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Asia-Pacific Region



Doing Business in

Australia

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Doing Business in Australia

Contents

- 2 Introduction
- 2 About JHI
- 3 JHI in Australia
- 4 Key Facts
- 6 Taxation in Australia
- 9 Foreign investment
- 10 Immigration to Australia
- 12 Establishing a business in Australia

Introduction

This guide is written for companies and individuals interested in doing business in Australia. It outlines key facts and figures on Australia's economy, business infrastructure, laws and taxation. This information contained herein is for guidance only and no responsibility for loss from action taken based on any material herein can be accepted. It is recommended readers obtain further information and professional advice prior to making any decision.

About JHI

JHI is a flourishing worldwide network of approximately 130 member firms in 55 countries. The largest association of its kind, JHI exists to enhance the ability of member firms and their clients to drive business locally and internationally through a variety of distinctive programs and services.

Its members are respected leaders, offering a broad range of accounting, auditing and management consultancy services in every business sector. They play key roles in setting the course for the profession. This extends to JHI members who serve in leading positions with worldwide bodies such as the Forum of Firms, an organization of international firms that perform audits of financial statements that are, or may be, used across national borders. Potential new members are subject to a rigorous selection process based on criteria including the quality of practice, reputation and geographical location.



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Doing Business in Australia



JHI in Australia

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Doing Business in Australia



Key Facts

Population: 21,500,000 (Jul 2008 est.)
Currency: Australian dollar

Dialling Code: +61
Language: English
Fiscal Year: 1 July-30 June

Time Zone: Australia is divided into three time zones:
Eastern: Australian Eastern Standard Time (AEST) is equal to Coordinated Universal Time plus 10 hours (UCT+10).
Daylight Saving Time: +1hr, begins last Sunday in October-adopted by most, but not all states.
Central: Australian Central Standard Time (ACST) is equal to Coordinated Universal Time plus 9 ½ hours (UTC+9 ½).
Western: Australian Western Standard Time (AWST) is equal to Coordinated Universal Time plus 8 hours (UTC+8).

Political Overview

Australia has 8 administrative divisions - 6 states and 2 territories*; Australian Capital Territory*, New South Wales, Northern Territory*, Queensland, South Australia, Tasmania, Victoria, Western Australia.

Australia has a 2 parliamentary chambers, consisting of the Senate and the House of Representatives. The chief of state is Queen of Australia ELIZABETH II (since 6 February 1952) who is represented by

Governor General Quentin Bryce (since 5 September 2008).

The prime minister nominates from among members of Parliament candidates and they are subsequently sworn in by the governor general to serve as government ministers. The governor general is appointed by the monarch on the recommendation of the prime minister.

Doing Business in Australia

Legal and Judicial System

The Australian Constitution of 1901 established a federal system of government, under which powers are distributed between the federal government and the states. It defined exclusive powers (investing the federal government with the exclusive power to make laws on matters such as trade and commerce, taxation, defence, external affairs, and immigration and citizenship) and concurrent powers (where both tiers of government are able to enact laws). The states and territories have independent legislative power in all matters not specifically assigned to the federal government.

The common law system, as developed in the United Kingdom, forms the basis of Australian jurisprudence.

The Federal Court's jurisdiction is broad, covering almost all civil matters arising under Australian federal law and some summary criminal matters. Australian state and territory courts have jurisdiction in all matters brought under state or territory laws. Each state and territory court system operates independently. All states have supreme courts.

Economy

The Economy of Australia is a prosperous, Western-style market economy dominated by its services sector (68% of GDP), though the agricultural and mining sectors account for 52% of its exports. Rich in natural resources, Australia is a major exporter of agricultural products, particularly grains and wool, and minerals, including various metals, coal, and natural gas. Australia occupies a continent close to the size of the contiguous United States, but has a labour force of only about ten million. Australia's economy grew in the first quarter of 2009, being one of the few developed nations to have side-

stepped a technical recession during the global financial crisis thus far. The growth hinged almost entirely on a positive shift in the country's trade accounts, together with higher than expected consumer growth. The Australian government introduced a number of multi-billion dollar stimulus packages, including increased infrastructure spending and cash handouts to most Australians since the end of last year to lift consumer spending. The Australian central bank also cut interest rates to a 45-year low of 3.25% in February 2009.

Doing Business in Australia



Taxation in Australia

The Federal Public Accounts and Audit Committee found that, in 2004, Australia's tax system was the third most complex of the 20 largest economies in the world.

