tax on the unimproved capital value of land. Concessions are made for the taxpayer’s principal place of residence. This tax does not take the value of buildings and other improvements on land into account.

Victoria and New South Wales have also introduced a surcharge of up to 1.5% per annum for foreign owners of residential property.

The Australian Government has announced a proposal to introduce a ‘vacancy tax’ on foreign-owned property, which will apply when the property is not occupied or available for rent for 6 months in a year.

Resource rent taxes and royalties

A petroleum resource rent tax is levied on certain offshore petroleum production at 40% of the net cash flow on a project-by-project basis. It also applies to onshore oil and gas projects.

Various natural resource royalties are applied by state governments.

Death, wealth and gift taxes

There is no death duty in Australia. There is also no gift duty, though a gift of property may, in certain circumstances, be chargeable with stamp duty or trigger CGT.

Property tax

A local property tax (called rates) is levied by municipalities.

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