Nexia Australia

Doing Business in Australia

Preface

Nexia Australia has firms in Adelaide, Brisbane, Canberra (Australia's capital city), Melbourne, Perth, Darwin and Sydney and is part of the global Nexia International network of independent accounting and consulting firms. The Australian firms have approximately 600 personnel including 60 partners with gross fees of AUS$90m.

All of the Australian Nexia firms are progressive and supply a wide range of services including expert accounting, audit, financial planning and management and tax services to most industries operating in Australia.

This guide has been produced to give a general outline for anyone considering operating a business in Australia together with a broad overview of Australia's business environment; the levels of government with which foreign firms need to interact, and the associated banking, financial and regulatory regimes.

Welcome to Australia.

Ian Stone
Chairman
Nexia Australia

How can Nexia Australia help you?

The decision to expand into Australia is an exciting yet challenging time for a business. No matter how good you are at what you do in your home environment, coming to grips with a foreign country's operating and regulatory environment can be a daunting process.

Obtaining the right advice from the very beginning and knowing that the advice is relevant to your particular business is crucial to ensuring a smooth transition and ongoing success.

Nexia Australia's experienced team can provide comprehensive and personalised advice, incorporating:

- Business structuring
- Local and international tax consequences
- Asset protection
- Profit repatriation to your home country
- Transfer pricing and withholding tax issues
- Meeting your obligations as an employer
- Expatriate taxation and salary packaging
- Government incentives
- Ongoing compliance obligations
- Securing licences and permits
- Succession planning
- Outsourced CFO and Resident Director

Contact a Nexia Advisor for tailored advice and to answer any questions you might have about taking this next step for your business.

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CHAPTER 1

Introducing Australia

Australia is a modern industrialised nation with a diverse, open and competitive economy. It is a major exporter and importer of commodities, manufactured goods and services, and generally welcomes foreign investment.

Geography and climate

Australia is an island continent of 7.7 million square kilometres, almost the same size as the continental United States and about twice the size of the European Union. Australia spans 3200 kilometres from north to south and 4000 kilometres from east to west.

The land is mostly flat and low-lying. Apart from Antarctica, it is the driest of the continents.

The climate varies from the northern tropical regions, a vast and arid interior with generally low rainfall, to temperate and more fertile regions in the south. Climatic events can include widespread and long-lasting droughts, as well as floods, bushfires and cyclones (hurricanes).

History

Aboriginal and Torres Strait Islander peoples inhabited most areas of the Australian continent for many thousands of years before the arrival of European settlers in 1788.

Political system

The Commonwealth of Australia was created in 1901 by the federation of six former British colonies. It consists of a national government, six states (New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania) and two territories (the Australian Capital Territory and the Northern Territory). There are also local governments, generally known as municipalities or shires.

Australia is a constitutional democracy. The Head of State is Queen Elizabeth II of Great Britain, who is Queen of Australia. Federal legislative power operates through a parliament consisting of a House of Representatives and a Senate based on the Westminster system of the United Kingdom and elements of the Congress of the United States.

The Australian Constitution provides for the division of powers between the Commonwealth and the states and territories. Broadly, the Commonwealth can legislate in the areas of defence, foreign affairs, income and other taxes, customs and excise, social services, overseas trade, communications, banking and intellectual property. Education, justice, infrastructure, health services and housing are mainly under the control of state and territory governments.

Legal system

The legal system developed from British law. Much of the law is codified in statutes, but common law remains important in many areas.

Population

In March 2018, Australia's population was estimated to be 24.8 million. The population is projected to grow to almost 30 million by the year 2020. Although people are mainly of European origins, there are many ethnic groups reflecting the large migrations since World War II. About 25 per cent of Australians now living were born overseas.

Most of Australia's population is concentrated in two widely separated regions – parts of Victoria, NSW and Queensland in the south-east and east, and in the south-west of Western Australia. The south-east and east region is by far the largest in area and population. The populations within these

Population *continued*

regions are concentrated in urban centres. About 65 per cent of Australians live in the state and territory capital cities.

There are about 12 million people in the workforce.

Language

English, Australia's official language, is spoken in every part of the country and is the language of business. More than four million residents speak a second language.

Economy

Australia has a private enterprise economy. The Commonwealth and the States do not seek to take part in the production of goods and services. Public utilities are largely under government control but there is an increasing trend towards privatisation, particularly in areas like power generation and distribution, toll roads and shipping. In some areas government enterprises compete with private corporations. Some government and other statutory authorities conduct business operations on profit-making or cost-recovery bases.

Historically, agriculture, mineral and energy resources and manufacturing formed the basis of Australia's economy. Today agriculture and mining represents approximately 11 per cent of Australia's total gross domestic product (GDP). Manufacturing has declined in importance over recent decades. The substantial growth area has been sales and services, which now account for 71 per cent of total output.

Australia's GDP grew for the 26th consectutive year in 2016-2017 and was estimated to be a nominal $1.69 trillion dollars. Growth has declined slightly in recent years with the slowdown in the mining sector. It is estimated to grow by 2.75 per cent in the 2017-2018 financial year.

Australia is the world's 13th largest economy and the 25th largest export economy in the world and its major exports in 2016 were from the resources sector with minerals and oil and gas accounting for 55% of the total exports. The main export destinations for all goods and services were in Asia with China and Japan the major buyers, followed by the EU, South Korea and the USA.

Currency

Australia's currency is the dollar, divided into 100 cents. All money amounts in this book are in Australian dollars unless otherwise stated.

Business hours

Business hours are generally between 8.30 am and 5.30 pm.

Visas

Valid passports and visas are generally required for business visitors. Visas should be obtained from an Australian embassy or consulate before arriving in Australia.

A Business (Short Stay) Visa may be issued for either single or multiple entries which normally allow for a stay of three months on each arrival. Applications are processed at most Australian embassies or consulates. The Electronic Travel Authority (ETA) for business people allows those who are nationals of certain countries to obtain an ETA normally when they book their travel.

A Business (Short Stay) Visa and the Business ETA must be obtained before entering Australia.
A letter of invitation from relevant Australian businesses may be requested. Applicants must have valid passports

Government policies and regulations affecting business

Doing business in Australia involves a range of dealings with federal, state, territory and local government agencies, depending on where you intend establishing, operating or developing your business.

Business regulations

A foreign company wanting to do business in Australia must be registered with the Australian Securities and Investments Commission under Part 5B.2 of the Corporations Act 2001. Registration of a business name is compulsory in every state and territory from which a business operates and must be completed before trading. Restrictions can apply to the foreign ownership of businesses or developed commercial properties in Australia. Acquisitions of interests in businesses of 20 per cent or more valued at above $261m should be notified. There is an exception for Chile, China, Japan, Korea, NZ and US investors where the $261m threshold only applies for investments in prescribed sensitive sectors. A $1,134m threshold applies to investors from those countries in other sectors.

Foreign persons should notify the Government and get prior approval before acquiring an interest in certain types of real estate. Regardless of value, foreign persons generally need to notify before they can take an interest in residential real estate or vacant land. Investments in developed commercial property valued at less than $57m generally do not need approval unless they are in a sensitive sector.

Sensitive sectors with specific restrictions on foreign investment include agribusiness, residential real estate, banking, telecommunications, shipping, civil aviation, airports and media. Proposals in sensitive sectors or which raise specific issues of national interest may need more detailed examination.

The Foreign Investment Review Board, on behalf of the Federal Government, screens proposed foreign purchases of Australian businesses and properties which could be contrary to the national interest.

Bank accounts

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's anti-money laundering regulator and specialist financial intelligence unit. AUSTRAC regulates cash dealer compliance with legislation. The term 'cash dealer' includes:

- Authorised deposit-taking institutions such as banks, building societies and credit unions.
- Managers and trustees of unit trusts.
- Financial institutions.
- Insurance companies and insurance intermediaries.
- Stockbrokers.

The following transactions must be reported to AUSTRAC:

- Any transaction with a cash component of $10,000 or more.
- Any instruction for electronic transfer of funds into, or out of, Australia.
- Any transaction in which the individuals, monies or circumstances make the cash dealer suspicious, such as an apparent lack of commercial logic.

Members of the public are also required to report international cash currency transfers worth more than $10,000 to AUSTRAC.

Banking

The Australian Prudential Regulation Authority (APRA) is responsible for prudential supervision of financial institutions. It oversees banks, credit unions, building societies, general insurance, life insurance and reinsurance companies, friendly societies, and most of the superannuation industry.

The Reserve Bank of Australia (RBA) is Australia's central bank. Its main responsibility is monetary policy and maintaining financial system stability and the safety and efficiency of the payments system in Australia. The RBA sets the terms of the cash rate.

Copyright and intellectual property

With the exception of copyright and circuit layout rights, which are automatic, businesses and individuals must register their intellectual property (IP) to obtain legal ownership. Types of IP that must be registered include: patents, trademarks, designs, plant breeder's rights and confidentiality agreements/trade secrets.

IP Australia is the Federal Government agency for granting rights in patents, trademarks and designs. It administers IP legislation, including the Patents Act 1990, the Trade Marks Act 1995 and other relevant Acts and regulations.

Copyright is free and automatically protects original works of art, literature, music, films, broadcasts and computer programs from copying and certain other uses. Protection is provided by the Copyright Act 1968, administered by the federal Attorney-General's Department. Depending on the material, copyright for artistic and literary works generally lasts 50 years from the year of the author's death or from the year of first publication.

Privacy

The federal *Privacy Act 1988* which includes the Australian Privacy Principles covers standards for collecting personal information, its use, terms of disclosure, data security, and anonymity requirements. There is also a credit reporting code of conduct, which is binding on all credit providers. The Act covers parts of the private sector, all health service providers and Commonwealth and Australian Capital Territory government agencies. The private sector provisions of the Act apply only to organisations (including not-for-profits) with an annual turnover of more than $3m, subject to certain prescribed businesses.

Some states in Australia have also enacted privacy legislation.

Financial services

The Australian Prudential Regulation Authority (APRA), regulates the Australian financial services industry. The Australian Prudential Regulation Authority Act 1998 prescribes prudential standards and practices for banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies and most of the superannuation industry.

APRA has the power to conduct investigations and discipline firms or persons.

Activities of banks, insurance companies, and the superannuation industry are dealt with under separate legislation (such as the Banking Act 1959, the Insurance Act 1993, and the Superannuation Industry (Supervision) Act 1993).