Company Tax

Companies pay taxes at a rate of 30% of net profits. Tax is collected from companies under the PAYG installment scheme. It is possible for companies to carry forward losses under certain conditions. It is not

possible to reduce prior year income with current year losses. A fixed tax year end of the 30th June exists, however an application can be made to vary this in limited circumstances.

Individuals

A progressive system of taxation exists in Australia. Resident individual tax rates for 2009/10 are:

Taxable income	Tax on this income
\$0 – \$6,000	Nil
\$6,001 – \$35,000	15c for each \$1 over \$6,000
\$35,001 – \$80,000	\$4,350 plus 30c for each \$1 over \$35,000
\$80,001 – \$180,000	\$17,850 plus 38c for each \$1 over \$80,000
\$180,001 and over	\$55,850 plus 45c for each \$1 over \$180,000

Doing Business in Australia

Non-resident individual tax rates for 2009/10 are:

Taxable income	Tax on this income
\$0 – \$35,000	29c for each \$1
\$35,001 – \$80,000	\$10,150 plus 30c for each \$1 over \$35,000
\$80,001 – \$180,000	\$23,650 plus 38c for each \$1 over \$80,000
\$180,001 and over	\$61,650 plus 45c for each \$1 over \$180,000

In addition to the above tax a medicare levy is applied to assessable income in Australia on resident individuals and certain trusts. It is imposed at a rate of 1.5% on assessable income and operates subject to shading in rules. A medicare surcharge is also payable at 1% if the individual does not have private medical cover and their income is greater than \$73,000 for individuals or \$146,000 for families.

As per companies, a fixed tax year end of the 30th June exists.

A resident is required to include in assessable income, ordinary income derived directly or indirectly from all sources, whether in or out of Australia during the income year. A foreign resident is required to include in assessable income, ordinary income derived directly or indirectly from all Australian sources only during the income year.

Capital Gains Tax (CGT)

CGT was introduced in Australia in 1985. For individuals a capital gain is included in their 'assessable income' - see **Individuals** above. The main residence exemption exists, together with exemptions for certain motor

vehicles. Assets which are held for greater than one year are entitled to a 50% discount on disposal. There are also concessions available to small businesses to reduce capital gains.

Capital Allowances

The 'prime cost' method or 'diminishing value' rate is available to taxpayers. 'Prime cost' is a straight line deduction method while the later is a reducing balance. The effective life used in these two methods can either

be self-assessed or Commissioners rates can be used. Assets less than \$1,000 in cost or \$1,000 in write down value can be pooled. Assets under \$300 can be written off against profits in the current year.

Doing Business in Australia

Goods & Services Tax (GST)

GST was introduced in 2000. The main rate is a flat rate of 10% on goods and services supplied by registered entities and on most importations of goods. The

registration threshold is \$75,000 (\$150,000 for a non-profit body). Tax is paid quarterly, except for entities with a turnover greater than \$20m who pay monthly.

Dividend Distribution Tax

The Imputation system exists to avoid double taxation of shareholders. Effectively a notional tax of 30% is attached to dividends-referred to as 'franking'. Companies operate a franking control account- it is

possible to have unfranked and partially franked dividends. The dividend is grossed up by the individual shareholder and forms part of their assessable income with an offset for the attached franking credit.

Fringe Benefits Tax (FBT)

Applied to non cash benefits provided to employees. It is imposed solely on the employer. The current rate is 46.5% and is generally deductible to the employer.

Numerous reconciliation rules to prevent employees being subject to income tax on fringe benefits. FBT liabilities are generally reported quarterly, but payable annually.

Losses

An individual may offset a loss from a business activity against other income derived in the same income year if the business activity adheres to certain conditions. A non-deductible loss may be carried forward and applied in future years against assessable income from that particular activity. Business losses cannot be offset against assessable income such as wages/salary. The

procedures for carrying forward losses are automatic, but must be carried forward one year at a time. Rental losses can be offset against total assessable income. Taxpayers are not able to claim deductions for net capital losses, they can however be carried forward to reduce net capital gains in future years. There are anti-trafficking provisions to the carried forward losses of companies.

State Taxes

Stamp Duty: There are concessions available to first-time home buyers and senior Australians. States have varying further rates applicable to i) transfers of unquoted shares & securities ii) lease of real property iii) rental business duty iv) loan security/ mortgage duty.

Payroll Tax: Payable by an employer whose total annual wages exceed minimum thresholds. They are differences between various state jurisdictions. The rates vary between 4.75% and 6.85%, while minimum thresholds range from \$552,000 to \$1,500,000.