Insurance

The Insurance Act 1993 establishes who can carry on an insurance business in Australia and imposes standards of capital adequacy, prudent management and protection of policyholders' interests.

Government policies and regulations affecting business *continued*

Mergers and monopolies

The *Trade Practices Act 1974* prohibits anti-competitive conduct of various kinds, particularly price-fixing agreements, collective boycotts, secondary boycotts, misuse of market power, anti-competitive exclusive dealings, resale, price maintenance and anti-competitive mergers.

The Australian Competition and Consumer Commission (ACCC) is responsible for policing the Trade Practices Act. It may investigate and litigate to achieve injunctions, fines and damages. The ACCC has a substantial role in regulating monopolies, especially in telecommunications, electricity, gas, airports and rail.

Mergers are prohibited where they would be likely to substantially lessen competition in a market (Section 50 of the Act). However, such mergers can be authorised on public benefit grounds. It is a specific requirement in mergers to regard as public benefits outcomes such as a significant increase in the real value of exports or significant import substitution.

The ACCC's guidelines for informal merger reviews are on its website at **www.accc.gov.au**.

Trademarks

A trademark can be a word, phrase, letter, number, sound, smell, shape, logo, picture, aspect of packaging or a combination of these to distinguish the goods and services of one trader from those of another.

Trademarks are registered in Australia by IP Australia in accordance with the requirements of the *Trade Marks Act 1995*. A Trademarks Application Kit can be obtained from IP Australia's website, www.ipaustralia.gov.au/trademarks.

Australia joined the Madrid Protocol relating to international registration of trademarks in July 2001.

Import and export controls

All goods imported into Australia must be cleared by the Australian Customs Service. Importers are responsible for obtaining a formal Customs clearance for goods worth more than:

- $1,000 when imported by sea and air cargo.
- $1,000 when imported by post.

Fees apply.

Goods entering Australia can attract Customs duty, GST and other taxes and charges. Customs duty rates vary. Customs determines the value of imports based on the World Trade Organization Valuation Agreement.

Many goods are subject to import prohibitions and restrictions. Full details are prescribed in the *Customs (Prohibitions and Restrictions) Regulations 1956*.

Apart from some exemptions, all goods intended for export must be entered into Custom's Export Integration System. Exemptions include:

- Personal or household effects.
- Consignments by post, ship or aircraft from one person to another with freight on board (FOB) values under $2,000.

There are exclusions and restrictions to the use of the exemptions which can be found on the Customs and Border Protection website, www.customs.gov.au.

Export licences or permits must be obtained for a range of goods, including some military goods, native animals, marine life and plants, some medicines, hazardous waste, moveable cultural heritage items, etc.

Consumer protection

Australia has a range of federal, state and territory laws covering the supply of goods and services that apply to fair trading, consumer protection and privacy.

The broad aim is to ensure that businesses compete fairly on price and quality and that standards of consumer contracts and warranties relating to quality, fitness for purpose, title and safety are observed. Australia has legal sanctions against non-compliance with safety standards, performance criteria, design, construction, finish and packaging. Recalls and public warnings about possible unsafe goods can be required.

Building regulations

Federal, state, territory and local government legislation and requirements cover land use, construction, heritage, conservation issues and changes to land use. Local government approval is normally required before development can proceed.

Individuals and businesses should first seek details from the relevant local council, state or territory government about planning and building control requirements before proceeding with any property development or building proposal.

Environment, pollution and waste management

The Federal Department of the Environment and Heritage administers a number of environmental laws to ensure the conservation and protection of the environment.

State and territory governments and local councils also administer laws relating to pollution, waste management, discharge of effluent, and transport and disposal of waste material.

Water is a precious resource in Australia. In many locations, water restrictions may be imposed because of drought.

Businesses should check with the relevant local council, state or territory government about environmental protection requirements.

Currency exchange controls

Australia has a floating exchange rate with the market determining the value of the Australian dollar.

Financial institutions and sources of finance

The major financial centres in Australia are Sydney and Melbourne.

Banking system

The Reserve Bank of Australia is the central bank. Its main responsibility is setting monetary policy aimed at achieving low and stable inflation over the medium term. Other major roles are maintaining financial system stability, promoting the safety and efficiency of the payments system, printing and managing note issues and distributing coins. The bank is an active participant in financial markets, manages Australia's foreign reserves, issues Australian currency notes and serves as banker to the Federal Government.

Information provided by the Reserve Bank includes statistics on interest rates, exchange rates and money and credit growth - and a range of publications on operations and research.

The Australian banking system consists of the following institutions:

- Australian-owned banks, including four major banking groups.
- Foreign-owned banks that are locally incorporated subsidiaries of parent banks.
- Foreign banks that operate as branches of overseas parent banks.
- Building societies, credit unions and around 200 other participants, including investment banks.

The range of products offered by banks has expanded beyond loans and deposits to include credit cards, insurance, investment banking and managed-fund products.

Since 1992, foreign banks have been able to establish operations in Australia either through subsidiaries or branches. There are now no restrictions on the number of foreign banks able to operate in Australia. The Federal Government permits the issue of new banking authorities to foreign-owned banks where the Australian Prudential Regulatory Authority (APRA) is satisfied the bank is of sufficient standing and that it will comply with APRA's prudential supervision arrangements.

Other financial and investment institutions

Investment banks. Commonly known as merchant banks or money market corporations, they operate principally in the wholesale segment of the finance market servicing larger corporations, public authorities and governments.

Funds management. Many banks and investment banks have established funds management operations. These include pension funds, which in Australia are known as superannuation funds.

Financial markets. The domestic securities market consists of the Australian Stock Exchange (ASX) and Over the Counter (OTC) markets. Instruments traded include equities, debt securities and currencies. These markets are supported by derivatives markets which themselves can be either exchanged, traded or traded OTC. ASX also provides markets for some debt securities and equity and indexed derivatives.

Trading in equities is augmented by an active market in derivatives. The main instruments traded are futures and options on the share price index, which is based on the All Ordinaries index.

Debt markets. These include the bond market for long-term federal and state government, semi-government and corporate bonds and money markets for short-term securities and cash.

Currency Markets. The Australian dollar has been floating freely since 1983. The Reserve Bank will intervene if the currency is subject to sharp, short-term speculative movements.

Sources of funds

Australian banks and other financial institutions provide foreign investors with the same access to credit as they do for domestic investors.

The traditional form of Australian trading bank lending to businesses involves advances on an overdraft basis mainly for short-term working capital purposes.

Other sources of funds can include fixed-term loans from banks; bank bill lines from trading banks, whereby a bank agrees to accept or endorse a customer's bill of exchange up to an agreed amount; bank bridging finance; money market corporations; Euro currency borrowings; insurance companies and pension funds, life insurance and general insurance companies.

Leasing. Leasing of capital equipment is readily available through banks, finance companies and merchant banks.

Factoring. The factoring of debts is widely available and can be arranged by finance companies.

Types of business enterprises

In Australia, choosing the right business structure is important in achieving maximum returns and managing legal and economic risks.

Taxation should not be the only factor in deciding on the most appropriate structure, but different structures have different tax implications.

The main categories of business enterprise in Australia are:

- Companies;
- Trusts;
- Partnerships;
- Sole traders;
- Joint ventures.

Companies

A company is a legal entity separate from its shareholders, who are the owners. The Corporations Law, administered by the Australian Securities and Investments Commission (ASIC), provides companies with separate legal personalities upon registration, which affords them legal status to enter into contracts, etc. A company's operations are governed by its constitution to the extent that the rules are not inconsistent with the Corporations Law.

The Corporations Law provides for different types of companies, such as:

- Companies limited by shares, the most popular type.
- Companies limited by guarantee, where the members guarantee to pay up to a stated amount in the event of winding up.
- No liability companies, in which the shareholders have no liability.
- Unlimited companies, where the liability of members is unlimited in the event of winding up.

Limited companies. Limited companies protect shareholders by limiting their liabilities to the extent of any amounts remaining unpaid on their shares.

Limited companies are either 'public' (whether listed on the stock exchange or not) or 'proprietary' (private limited liability company).

All companies must have at least one shareholder. Proprietary companies can have up to 50 shareholders, while the numbers of shareholders in public companies are not restricted.

Public companies must have at least three directors, two of whom must be ordinarily resident in Australia, and proprietary companies must have at least one director ordinarily resident in Australia. Public companies are also required to appoint a company secretary who must be ordinarily resident in Australia. The company secretary may also be a director. A listed public company is subject to mandatory listing requirements imposed by the Australian Stock Exchange (ASX).

Common to both forms of company are the following conditions:

- Directors must be natural persons;
- A public officer must be appointed to satisfy taxation reporting requirements (often fulfilled by the company secretary);
- A company must apply to ASIC to be registered and be given an Australian Company Number (ACN);
- A company must have a registered office in Australia with minimum prescribed office hours.

Companies *continued*

Directors of limited or proprietary companies do not have to beneficially own shares.

Financial reporting requirements differ depending on the type and size of the company. There are also regulations on keeping statutory records, making annual filings, etc.

Directors and other officers of a company are subject to duties imposed by the Corporations Law and other legislation. A breach of these duties may result in civil or criminal penalties.

Taxation of companies. A company pays income tax on its taxable income. The tax rate is currently a flat 30 per cent with no tax-free threshold. Companies carrying on a "small business" pay tax at 27.5 per cent with no tax free threshold for the 2017-2018 year.

Branch of a foreign company. Foreign companies can operate branches in Australia, which are considered to be extensions of the foreign company.

To operate an Australian branch, a foreign company must register with ASIC. Registered foreign companies are provided with an Australian Registered Body Number (ARBN). Branch profits are subject to the normal rate of corporate tax. There is no separate branch profits tax.

Trusts

A trust is not a separate legal entity, but refers broadly to an obligation accepted by a person or persons (the "trustee" or "trustees") in relation to property (the "trust property"), for the benefit of another person or persons ("beneficiaries").

Trustees are required to undertake all obligations and transactions on behalf of the trust. As this role carries a legal liability for the activities undertaken, trustees are often companies so as to limit liability.

A trust deed sets out a trustee's obligations and the relationship between trustee, beneficiaries and the trust property. The most common types of trust are:

- Bare trust;
- Fixed trust;
- Discretionary trust;
- Unit trust.

Bare trust. This is the simplest form. It is a nominee arrangement whereby one person (usually a company) is the legal owner of an asset but another enjoys the entire beneficial interest in the asset. A common example is where a trustee company has legal ownership of shares, but another person beneficially owns the shares.

Fixed trust. In a fixed trust, each beneficiary enjoys a fixed or predetermined share of the income and/or capital of the trust.

Discretionary trust. In a discretionary trust, some or all of the entitlements of the beneficiaries in any income year are governed by the exercise of the trustee's discretionary powers. The trust instrument may specify limits on the extent of the trustee's discretion. The discretion may include the right to add or remove beneficiaries.

Unit trust. A unit trust is a form of fixed trust whereby each beneficiary (i.e. unit holder) is entitled to trust income and trust property, in proportion to the number of units owned. The trust instrument may permit units to be transferred in the same way as shares in a company. Many investment funds use this type of structure.

Taxation of trusts. Although in general law a trust is not recognised as a separate legal entity, they are recognised as such for taxation purposes.

Types of business enterprises *continued*

Trusts *continued*

A trust must obtain its own tax file number (TFN), used when lodging annual income tax returns. The trustee needs to register for the TFN in its capacity as trustee.

Except in limited circumstances, beneficiaries who are "presently entitled" to income of a trust are taxed on the net income of a trust estate for an income year, whether the income is distributed or not. Beneficiaries must include their share of the trust's net income in their personal tax return for the year the entitlement arises.

If the beneficiaries are not entitled to all the income of the trust estate, the trustee will be liable to pay tax on part or all of the net income of the trust estate. Typically, this occurs where the income is distributed to minor or non-resident beneficiaries, or if a trust fails to distribute all of its income for the year.

Partnerships

A general-law partnership is a relationship between two or more persons carrying on a business with a view to profit. Partnerships are governed by state government laws. It is usual to have a formal overriding partnership agreement which outlines the rules by which the partnership conducts its business, such as profit-share agreements and arrangements for partners' salaries, new partners, and retirement of partners.

A partnership, unlike a company, has no separate legal personality distinct from its members.

Taxation of partnerships. For tax purposes, a partnership is treated notionally as a separate entity. In this context, a partnership is an association of persons or entities that carry on business as partners or receive income jointly – except for limited partnerships, which are essentially taxed as companies (see below). A partnership needs its own TFN.

Although the partnership itself is not liable to tax, it is still required to lodge a separate income tax return to report its partnership income or loss. Each partner includes their individual shares of the partnership net income or loss in their individual tax returns. Partnership income retains its character in the hands of the partners.

Limited partnerships. In a limited partnership at least one of the partners has limited liability. Limited partnerships may be established under specific state laws or overseas. The liability of the limited partners is usually limited to their capital contribution and they are generally precluded from being involved in the management of the partnership business.

For tax purposes, most limited partnerships are corporate limited partnerships, and are treated essentially as companies.

Sole traders

Sole traders are individuals operating a business in their own right. Such a business is not an entity separate from its owner. For tax purposes, the income of the business is treated as the person's individual income and that person is solely responsible for tax payable on profits derived by the business.

Company formation and administration

Forming a company in Australia is covered by the *Corporations Act 2001* and begins with an application for registration to the Australian Securities and Investments Commission (ASIC).

Forming a company

The application must state the type of company and name proposed, and the name and address of each person who consents to become a member.

Each person who has consented in writing to be a director or company secretary, must provide their full name and address, any former names, and date and place of birth.

The application must include the address of the proposed registered office and opening hours if not standard; and the address of the principal place of business, if different.

A proposed unlimited company, or one limited by shares, must provide:

- The number and class of shares each member agrees to take up.
- The amount, if any, each agrees to pay for each share.
- Whether they would be fully paid on registration or, if not, the amount to be unpaid on each share.
- Whether the shares each member agrees to take up would be beneficially owned by the member.

Where shares in a proposed public company limited by shares, or an unlimited company, would be issued for non-cash consideration, details must be provided. If the shares would be issued under a written contract, a copy of the contract must be lodged.

For a company limited by guarantee, the proposed amount guaranteed by each member must be stated, whether or not the company would have an ultimate holding company.

If the proposed company would have an ultimate holding company registered in Australia, the application must include its name and details such as its ABN. The place of formation for a foreign holding company must be stated.

Formation costs. Companies can be incorporated in Australia and are typically formed quickly, often within two days at a cost of about $1,000, which includes a standard constitution and registration with ASIC.

Companies which have never traded can be bought 'off-the-shelf' and put into operation quickly. Changing the company name and some alterations to the constitution may be required.

Shares and capital structures

There are no restrictions on the level of issued share capital or the number of shareholders, except for proprietary companies, which are limited to 50 non-employee shareholders. All companies must have at least one shareholder.

Classes of shares. Most companies only issue one class of share, but companies may differentiate shares by voting, dividend and other rights. Preference shares entitle shareholders to receive a dividend up to a specified amount, but may have restricted voting rights. Ordinary shares usually have voting rights and no restriction on dividends.

Debentures. In addition to capital raised by issuing shares, companies may issue debentures. A debenture is a loan made to a company and may include debenture stock, bonds and other securities with or without a charge on the company's assets, however, a charge often applies. Debenture stock may be issued at a discount and be redeemable or non-redeemable. If the debenture holder is secured, the charge over the company's assets must be registered with ASIC.

Company formation and administration *continued*

Shares and capital structures *continued*

Changes to share capital. Under the *Corporations Act 2001*, a company may reduce its share capital provided it is authorised by its constitution and the members make a special resolution to do so. The Act allows companies to buy their own shares.

Share registration and transfer. Shareholder details are entered into the share register and shareholders are issued with share certificates.

Shares are normally transferable unless the company's constitution provides otherwise. Transfers are only valid if the transferee lodges a share transfer form with the company. Stamp duty on share transfers still applies in certain States.

Shareholder agreements. Proprietary companies often have shareholder agreements that deal with issues that may arise in the event of a dispute, disagreement or disposal of shares.

Restrictions on dividends. Under the *Corporations Act 2001*, companies may only pay a dividend if immediately before the dividend is declared the company's assets exceed its liabilities. The dividend payment must also be fair and reasonable to the company's shareholders as a whole and must not materially prejudice the company's ability to pay its creditors.

Public companies must make adequate provision for any excess of unrealised losses over unrealised profits. They must also ensure that net assets are not less than the total of called-up share capital and undistributed reserves both before and after the dividend distribution.

Company administration

Before applying to register a company certain decisions must be made about how it will be run. That is, if its internal governance will operate under the replaceable rules in the Corporations Act (not applicable for sole director/shareholder proprietary companies), its own constitution, or a combination of both.

Replaceable rules. The basic rules for internally managing a company are included in the Companies Act as 'replaceable rules'.

If a company uses these rules, it does not need a written constitution of its own. Such companies would not incur the expense of keeping their constitutions up to date with the law, even if the replaceable rules are amended.

The replaceable rules do not apply to a proprietary company with a single shareholder who is also the sole director as there is no need for formal rules governing internal relationships.

This does not mean that sole director/shareholder proprietary companies have to adopt constitutions, although they may do so. Such companies only need rules to allow them to conduct business and deal with contingencies. The Companies Act sets out basic rules that apply only to sole shareholder/director proprietary companies. These cover:

- The powers of a single director/shareholder of a proprietary company to sign, draw, accept, endorse or otherwise execute negotiable instruments;
- The remuneration of a single director, who is also the sole shareholder and any reimbursement of his or her expenses.
- Special rules for appointing additional directors to a single director/shareholder company.

Although a sole director/shareholder proprietary company may have a constitution, the rules in the Act cannot be modified.

Company administration *continued*

If an additional director is appointed or an additional person takes up shares in a single director/shareholder company, the replaceable rules will automatically apply, except to the extent they are displaced by a constitution.

Constitutions. A company may choose to adopt a constitution rather than use the replaceable rules. If it is a proprietary company it does not have to lodge its constitution when applying to register. However, the constitution must be kept with the company's records and be available.

If a public company adopts a constitution or a combination of replaceable rules and constitution, a copy must be lodged with ASIC when applying to register.

The Act requires a no-liability company to be a public company and have a constitution that restricts its activity to mining purposes only and states the company's objectives.

Directors

Shareholders delegate the day-to-day management of a company to the board of directors. Every public company must have at least three directors and a proprietary company must have at least one.

Role of directors. Directors are accountable to the shareholders for overall management of the company in accordance with the powers and duties set out in its constitution. Directors may also be shareholders: their responsibilities and liabilities are not limited by the dual role. Occasionally, a constitution may require a director to hold a specified number of shares.

Eligibility. Unless specified in the company's Constitution, there are no qualifications for becoming a director. People who cannot become directors include:

- Undischarged bankrupts, unless permitted by a court.
- The company's auditors.
- Anyone disqualified by a court.

The company's Constitution normally disqualifies anyone of unsound mind or who is absent from board meetings without prior agreement over an extended period.

Foreigners can be directors, but at least two directors of a public company incorporated in Australia must be ordinarily resident in Australia. Directors must be natural persons.

Appointing directors. A company's first directors are named in a form filed on registration of the company. Subsequent appointments are usually made by a simple majority of shareholders at a general meeting in accordance with the company's constitution.

Existing directors are usually permitted to appoint additional directors to fill casual vacancies, subject to a maximum specified in the constitution. Every time a new director is appointed, the company must file a notice of change of office holder with ASIC.

Retirement and removal. Directors may resign at any time. A notice becomes effective as soon as it is given and cannot be withdrawn.

In public companies one-third of the directors, excluding the managing director, must retire each year in rotation. They are then eligible for re-election at the annual general meeting unless the articles state otherwise. There is no age limit for directors but the minimum age is 18 years.

Shareholders may remove a director from office at any time by passing an ordinary resolution. They must notify the company of the proposed resolution at least 35 days before the meeting at which it is to be proposed. Directors may not be removed from office by written resolution. A director whose removal is proposed has the right to have written representations circulated to shareholders and to speak at the meeting at which the resolution is to be considered.

Company formation and administration *continued*

Types of directors

While directors may have different powers, they all share the same responsibilities to the company.

Executive director. As employees of the company, executive directors carry out a management role and fulfil board duties. An example of an executive director is the managing director, who is entrusted with the overall management of the company by the board.

Non-executive director. Although they have the same powers as executive directors, non-executive directors are not employees of the company and usually only serve on a part-time basis. They are appointed for their commercial, management or political skills. Non-executive directors contribute independence and impartiality through not being involved in the day-to-day running of the business.