Doing Business in Australia



Foreign Investment

Sustained growth has encouraged increased foreign investment in Australia, which now attracts a high level of foreign direct investment compared to other developed economies. According to the Australian Trade Commission foreign direct investment in Australia has increased by more than 50 percent over the five years to June 2008. Australia's ratio of foreign direct investment to GDP is now 34.4 per cent, which is well above the average for comparable developed economies. This premium indicates the relative attractiveness of Australia as a venue for direct investment.

The legislation in Australia in relation to foreign investment in Australia is laid out in the Foreign Acquisitions and Takeover Act. It lays out which foreign investment proposals should be notified to the Foreign Investment Review Board for prior approval, together with detailing what penalties apply for non-compliance.

What type of property can foreign investors buy?

- **Vacant Land:** Subject to an investor commencing construction within 12 months of Foreign Investment Review Board approval.
- **Second-hand dwelling:** Purchases of second hand dwellings by foreign persons are restricted to

temporary residents with visas (more than 12 months) or investors making the dwelling their principal place of residence.

- **New dwellings:** Ownership is restricted to no more than 50 per cent of the dwellings in a development being sold to foreign interests. For single dwellings, a developer must have another dwelling that is similar in construction and proximity.
- **Commercial:** Purchase of commercial property is normally approved unless it is contrary to the national interest. This is determined by the Government on a case by case basis.

What restrictions are there on new business set up by foreign residents?

Proposals to establish new businesses involving a total investment of \$10 million or more are subject to notification and approval. The Government registers, but normally raises no objections to, proposals above the notification thresholds where the relevant total assets/total investment falls below \$100 million. However, proposals in Sensitive Sectors or those which raise specific national interest issues may be subject to more detailed examination.

Doing Business in Australia



Immigration to Australia

The main categories of visas for entry into Australia are:

Business Owner

These visas are for people who have a successful business career, and have a genuine and realistic commitment to be involved as an owner in a new or existing business in Australia. This visa is also the first

step towards being granted a permanent Business Skills visa. The visa is for business owners from overseas who intend to own a business in Australia, and are less than 45 years of age.

Investor

These visas are for people who have a successful business or investment career, and have a genuine and realistic commitment to be involved in investing or business in Australia. This visa is also the first step

towards being granted a permanent Business Skills visa. The visa is for investors from overseas who are willing to invest funds in a designated investment in Australia for four years, and are less than 45 years of age.

Skilled Workers

The Employer Nomination Scheme allows Australian employers to sponsor employees who are foreign nationals for a permanent visa to work in Australia. This visa is for Australian employers who want to sponsor highly skilled workers for a permanent visa to work in Australia. The employees can be either:

- highly skilled workers from overseas
- highly skilled temporary residents currently in Australia

The Regional Sponsored Migration Scheme (RSMS) is for

employers in regional Australia, to fill skilled positions they are unable to fill from the local labor market. Under the RSMS, employers are able to nominate staff from overseas or temporary residents currently in Australia to fill full-time, permanent vacancies.

The employees applying for a visa can be either of the following:

- skilled workers from overseas
- skilled temporary residents.

Doing Business in Australia

Family

There are a number of migration options for fiance(e)s, partners, children, parents and other family members of Australian citizens, Australian permanent residents or eligible New Zealand citizens.

Partner

Partners of Australian citizens, Australian permanent residents or eligible New Zealand citizens may enter and/or remain permanently in Australia. Partner migration may apply to:

- people intending to get married
- married (de jure) partners
- de facto partners
- interdependent partners (including those in a same-sex relationship).

Parent

Parents may be able to migrate to Australia if they have a child in Australia who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen.

Child

For dependent children, orphan relatives or adopted children of an Australian citizen, Australian permanent resident or eligible New Zealand citizen.

Other Family

Aged dependent relatives, remaining relatives and carers of Australian citizens, Australian permanent residents and eligible New Zealand citizens may apply for visas to come to Australia permanently.



Establishing a business in Australia

Introduction

The main forms of business enterprise in Australia may be operated by an individual, partnership, a trust, a company, a joint venture, a partnership, or a branch of a foreign company. Each business type has different legal and taxation implications. A foreign investor may

use any of these structures to conduct business in Australia. Entities will need to register for an Australian Business Number (ABN) and obtain a Tax File Number (TFN), and may also be required to register for the Goods and Service Tax (GST).