Permanent director. A company may decide that certain directors should not have to be re-elected periodically and the articles will provide for this. It is common for the managing director not to retire by rotation.

Alternate director. A director may appoint an alternate director to exercise some or all of the director's decisions for a specific period.

Duties of directors

Fiduciary. As directors are in a position of trust, they must always act in the company's best interests.

Companies are liable for all contracts entered into by directors on their behalf. However, a director may be liable for any action taken in their own name without mention of the company.

Any conflict of interest, e.g. a personal matter, must not affect the actions a director takes on the company's behalf. Directors must also declare to the company any personal profit made while carrying out the role.

Duty of skill and care. Directors must carry out their duties with a reasonable degree of skill and care, taking into consideration their skills and experience.

If duties are delegated to managerial staff, a director must be completely satisfied that the manager is honest, reliable and suitably experienced for the job. If a person entrusted with a particular duty is suspected or has been suspected of acting dishonestly and is not monitored, the director can be charged with negligence.

Directors' liabilities. Directors' liabilities are potentially very great, although companies are permitted to insure directors against this eventuality.

Situations in which directors might be held personally liable include:

- being in breach of the common law duties to:
  a) act in good faith in the interests of the company;
  b) exercise a reasonable level of skill and care;
- acting beyond the powers set out in the constitution or replaceable rules;
- including false or misleading statements on listing particulars in a disclosure document;
- jeopardizing the interests of the company's creditors through incompetent or fraudulent management.

Directors may be held liable to compensate investors who suffer loss as a result of false or misleading statements. Directors of insolvent companies may incur extensive penalties and even disqualification.

Company secretary. All companies (except single director/shareholder companies) must have a company secretary, who is ordinarily resident in Australia, responsible for the administration of the company and, in particular, compliance with statutory legal requirements.

Duties of directors *continued*

The secretary is appointed and removed by the directors. A director may also be the company secretary.

There are no qualification requirements for the secretary of a proprietary company. However, a public company must employ a secretary with appropriate knowledge and experience. Such a person might be a chartered secretary, chartered accountant, solicitor or barrister.

Company secretaries must be natural persons.

Other statutory requirements

Company legislation imposes extensive duties on a company and its directors including:

- **substantial property transactions**
  Arrangements to acquire from, or transfer to, the company a substantial asset must not be entered into unless first approved by the company in general meeting;
- **loans to directors**
  With a limited number of exceptions, loans (or security or guarantee for a loan) must not be accepted from the company. Exceptions are loans under a specific amount and funds provided to meet legitimate business expenditure;
- **interests in shares and debentures**
  Inside knowledge must not be used to deal in the shares of a public company. This is a criminal offence. It is also an offence to pass on this knowledge to an outside party knowing that they may deal in the shares;
- **insider dealing**
  Inside knowledge must not be used to deal in the shares of a public company. This is a criminal offence. It is also an offence to pass on this knowledge to an outside party knowing that they may deal in the shares;
- **company name and ACN**
  The name of the company and its Australian Company Number (ACN) must be included on all correspondence. The company name must be legible on all stationery;
- **shareholder meetings**
  Periodic annual general meetings must be called in accordance with the Corporations Act (Clth) 2001;
- **annual reviews**
  an Annual Review must be filed with the ASIC in the prescribed form
- **annual accounts**
  Financial statements that comply with the Corporations Act 2001 and applicable accounting standards must be prepared and filed with ASIC within the prescribed timescale (four months for public unlisted companies and three months for public, listed companies). The financial year is 1 July to 30 June unless approval to adopt a different financial year has been granted to the company;
- **auditors**
  Unless the company meets the audit exemption criteria and at least 5% of the members require an audit, an auditor must be appointed (with subsequent approval by the members at the annual general meeting);
- **tax matters**
  Tax returns must be prepared and submitted to the Australian Taxation Office within the prescribed time periods.

Company formation and administration *continued*

Meetings

Company meetings comprise shareholders' general meetings and board meetings. Shareholders' meetings include annual general meetings and extraordinary general meetings.

Annual general meeting. Companies must have an initial annual general meeting (AGM) within 18 months of incorporation and each subsequent calendar year, with no more than a 15-month gap between meetings. It is the duty of the directors to call an AGM. Failure to do so can lead to penalties.

AGM's normally consist of:

- receiving the annual financial statements, auditors' report and Director's report;
- electing or re-electing directors; and
- appointing or reappointing auditors.

Private companies can elect not to have AGM's and elect not to lay the accounts and reports before the members at general meetings. This must be decided by elective resolution at a general meeting.

Extraordinary general meetings. The directors can call an extraordinary general meeting (EGM) at any time and for any purpose. Shareholders with 5 per cent or more of the voting share capital of 100 or more shareholders can require the directors to call an EGM.

An EGM might deal with matters such as changes in the Constitution or related party benefits.

Conduct at general meetings. General meetings are governed by company Constitution and by company law generally. They can only continue if a quorum, as set out in the articles, is achieved. At least two members are required unless the company only has one member. Voting is generally by show of hands, although members have the right to a poll of one vote per share and can appoint proxies to vote on their behalf.

There are two types of resolution:

- ordinary resolutions require 28 days' notice for listed entities (21 days for unlisted company) notice to be given to shareholders and a simple majority (50 per cent) to be passed;
- special resolutions require 28 days' notice (21 days' notice for a private company) and a 75 per cent majority;

The chairman of the board normally chairs shareholders' meetings. If the chairman is absent, the directors must appoint another director to chair the meeting. The shareholders retain the right to elect another director to take the chair.

The minutes of all general meetings must be formally reported and the minute book available for inspection by any shareholder. This should include a list of attendees and a record of the major decisions taken.

Written resolutions. Private companies have the statutory right to adopt a resolution in writing. All members must sign a document containing the resolution or several identical documents, in lieu of passing it in general meeting. The only exceptions are resolutions to remove a director or the auditor, which may only be considered in general meeting.

Single member companies. If a private company has a single member, that member has the same duty to record resolutions and major decisions in a minute book.

Board meetings. There are no legal requirements in respect of board meetings. Meeting frequency and subject matter is at the board's discretion. Generally, board meetings address broad management issues, such as strategic planning, and record important policy decisions.

Meetings *continued*

Insolvency, liquidation and administrative receivership. A company is deemed to be insolvent when it is either unable to pay its debts as and when they fall due or the value of its assets is less than its liabilities, including contingent and prospective liabilities.

The legislation governing insolvency is contained in the *Corporations Act 2001*. This legislation deals, inter alia, with the conduct of directors when a company is leading up to and is in an insolvent position. Most importantly it sets out the circumstances in which directors may be disqualified or become personally liable for the company's debts - termed insolvent trading.

If a company gets into financial difficulties, its director can first look at the various options available to solve any cash flow problems including the possibility of raising additional equity or loan capital, or selling to or merging with a third party. It is usual for the directors to consult a Licensed Insolvency Practitioner to obtain advice on the options available and to ensure that they do not become personally liable under the provisions of wrongful trading.

There are a number of options should a formal insolvency procedure become necessary.

Liquidation

Liquidation is a means of winding up the affairs of a company.

Compulsory liquidation occurs when a stakeholder (usually a creditor) petitions the court and the court appoints a liquidator.

The function of the liquidator is to:

- realise the assets of the company;
- pay the company's creditors in order of priority;
- distribute any remaining surplus to the members in accordance with the company's articles of association.

A voluntary liquidation is initiated by a shareholders' special resolution. A members' voluntary liquidation is only possible where the directors believe that the company's liabilities can be settled. In these circumstances, the members are entitled to appoint the liquidator and there is no involvement of the creditors.

Administrative receivership

A secured creditor holding a floating charge has the power to appoint an Administrative Receiver to realise the company's assets in satisfaction of its outstanding debt. This does not necessarily result in the liquidation of the company. An administrative receiver will, if possible, allow the company to continue to trade with the aim of selling the business as a going concern as this is usually the best method of maximising the recovery from the charged assets. A receiver does not deal with the ordinary unsecured creditors.

An insolvent company may apply to the Courts for the appointment of an administrator with a view to executing a deed of company arrangement that creates an immediate moratorium on payments to creditors and the rights of creditors to take any recovery action.

The Administrator appointed will typically:

- use the moratorium to resolve the underlying cause of insolvency
- sell the whole or parts of the business as going concerns
- draft a creditors' voluntary arrangement for the approval of creditors.

Financial reporting and audit requirements

Financial reporting in Australia is governed by two broad sources of regulation: legislation, (such as the *Corporations Act 2001*, the *Association Incorporations Act 1981*, and the *Superannuation Industry (Supervision) Act 1993)*, and regulations covering industries, such as travel and real estate; and requirements established by the accounting profession.

The applicable regulation will depend on the nature and type of incorporated entity. Most international organisations carrying on business in Australia incorporate under the *Corporations Act 200*1 (the Act).

Part 2M.3 of the Act governs these aspects of preparing and auditing financial reports:

- Annual financial reports and directors' report.
- Half-year financial report and directors' report.
- Audit and auditor's report.
- Annual financial reporting to members.
- Lodging reports with the Australian Securities and Investments Commission (ASIC).
- Special provisions about consolidated financial statements.
- Financial years and half-years.
- Disclosure by listed companies of information filed overseas.

Types of business entities

Financial reporting and audit requirements in Australia depend on an organisation's structure.

The more common types are:

- Disclosing entities.
- Public companies.
- Large proprietary companies.
- Small proprietary companies.
- Registered schemes.
- Australian financial services licensees.

Companies may also be:

- Limited by shares.
- Unlimited, with share capital.
- Limited by guarantee.
- No liability companies.
- A banking or life insurance company where the financial reporting provisions of the *Banking Act 1959* or *Life Insurance Act 1995* should be followed.

The following definitions will help international organisations to assess their requirements based on their intended activities in Australia.

Registered scheme. A managed investment scheme registered under the Act where:

- Individuals contribute money to acquire rights to benefits produced by a scheme.
- Contributions are pooled to produce financial benefits.
- Members do not have day-to-day control over operation of the scheme.

Types of business entities *continued*

These entities are normally for fund managers, property syndicates and other activities requiring the pooling of investors' money.

Disclosing entity. A body that issues enhanced disclosure financial reporting securities including entities that have:

- Securities listed on a stock exchange.
- Issued securities pursuant to a prospectus.
- Issued securities pursuant to a takeover scheme.
- Issued securities pursuant to an arrangement.
- Issued or made an offer of debenture which requires a trustee to be appointed.

Financial report. Includes financial statements, notes to financial statements and directors' reports and declarations.

Financial statements. Consist of income and cash-flow statements, balance sheets, statements of changes in equity and notes to the financial statements.

Proprietary company. A company limited by shares or an unlimited company that has share capital, has no more than 50 non-employee shareholders, and must not engage in any activity that would require publishing a prospectus.

Small proprietary company. A company that satisfies at least two of the following tests:

- Consolidated gross financial year operating revenue for the company and any entities it controls is less than $25 million.
- Consolidated gross assets at the end of a financial year of the company and any entities it controls is less than $12.5 million.
- The company and any entities it controls have fewer than 50 employees at the end of the financial year.

Large proprietary company. A proprietary company other than a small proprietary company.

Public company. A company that is not a proprietary company.

Australian financial services licensee (AFS). An entity registered to provide financial advice.

Foreign company is defined as:

- a body corporate incorporated in an external territory or outside Australia and the external territories, not being:
  - a corporation sole; or
  - an exempt public authority; or
- An unincorporated body that:
  - is formed in an external territory or outside Australia and the external territories; and
  - under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and
  - does not have its head office or principal place of business in Australia.

Foreign controlled company. A public, large or small proprietary company incorporated in Australia that is controlled by a foreign company.

Financial reporting and audit requirements continued

Reporting and audit requirements

The entities listed below must prepare financial reports under Australian Accounting Standards, lodge them with ASIC, and have them audited:

- Listed public companies.
- Disclosing entities.
- Unlisted public companies, including companies limited by guarantee.
- Unlisted registered schemes under the Managed Investments Scheme provisions.
- Large proprietary companies.
- Small proprietary companies that are foreign controlled and are directed by ASIC or where 5 per cent of members have requested them to prepare, lodge and have audited their financial reports.
- AFS licensees.
- Registered foreign companies.

In limited circumstances, these entities may seek an ASIC Class Order for relief from the audit of the company provided the class order criteria are met.

Deadlines for preparing, lodging and auditing financial reports will depend on the nature of the company. A summary is in Appendix A.

ASIC Class Orders

ASIC Class Orders are particularly relevant to foreign organisations doing business in Australia.

Applicability	Class Order	Issue Date	Content
Synchronisation of financial year with foreign parent company	98/96	10.7.98	Allows synchronisation of entity's financial year with that of its foreign parent entity in certain circumstances.
Small proprietary companies which are controlled by a foreign company but which are not part of a large group	98/100	10.7.98	Provides relief from financial report preparation and lodgement requirements provided that the company is not part of large group. The definition of a large group is the same as that of a large proprietary company as discussed above.
Rounding in financial reports and directors' reports	98/104	10.7.98	Subject to certain restrictions, rounding in financial and directors' reports is permitted. In 2006 Class Order 06/709 varied this class order to refer to the requirements of the new AASB 124 and continued the level of rounding for director and executive related disclosures.
Dual lodgement relief	98/1417	10.7.98	Relief provided from lodgement of financial statements with ASIC on the proviso that the relevant financial report is lodged with the ASX. Class Order 99/837 has made consequential amendments to this Class Order.
Audit relief for proprietary companies	98/1418	13.8.98	Relief provided to large proprietary companies and small proprietary companies that are controlled by foreign companies from audit requirements. This class order is very restrictive in application.
Wholly-owned entities	98/1418	13.8.98	Relief from preparing and lodging a financial report, directors' report and auditor's report for wholly-owned subsidiaries. It provides relief subject to certain conditions relating to a requirement of a deed of cross guarantee between the economic entity and the holding entity lodging consolidated financial reports.

Applying the International Financial Reporting Standards

Australian business entities adopted the International Financial Reporting Standards (IFRS) for full financial years from January 2005. The Australian approach has been to adopt the wording and content of IFRS with changes only to accommodate the Australian legal requirements. The result is referred to as the Australian equivalents to International Financial Reporting Standards (AIFRS).

All entities that are required or elect to prepare a general-purpose financial report will be required to adopt AIFRS in its entirety. This includes recognition, measurement and disclosure requirements. All other entities that prepare a special-purpose financial report may apply differential policies, with some Australian accounting standards being mandatory. Entities required to report under the Act must comply with AIFRS.

Statutory requirements

Books and records. Every company is required to keep for a minimum of seven years accounting records which correctly explain its transactions, including any transactions as trustee, and enable:

- True and fair financial statements to be prepared periodically.
- Financial statements to be conveniently and properly audited.

In most cases these records would include financial statements, general ledgers, journals and supporting work papers, and transaction source documents, such as invoices.

Directors must ensure appropriate accounting records are kept.

Every company must keep financial and other records that will sufficiently explain its transactions, financial position and performance and enable true and fair financial reports to be prepared, and audited if required.

The financial records of the company can be kept in any language; however an English translation should be available to the person who is entitled to inspect the records. The company's financial reports must be in English and Australian currency.

Annual financial report. An annual financial report would normally include:

- A directors' report.
- Auditor's report and independence declaration.
- Financial reports comprising profit and loss statement, a statement of financial position, cash-flow statement, statement of changes in equity and notes to the financial statements.
- Directors' declaration.

The disclosure requirements for financial reports are set out in the Act and regulations. Accounting standards issued by the Australian Accounting Standards Board (incorporating the International Financial Reporting Standards), and the Listing Rules of the Australian Stock Exchange for listed companies and other entities.

Directors must ensure the financial reports are prepared in accordance with the Act and the Accounting Standards.

Financial reporting and audit requirements *continued*

Appendix A: Reporting and audit deadlines

Type of entity	Deadline for reporting to members	Deadline for lodgement with ASIC
Disclosing entities	**Annual financial report** The earlier of: • 21 days before next AGM; or • 4 months after the financial year-end **Half-year financial report** No legal requirement	**Annual financial report** Within 3 months of financial year-end **Half-year financial report** Within 75 days of half-year-end
Listed entities	**Annual financial report** The earlier of: • 21 days before next AGM; or • 17 weeks (trusts – 3 months) after the end of the financial year **Half-year financial report** No legal requirement	**Annual financial report** Within 3 months of financial year-end **Half-year financial report** Within 75 days of half-year-end
Registered schemes	Within 3 months of financial year-end	Within 3 months of financial year-end
Public companies	The earlier of: • 21 days before next AGM; or • 4 months after the financial year-end	Within 4 months of financial year-end
Public companies and large proprietary companies which are wholly-owned entities and have obtained relief under Class Order 98/1418	N/A	N/A (Form 389 must be lodged within 4 months of financial year-end)
Large proprietary companies	Within 4 months of financial year-end	Within 4 months of financial year end
Large proprietary companies that are grandfathered proprietary companies	Within 4 months of financial year-end	N/A
Small proprietary companies (not controlled by a foreign company) where ASIC requests a financial report	Where the request is given before the financial year-end, the company must report within 4 months of financial year-end. Where the request is given after the financial year-end, the company must report by the later of: • 4 months after the financial year-end; or • 2 months after the request	N/A
Small proprietary companies (not controlled by a foreign company) where ASIC requests a financial report	N/A	Date specified in request (reasonable time must be given in view of the nature of ASIC's request)
Small proprietary companies controlled by foreign companies	Within 4 months of financial year-end	Within 4 months of financial year-end
Small proprietary companies controlled by foreign companies where a parent company lodges consolidated financial statements with ASIC	N/A	N/A
Registered foreign companies	Will be determined by requirements in the company's place of origin	Once each calendar year at intervals of not more than 15 months
Registered foreign companies to which subsection 601CK(7) declaration applies	N/A	Required only to lodge annual return (Form 406)

Business taxation

In Australia there are several different types of business structures available, each with different implications for taxation. The following table lists typical business structures and the maximum rate of tax payable.

Type of structure	Maximum income tax rate
Sole trader - individuals	45.0%
Partnership (individuals taxed on profits)	45.0%
Trusts (beneficiaries usually taxed on profits)	45.0%
Companies (foreign branch or Australian incorporated)	30.0%
Companies carrying on a "small business"	27.5%
Individuals and trusts are generally subject to a Medicare Levy of a further	1.5%.

The most common structure for larger businesses is a company. However, discretionary trust structures are also common in the small to medium enterprise sector because they provide asset protection (especially with a company trustee) and flexibility in distribution of taxable profits. Often, a discretionary trust would also have a corporate beneficiary such that after the distribution of taxable income to the individuals who actually "operate" the trust's business, excess taxable income is distributed to the corporate beneficiary, which is taxed at the (usually lower) Australian company tax rate.

Company taxation

Companies are liable to income tax at the rate of 30 per cent on their taxable income, including capital gains. The Government has announced a staggered reduction in the company tax rate to be phased in over an eleven year period depending on the size of a company's aggregated turnover. For the year ending 30 June 2018companies with an aggregated turnover threshold of under $25m will pay tax at 27.5%. Companies over that threshold will continue to be taxed at 30%.

The following information applies to incorporated entities conducting business in Australia, whether incorporated in Australia or elsewhere. Companies resident in Australia are liable to Australian income tax on their worldwide profits, wherever earned and regardless of whether or not remitted to Australia. The position of sole traders, partnerships and trusts, is similar, unless otherwise noted.

Resident companies

Generally speaking, a company is resident in Australia for income tax purposes:

- if it is incorporated in Australia; or
- if not incorporated in Australia, carries on business in Australia, has either its central management and control in Australia, or its voting power controlled by shareholders who are residents.

An individual is a resident if:

- the person resides in Australia;
- the person's domicile is in Australia, unless the person's permanent place of abode is outside Australia; or
- the person has been in Australia for more than one half of the year of income unless the place of abode is outside Australia and the person has no intention to take up residence in Australia.

A partnership is not a taxpaying entity because all of the partnership's profits are distributed to the partners. In that event, only the residency of the partners is relevant.

A trust is a resident if its trustee is a resident or if the trust's central management and control is in Australia.

Business taxation *continued*

Non-resident companies and entities

Non-resident companies and other non-resident entities are liable to Australian income tax on the profits arising directly or indirectly from the carrying on of a business in Australia through a branch or an agency.

Non-resident companies (and other entities) may also be liable to Australian income tax, usually via a withholding tax regime, from sources not connected with trading in Australia, such as interest, dividend and royalties payable to the non-resident by an Australian resident entity. The relevant withholding tax rules and rates of withholding may be modified by a double-tax treaty between Australia and the relevant country.