Sole traders and Partnerships

A sole trader is the simplest business to establish as it is owned and run by one person, who may trade under their own name, or register a name with the Australian Securities and Investments Commission (ASIC). All the decisions may be made by one person; however they are also personally liable for all debts. A sole trader may also employ other people. The profit (or loss) is included in the individual's tax return and taxed at their marginal rate.

Partnerships are a common arrangement, particularly in fields such as law and accounting. Partnerships are a legal relationship governed by state laws consisting of trust law, agency law, and contract law. A partnership is

a simple and relatively cheap business structure to establish and is created through a formal agreement (a written partnership deed/agreement is recommended) or even by the parties conduct.

A partnership has the advantage of flexibility and confidentiality, as they are not required to make public disclosures. Each partner is taxed separately on the income they receive, at their marginal rate.

All the partners are jointly and severally liable for the debts of the partnership and have unlimited liability.

A partnership may have between 2 and 20 partners.

Trusts

Trusts are very common place in Australia. A trust can give some protection from creditors and is able to accommodate an employer/employee relationship. In family matters, the flexibility, control and limited liability aspects combined with potential tax savings, make discretionary trusts very popular.

Trusts are typically governed by the common law and contract law, although there are certain industries, such as superannuation funds that have very specific laws relating to their trust.

The profits are not taxed in the trust; they are distributed to the beneficiaries and taxed at the flat rate of 30% for a company beneficiary or at the individual's marginal rate. If left in the trust, profits are taxed at 46.5%.

Since the late 1990s discretionary trusts and small unit trusts have been affected by a number of highly technical measures which affect the treatment of franking credits and tax losses. This is an area where specialist advice is essential.

Company

The most common choices for foreign investors to conduct business in Australia include establishing an Australian subsidiary by registering or acquiring an Australian company, or by registering as a foreign company. In both cases, registration is with the Australian Securities and Investments Commission (ASIC) and governed by the Commonwealth Corporations Act 2001.

There are four types of companies that may be registered:

- A company limited by shares
- A company limited by guarantee
- A company with unlimited liability, or

The most common type of company is the company limited by shares, which may be either a proprietary (private) company being simple to manage and administer, or a public company which must be listed on the Australian Stock Exchange and meet the prescribed requirements set out in the ASX listing rules. A private company must include the word "Private" or the abbreviation "Pty" at the end of its name, and a company limited by share or guarantee, must include the word "Limited" or the abbreviation "Ltd" at the end of its name. A private company is restricted to a maximum of 50 non-employee shareholders; a public company however has no maximum. A proprietary company must have at least one director, but need not have a secretary.

The director and secretary (if any), must ordinarily reside in Australia and be over the age of 18.

A public company must have at least three directors and at least one secretary. At least two of the directors and one secretary must ordinarily reside in Australia

Whether an Australian subsidiary is established by registering a new company or acquiring an existing 'shelf company' (one recently registered that has not yet traded), it will need to lodge documents with ASIC, apply for an Australian Business Number (ABN), a Tax File Number (TFN) and also be registered for the Goods and Service Tax (GST).

It is also possible to acquire the shares in, or the assets of, an established Australian company. This is generally welcomed, with the Australian Government encouraging foreign investment consistent with community interest. It may however require prior approval under the Government's foreign investment policy and the Foreign Acquisitions and Takeovers Act 1975. For example where acquisitions of substantial interest in existing Australian businesses with total assets over \$50 million or where the proposal values the business at over \$50 million.

A Foreign company conducting business in Australia, other than through an Australian subsidiary, must register with ASIC a business name and complete and lodge the relevant application forms and documents, including a certified copy of the company's certificate of incorporation and constitution documentation. A foreign company must have a registered office in Australia and appoint a local

Doing Business in Australia

agent to represent the company making sure it complies with its legislative requirements in Australia. Once successfully registered, ASIC will allocate an Australian Registered Body Number (ARBN) to the foreign company and issue to it a 'Certificate of Registration' as evidence of its registration as a foreign company in Australia.

ASIC must be notified of certain changes as they occur, such as changes to the structure of the company itself, or changes concerning its directors, local agent or office addresses.

Joint Venture

Foreign investors may enter into joint venture agreements with Australian entities to carry out commercial activities. This means they can avoid the need to incorporate an Australian subsidiary or register as a foreign company. A joint venture is commonly used when the parties intend to undertake one venture as

apposed to carrying on a continuous business. They are most popular for mining and manufacturing enterprises.

The joint venture is governed by the terms of the agreement between the parties as well as by common law and contract law.