The Capital Gains Tax ("CGT") rules for non-residents have been changed, such that Australian CGT will apply only to non-residents who dispose of:

- Australian real property;
- Companies or trusts whose main assets are comprised of Australian real property; and
- Assets in connection with an Australian permanent establishment.

This new CGT measure is expected to make Australia a more attractive place to invest in for non-residents, because most interests in Australian companies and unit trusts will be exempt from Australian CGT.

Non-resident individuals are taxed on their Australian-sourced income subject to the terms of any relevant double tax agreement.

Tax returns and assessment

Business taxation in Australia is collected through a system of self-assessment. Each entity must lodge an income tax return for each financial year - from 1 July to 30 June. Foreign-owned entities can apply to substitute an accounting period in line with their foreign head office.

Companies usually pay by quarterly instalments.

Generally, businesses must file income tax returns within 10 months after the end of their financial year. Penalties apply for late filing.

Tax deductions include depreciation, tax amortisation of certain expenses (such as buildings used in business) and trading losses from previous years. The government has introduced a tax consolidation regime which allows wholly owned groups of companies operating within Australia to elect to be taxed as one entity (see 'Tax consolidation' in this chapter).

Claims for repayment of income tax deducted at source and for payment of tax credits can be made in the annual income tax return, by an amended return, or by written request.

Profit subject to tax

Taxable income for businesses includes:

- trading income;
- interest;
- dividends from resident and non-resident companies (although some corporate taxpayers may be exempt);
- rent;
- royalties;
- any other annual profits or gains; and
- capital gains computed in accordance with the CGT rules.

Dividends from Australian resident companies are assessable income but a credit is allowed to shareholders for the tax paid by the company before payment of the dividend.

Calculating trading profits

In calculating trading profits, a distinction is made between capital and income. The distinction is not defined in Australian tax legislation. Instead, the courts have laid down general principles to determine whether a receipt or expense is on capital or income account. Australia has had a CGT regime in place since 20 September 1985 and capital gains made on assets acquired after that date are subject to the normal income tax rates. However, capital gains made on disposal of assets used in a business by non-company business taxpayers may be eligible for concessions that make the capital gains effectively not taxable.

Tax deductions are permitted for expenditure incurred in the production of assessable income, or necessarily incurred in carrying on a business for the purpose for gaining or producing assessable income. However, the two exceptions to this general principle are where the expenditure is considered to be private or capital in nature. Such expenditure may be eligible for depreciation or be included in the cost of an asset when determining capital gains.

Allowable deductions include:

- tax depreciation for capital assets used in the business;
- tax amortisation of buildings and certain intellectual property rights used in the business;
- a five-year tax write-off for business establishment costs; and
- loan establishment costs over either the life of the loan or five years, whichever is shorter.

Examples of expenditure which is not tax deductible include:

- goodwill amortisation;
- provisions for expenditure such as bad debts (compared to an actual bad debt write off); and
- expenditure incurred in connection with foreign income, where that expenditure is in excess of the foreign income earned for that year.

In fact, the latter is quarantined, rather than being lost to a business taxpayer. However, the foreign quarantining rules have been removed for losses arising after 1 July 2008.

Interest deduction

The tax deductibility of interest has been a source of considerable litigation in recent times. Generally, interest incurred on a loan which is used in the business will be tax deductible. This is so even when the business may have ceased, but ongoing payment of interest can be directly connected with the former business. Interest is deductible when the loan is used to acquire a capital asset, provided that it will produce assessable income.

Capital assets

Capital allowance deductions are available for capital assets used to produce assessable income.

They are self-assessed by reference to the cost and effective life of the asset. The Australian Taxation Office (ATO) publishes an annual list of 'safe harbour' depreciation rates on most assets used in business. Most taxpayers elect to follow these rates. As an example, here are some ATO depreciation rates:

- Commercial buildings 2.5%
- Motor vehicles 12.5%
- Computer hardware 25.0%
- Acquisition of copyright 4.0%

In most cases, there are provisions for balancing adjustments when the relevant depreciating asset is disposed of. A loss on sale of a building is considered a capital loss and only available against future capital gains.

Business taxation *continued*

Double taxation relief

Double taxation relief may be either a credit for foreign tax, or complete exemption of the relevant income, depending on several factors and the type of Australian taxpayer. For resident taxpayers, all foreign income is taxable in Australia. Under the Australian Foreign Tax Credit rules, relief for foreign income tax paid on a portion of the foreign income is creditable up to the amount of Australian income tax on that income.

However, foreign dividends payable to an Australian resident company owning at least 10 per cent of the shares of the foreign company (and where the foreign company passes an active income style test) are exempt from Australian income tax. Otherwise, foreign dividends payable to an Australian company will be assessable income, but will normally be entitled to a credit for any foreign tax paid on that income or for any foreign withholding tax. This is limited to the amount of Australian company tax payable on such dividends.

Tax File Number and Australian Business Number

Every Australian taxpayer must have a Tax File Number (TFN). This is issued by ATO after proof of identity similar to opening a bank account. Some entities may apply for a TFN on the ATO website. In addition to including the TFN on income tax returns, taxpayers may also need to quote it to avoid a withholding of tax (see below).

An Australian Business Number (ABN) is required where businesses wish to or are required to register for the Goods and Services Tax (GST), which is covered in Chapter 12. The ABN will eventually replace other registration numbers (such as the Australian Company Number and the Australian Registered Body Number) in the future and become the number through which an entity deals with government agencies. It will not replace the TFN. In many instances, a taxpayer may quote an ABN instead of a TFN to avoid withholding tax being charged on certain receipts.

Withholding tax

In certain circumstances, Australian business taxpayers must withhold tax at 46.5 per cent on payments to third parties who have not provided either a TFN or an ABN.

Australian companies paying interest, dividends or royalties to a non-resident can elect to pay the amount by reference to the relevant double-tax agreement provided they believe the recipient is entitled to the treaty provisions.

For residents of non-treaty countries, the withholding tax rate (which is a final tax in Australia) is generally 30 per cent for dividends, 10 per cent for interest and 30 per cent for royalties.

Capital Gains Tax

Since 1985 Australia has had a comprehensive CGT regime. Capital gains are included in the taxable income of Australian companies and company tax at the relevant corporate rate applying to the entity is paid on the gain.

For individuals and trusts, most capital gains may be eligible for a 50-per cent reduction of the taxable gain. To obtain the reduction, the individual or trust must hold the asset on capital account and have owned it for more than 12 months before disposal. The reduction is no longer available to non-residents.

Assets that come under the CGT regime include:

- profits arising from the disposal of assets, tangible or intangible, anywhere in the world;
- capital sums derived from assets;
- capital sums received for the surrender of rights; and
- capital sums received for the use of an asset.

Capital Gains Tax *continued*

Tax on capital gains may be deferred ('rolled over') where sale proceeds are reinvested in qualifying assets within specified time limits. As well, CGT can be deferred on rollovers, including:

- transfer of a business from a sole trader to a wholly owned company in exchange for shares;
- transfer of assets from a trust to a wholly owned company in exchange for shares;
- transfer of a partnership business to a company in exchange for shares in the company;
- where one company acquires 80 per cent or more of the shares in another company by way of issuing new shares to the shareholders of the target company; and
- demerger roll-overs where a subsidiary company is proportionately transferred out to the shareholders of the parent company.

Small business capital gains tax relief

There are four CGT concessions available to small businesses in Australia: The 15-year asset exemption, the 50-per cent active asset reduction, the retirement exemption, and rollover relief.

To qualify, the net assets of the taxpayer and connected entities cannot exceed $6 million just before the time of the CGT event and the asset disposed of must be an active one. Where the asset sold is a share in a company or an interest in a trust, an additional requirement is that the company or trust must satisfy a controlling individual test.

An active asset is one used in the course of carrying on a business. Shares in a company or interests in a trust will be considered active assets where at least 80 per cent of the assets are active.

These CGT concessions are generally applied in the order in which they are listed. Before these concessions are applied, any capital losses (current year and prior year) must be deducted from the gain, with the balance discounted, if available (see the section on Capital Gains Tax above).

15 year asset exemption. Where the active asset was held for 15 years or more, any capital gain on disposal is ignored for tax purposes.

50 per cent active asset reduction. In effect, where the 50-per cent general discount is available to a taxpayer, the capital gain is discounted by a further 50 per cent under the active asset concession resulting in 25 per cent of the capital gain being taxable.

Retirement exemption. Individual taxpayers may elect to roll over up to $500,000 of the remaining capital gain into a complying superannuation fund. The $500,000 limit is a lifetime limit.

Replacement asset rollover. The capital gain may be rolled over where the taxpayer acquires a replacement (active) asset within two years of the disposal. The rolled over capital gain offsets the cost base of the replacement asset.

Business taxation *continued*

Use of tax losses

The Australian rules on deductibility of revenue and capital tax losses are complicated. This section outlines some of the issues. Professional advice should be sought before acquiring an Australian company or trust with tax losses.

Trading losses may be deducted against trading and non-trading income for the same accounting period. Alternatively, if there is no other income in the same period, the tax losses can be (subject to meeting certain tests), carried forward indefinitely and set off against future income of the same entity.

For Australian companies with tax losses from an earlier year, one of two tests must be satisfied to use prior-year losses. The first is 'continuity of ownership' which requires a majority of individuals continue to own the shares directly or indirectly in the relevant company. If that test fails, the company may still deduct its prior-year losses where it can pass the 'same business' test. This test requires the same business to be carried on from the time the continuity of ownership test failed to the year that the losses are eligible for deduction. The same business test is notoriously difficult to pass. Where a company is unable to pass either test, the prior-year losses will be forfeited.

A trust wanting to use prior-year losses must pass certain tests depending on whether it is a fixed, widely held, public, or discretionary trust. The category is important in determining the applicable rules. Most trusts would need to pass a '50-per cent stake' test and an 'income injection' test to deduct the tax losses in a future year. Publicly listed unit trusts can, in certain circumstances, use a 'same business' test.

Tax consolidation

In 2002, Australia introduced a tax consolidation regime for commonly owned corporate groups. These rules provide that all wholly owned Australian subsidiary companies are treated as divisions of the Australian parent company.

An Australian tax-consolidated group must have a 'head' company and at least one wholly owned resident subsidiary. The companies must elect to consolidate from a fixed date. Once the election is made, transactions between entities within the group are ignored for income tax purposes.

Foreign-owned companies which are commonly owned by a non-resident parent company with multiple entry points into Australia are subject to special rules to allow them to consolidate their Australian resident subsidiaries for income tax purposes.

Before 2002, Australia had a number of grouping rules, such as for CGT rollover relief of assets transferred among wholly owned companies; for rebates on unfranked dividends paid among group companies; and for transfer of tax losses among commonly owned companies. The only way in which such group rollover relief can now be obtained is by consolidating.

Once the election to consolidate is made, only one income tax return is lodged by the Australian parent company. This takes into account the results for each subsidiary. The tax consolidation rules also allow for tax sharing agreements between the Australian companies in the group. This is particularly useful where, for example, the group has several distinct businesses run by different entities within it.

The 'continuity of ownership' and 'same business' test rules are still relevant. However, a further layer of rules apply to tax losses in a tax consolidated group.

Special rules also exist where related companies, which have not consolidated, deal with each other. The ATO has the power to impose arm's length values on any related party dealings.

General anti-avoidance provision

Australian income tax legislation contains a general anti-avoidance provision known as Part IVA. Generally, Part IVA applies where an arrangement has been entered into for the sole or dominant

purpose of obtaining a tax benefit. A tax benefit can include a reduction in taxable income, an increase in tax-deductible expenditure and obtaining franking credits.

Transfer pricing

Australian tax law, and all Australia's double-tax treaties, require the arm's length principle to be applied to all related party cross-border dealings.

Thin capitalisation

Even though Australia has had thin capitalisation rules for decades, new rules were introduced in 2001. Those rules apply to the Australian operations of inbound and outbound investors. The new rules limit deductions relating to the total debt of Australian operations of those investors, rather than the foreign debt only. Putting aside certain exemptions, and application of the rules to authorised deposit-taking institutions such as banks, the maximum debt for an Australian entity will be the greater of either the 'safe harbour', or the 'arm's length' tests.

Under the safe harbour test, the amount of debt used to finance the Australian investments will be treated as being excessive when it is greater than that permitted by the safe harbour gearing limit of 3:1.

The arm's length debt amount is determined by analysing the entity's activities and funding to determine a notional amount that represents what would reasonably be expected to have been the entity's maximum arm's length debt funding of its Australian business during the period.

There is also a worldwide gearing test available for non-deposit-taking Australian entities with foreign investments. This test is not available if the Australian entity is controlled by foreign entities.

There are two *de minimis* exemptions which excludes a taxpayer from the thin capitalisation provisions:

- Taxpayers and their associates claiming annual debt deductions of $2m or less;
- Outward investing Australian entities if at least 90 per cent of their assets are Australian assets.

With effect from 1 March 2014, a tax deduction will no longer be available for intercompany interest where the recipient is based in a low tax jurisdiction or is subject to a special tax regime.

Australian debt-to-equity rules

In 2001 Australia also introduced rules to determine what instruments would be debt or equity for income tax purposes. In other words, the legal position of the instrument may be ignored under these rules such that, for example, it is possible that a share in a company could be treated as debt for tax purposes.

The rules have relevance on whether, for example, the return on an investment is interest (and therefore deductible) or a dividend (not deductible but frankable where franking credits are available).

Generally, an instrument will satisfy the debt test where all the following conditions are met:

a) it is a financing arrangement for the entity, or the entity is a company and the scheme does not give rise to an interest as a member or stockholder of the company;

b) the entity or a connected entity receives or will receive financial benefits under the instrument;

c) the entity or both the entity and the connected entity have an obligation to provide financial benefits to one or more entities after the first of the financial benefits in point (b) above is received; and

d) it is substantially more likely than not that the value provided under point (c) above will be at least equal to the value received under point (b) above.

Business taxation *continued*

Australian debt-to-equity rules continued

A scheme will satisfy the equity test if:

it gives rise to an interest in a company as a member or stockholder;

b) it is a financing arrangement that gives rise to an interest carrying a right to a return from the company, and the right or return is contingent on the economic performance of the company, a connected entity or part of their activities;

c) it is a financing arrangement that gives rise to an interest carrying a right to a return from the company and the right or return is at the decision of the company or a connected entity; or

d) it is a financing arrangement that gives rise to an interest issued by the company that either -

   (i) gives its holder (or a connected entity of the holder) a right to be issued with an equity interest in the company or in a connected entity of the company; or

   (ii) is or may be convertible into such in interest.

Where an instrument is both equity and debt under these rules, a tiebreaker provision provides that it is debt.

Australia as a 'holding company' jurisdiction

Australia recently introduced legislation to provide similar benefits to a 'participation exemption' common in some European countries. These include:

- a CGT exemption for disposal of substantial shareholdings in foreign trading companies; and
- a general exemption for foreign non-portfolio dividends received by Australian companies and their controlled foreign companies and, subject to some exceptions, foreign branch profits.

Planning points for foreign investors

Branches and subsidiaries. One of the first decisions to be made by foreign investors is whether to establish a branch of an existing foreign company, or to form a new Australian (possibly subsidiary) company. Both can be established relatively quickly and easily. However, foreign-owned Australian companies may incur the extra expense of having their financial accounts audited in Australia.

Provided a foreign incorporated company with a branch in Australia prepares accounts that are audited and lodged with the equivalent of the Australian Securities and Investments Commission (ASIC), then only a copy must be lodged with ASIC.

The branch of the foreign company must register with ASIC and is subject to continual disclosure requirements under the Australian Corporations Act.

Branches of foreign companies operating in Australia and Australian incorporated companies are subject to the same 30 per cent company tax rate. Once Australian company tax has been paid, branch profits may be remitted outside Australia without extra Australian taxation. Subsidiary company profits remitted as dividends do not attract further taxation or withholding tax (provided the Australian company has paid tax on those profits). Otherwise, there may be Australian dividend withholding tax based on the applicable double-tax treaty rate, or at rates pertaining to non-treaty countries.

Grouping issues. Foreign groups with interests in more than one Australian company, branch or other entity, should seek professional advice to ensure optimal use of group losses and tax-free asset transfers. Foreign groups need to consider the Australian tax consolidation rules in such a case. In addition, the new Australian transfer pricing rules and the transfer pricing rules in the home country need to be considered.

Loans. Factors such as interest rates, rates of tax relief and currency risks should be taken into account to ensure maximum tax relief for debt funding the Australian operations. In addition, the previously mentioned Australian thin capitalisation and debt/equity rules need to be considered.

Shares or assets. Where a business is being acquired in Australia, an issue is whether the shares in the Australian company, or merely the business's assets are to be acquired. In addition, the new Australian rules largely exempting a non-resident from Australian CGT on the disposal of shares in an Australian company (that was not land-rich) would also need to be considered.

If a foreign entity is acquiring a subsidiary from an Australian tax consolidated group, the rules dealing with de-consolidation of such an entity will need to be considered. Generally, purchasers prefer to buy assets, and vendors prefer to sell shares. Tax warranties for a share versus an asset purchase, are also an important factor.

Research and development incentives

The Government has a R&D assistance scheme whereby Australian companies that incur expenditure on, or that is related to, R&D may qualify for a R&D Tax Incentive.

The core components of the scheme are currently:

- A refundable 43.5 per cent tax offset for eligible companies with an aggregated turnover of less than $20m per annum;
- A non-refundable 38.5 per cent tax offset for all other eligible companies.

R&D expenditure is defined as systematic, investigative and experimental activities that involve innovation or high levels of technical risk. A company wanting to avail itself of the R&D concessions must register annually with the Australian Industry Research and Development Board within 10 months of the relevant year end.

There are three main categories of expenditure covered by R&D incentive. These are:

- Contracted expenditure;
- Salary expenditure; and
- Other expenditure incurred directly in respect of R&D activities carried on by or on behalf of the company.

Other incentives

There are also a number of employment related incentives including workforce assistance programs, tax exempt rebates to employers and wage subsidy programs. The incentives are often State based and are offered in the main to employers who employ longer term unemployed persons and apprentices.

Personal taxation

Whether a person is a resident or non-resident is important in determining the impact of Australian tax on income.

Residents and non-residents

A non-resident will only pay tax on Australian sourced income. In relation to capital gains, a non-resident is only assessed on net capital gains derived from assets that are 'taxable Australian property' (see below).

A resident, for income tax purposes, is someone who resides in Australia according to the ordinary meaning of the word (to "have one's settled abode, dwell permanently or for a considerable time, live in or at a particular place" – *Concise Oxford Dictionary*), but in some circumstances this can be difficult to determine.

Another way to determine residency is by satisfying one of these statutory tests:

- **The domicile or permanent place of abode test.** A person whose domicile is in Australia is deemed to be a resident unless the Commissioner of Taxation is satisfied that the person's permanent place of abode is outside Australia.
- **The 183-day test.** Constructive residence is attributed to a person who is present in Australia for a total of more than half a financial year, unless it can be established that the person's usual abode is outside Australia and there is no intention to take up residence.
- **The Commonwealth superannuation fund test.** An individual is a resident if a contributing member (or is the spouse or child under 16 of a person who is a contributing member) of a superannuation fund for Commonwealth government officers.

Australian taxes on income

As an Australian tax resident, all income derived from sources in or out of Australia will be taxable at resident rates. To prevent double taxation, agreements exist between Australia and many developed countries. These provide taxing rights to the country of residence (or if both countries' domestic rules claim residence, to the country with which the individual has the closest personal and economic ties) or, in some cases, to the country of the source of that income. If taxed in Australia, tax credits are available against Australian tax for taxes paid offshore. The credit is restricted to the lesser of the foreign tax paid and the amount of Australian tax payable on the relevant income. The credit for foreign taxes paid is only available after payment of the foreign tax either on assessment, or when withheld.

Capital Gains Tax

For Australian tax residents, almost all assets will come under the CGT provisions except for assets purchased before 20 September 1985. To determine future taxable capital gains and losses, individuals becoming residents for the first time are deemed to have purchased post-19 September 1985 assets. These are otherwise not taxable in Australia at their respective market values at the time of becoming a resident. Where applicable, these values are then converted to Australian dollars at the exchange rate prevailing at that time.

Exceptions are assets considered 'taxable Australian assets' to which the normal acquisition date and cost base rules apply, and assets acquired before 20 September 1985. Taxable Australian assets include:

- land and buildings in Australia;
- indirect interests in land and buildings in Australia, such as through investments in shares;
- Mining, quarrying and prospecting rights and information;

Capital Gains Tax *continued*

- assets used in carrying on business through a permanent establishment in Australia; and
- options or rights to acquire any of the above mentioned assets.

Essentially, a capital gain is made if an asset is sold (or deemed to be sold) for more than its cost base. A capital loss is made if the reverse happens.

Providing the relevant asset has been held for at least 12 months, an individual will only be taxed on 50 per cent of the gain, whereas companies are assessed on the full gain. Individuals deemed to have acquired an asset at the time of becoming a resident will only be eligible for the 50 per cent discount if the asset is held for at least 12 months from the time of becoming a resident, even if it was owned before that time. Non-residents can no longer avail themselves of the discount.

A net capital gain is the total of a taxpayer's capital gains for an income year, reduced by certain capital losses made by the taxpayer. A capital loss may only reduce a capital gain in the current year or a later income year; it cannot be offset against a gain made in a prior year or against ordinary income. The net capital gain is included in the taxpayer's assessable income.

Certain assets are excluded from the CGT rules. These include:

- cars and motorcycles;
- decorations for valour;
- collectables costing $500 or less;
- life insurance;
- personal use assets costing $10,000 or less; and
- an individual's main residence.

Main residence exemption. A taxpayer can have only one main residence at a time. When changing residences, a taxpayer can have two residences for a maximum of six months. This applies only where the first residence has been the main residence for at least three months continuously in the 12 months before disposal, and has not been used to produce income in this 12-month period.

Rates of personal tax

For the income year beginning 1 July 2017 the rates of tax for individuals are:

Resident Individual Rates			Non-Resident Individual Rates		
Taxable Income (Column 1) $	Tax on Column 1 $	% on Excess (Marginal Rate)	Taxable Income (Column 1) $	Tax on Column 1 $	% on Excess (Marginal Rate)
18,200	Nil	19	Nil	Nil	32.5
37,000	3,572	32.5	87,000	22,275	37
87,000	19,822	37	180,000	62,685	47
180,000	54,232	45			

In addition, residents are liable for a national health insurance (Medicare) levy of 1.5 per cent on taxable income, subject to shading in rules for low income earners.

A Medicare levy surcharge of 1 per cent on taxable income also applies to higher income earners who do not have adequate private patient hospital health insurance. The Medicare levy surcharge threshold for a single taxpayer is $90,000 or a combined income of $180,000 for a couple, plus $1,500 per dependent child after the first.

The surcharge is levied on the sum of a taxpayer's taxable income and their reportable fringe benefits (see below).

Personal taxation *continued*

Temporary residents

Recently introduced rules have created a third category of residence: the temporary resident. Temporary residents must hold temporary visas under Australia's migration laws, cannot be an Australian citizen or permanent resident, and cannot be the spouse of a citizen or permanent resident.

Temporary residents are subject to resident tax rates, but are taxed only on Australian sourced income and foreign-earned salaries and wages. Broadly, they are taxed as non-residents (with the exception of foreign earned salary payments) even though they may otherwise have been considered Australian tax residents.

Other taxes

Fringe Benefits Tax. Fringe benefits tax (FBT) is payable by employers on the value of non-cash benefits provided to employees. The rate is equal to the top marginal individual tax rate (45 per cent), plus the Medicare levy. Examples of fringe benefits are a company car, payment of employees' expenses such as school fees, credit card debts, and private health insurance. Special rules apply to calculate the taxable values. Superannuation paid on behalf of employees is not subject to FBT. Certain other benefits are also exempt (see Chapter 10 - Employer's payroll responsibilities).

Fringe benefits are not included in an employee's assessable income, but most are taken into account in calculating the Medicare levy surcharge, superannuation surcharge, child support payments and eligibility for various government benefits and allowances. These are called reportable fringe benefits.

Australia does not have death duties or wealth, inheritance, local or state income taxes.

Goods and Services Tax (GST). Sales taxes were abolished in 2000 on the introduction of a Goods and Services Tax (GST) of 10 per cent on most goods and services (see Chapter 7 – Business taxation).

Tax File Number rule. A Tax File Number (TFN) is issued by the Australian Taxation Office (ATO) for each taxpayer. If an individual does not provide a TFN in connection with an investment, the investment body must withhold an amount (calculated using the maximum personal marginal tax rate plus Medicare levy) on account of tax from any income which it becomes liable to pay in connection with that investment. For example, when setting up a bank account, if no TFN is provided, the bank is required to withhold 46.5 per cent from any interest payments.

This rule also applies to employment income where no TFN has been provided.

Pay-As-You-Go (PAYG). PAYG is a system for collecting and paying income tax. It applies to individuals, companies, certain trusts and superannuation funds.

Employers must withhold tax from salaries or wages earned in Australia for remitting to the tax office on the employee's behalf. This is referred to as 'PAYG withholding'.

People earning income from carrying on a business, renting property, dividends, interest and other sources not subject to compulsory PAYG withholding, are generally liable to pay PAYG instalments. No liability exists to make PAYG instalments until the Commissioner of Taxation issues a notice to pay. Lodging an income tax return including this type of income will be the trigger to place the taxpayer in the PAYG instalment system.

Lodging an income tax return for a particular year will crystallise the amount of tax payable for that year, from which any PAYG withholding or PAYG instalments will be deducted, to determine the final net liability or refund due.

Calculating taxable income

Taxable income is calculated by deducting from the assessable income, a taxpayer's allowable deductions. Assessable income comprises ordinary income (such as salaries, wages, commissions, dividends, interest, and rent) and statutory income (such as net capital gains).

Deductions are allowable for revenue expenditure and specific statutory deductions (see below). Tax calculated on taxable income is then adjusted for any allowable rebates (personal tax offsets) and credits.

Payments on termination of employment. Lump sum payments made in consequence of a termination of employment or from a superannuation fund are subject to special tax treatment. Such payments are called 'Superannuation Benefits' or 'Employment Termination Payments' (ETP), depending on the entity making the payment.

Income derived relating to foreign employment while a non-resident is generally tax exempt in Australia. So are payments from a non-resident superannuation fund relating solely to foreign employment while the taxpayer was a non-resident, if received within six months of becoming a resident.

If a person receives payments more than six months after becoming a resident, any increase in value since commencing residency will be taxable at the taxpayer's marginal rate (plus Medicare levy).

Redundancy and early retirement payments. Limited tax concessions apply to bona fide redundancies and approved early retirement payments by an employer.

Redundancy payments arise where the employer pays an amount in addition to what could reasonably have been expected on voluntary resignation or retirement.

Approved early-retirement payments arise under an arrangement approved by the Australian Taxation Office for specified employees and resulting from a rationalisation of the employer's business.

Limits apply to the maximum amount of redundancy or approved early retirement payments, which are tax free. Any additional amounts are treated as an ETP and special tax rates apply.

Employee share schemes

Australia has complex tax rules regarding employee share schemes (ESS).

The rules apply when an employee acquires an ESS interest under an employee share scheme at a discount. An employee share scheme is a scheme under which ESS interests in a company are provided to employees, or their associates (including past or prospective employees), in relation to the employee's employment.

The rules tax discounts on ESS interests either up-front at acquisition or on a deferred basis – the method will depend upon the nature of the scheme. Deferred taxation generally only applies where the ESS interest is at a real risk of forfeiture or was obtained under a salary sacrifice arrangement.

The discount, being the market value of the ESS interest less any consideration paid by the employee, is assessable in the year of receipt. The term "market value" is given its ordinary meaning but the Regulations set out an amount that can be used instead of market value for valuing unlisted rights.

Where an employee is assessable on a discount received a $1,000 exemption applies where certain conditions are satisfied.

Personal taxation *continued*

Employee share schemes *continued*

Where tax on the acquisition of an ESS interest is deferred, it is delayed until whenever the earliest ESS taxing point occurs. The deferred taxing point is the earliest of:

- When there is no real risk the employee will forfeit or lose the shares and there are no genuine restrictions preventing disposal of the shares;
- When the employee ceases the employment for which they acquired the shares;
- Seven years after the employee acquired the shares.

The rules also contain a number of integrity provisions, including reporting requirements and tax file number withholding tax provisions.

An employer which provides ESS interests to an employee during an income year must, at the end of the income year, give a statement to the Commissioner of Taxation and to the employee if:

- The employer provided interests to the employee during the year which were either taxed upfront or which could be deferred;
- The employer provided deferred tax interests to the employee (either within the year or an earlier year) and the deferred taxing point occurred during the year.

A refund is available for tax paid on an ESS interest where the employee had no choice but to forfeit the interest (other than to cease employment) and where the conditions of the scheme were not constructed to protect the employee from market risk.

A very limited, specific deduction is available to employers that provide discounts on ESS interests to employees; however the employee must be eligible for the upfront exemption mentioned above.

Other income

Individuals are taxed also on interest income, rents, royalties, dividends, pensions and income from business activities.

Rental income received from any real estate is taxable and a tax deduction is allowed for all relevant outgoings. Losses can be offset against other income sources. Tax losses incurred from rental properties held offshore can also be deducted from other Australian sourced income.

Receipts of parental maintenance or alimony, winnings from gambling or lotteries and life insurance proceeds are not regarded as assessable income.

Receipt of dividends and associated franking credits are classified as assessable income.

All business earnings are assessable and a deduction is allowed for all relevant outgoings.

Deductions

General provision. Allowable deductions are available for expenses that are:

- incurred in gaining or producing assessable income; or
- necessarily incurred in carrying on a business for gain or producing such income.

However, if it is of a capital nature, a private or domestic nature, or incurred in producing exempt income, the loss or outgoing is not deductible.

Specific provisions. There are deduction provisions for items including borrowing expenses, capital allowance amortisation, donations to approved deductible gift recipients such as charities, tax agent fees and income protection insurance.

In Australia, a system of self-assessment exists where taxpayers determine what income and expenditure is relevant to include for tax purposes. In addition, most expenses claimed must be substantiated by documentary evidence, such as receipts.

Personal tax offsets. Numerous tax offsets or rebates exist to reduce taxation. They include zone rebates for those living in a remote location within Australia and certain neighbouring islands, spouse rebates for childless couples where one spouse does not work, pensioners' and seniors' rebates.

Employment and industrial relations

Federal legislation was passed in December 2005 to bring the vast majority of Australian employers and employees under a new single national system and to encourage development of workplace agreements between employers and individual employees.

Industrial relations

However, a change of Government saw transitional measures introduced to phase out key provisions in the existing workplace relation laws. Notable among these was the phasing out of Australian Workplace Agreements.

The Australian Fair Pay and Conditions Standard sets out the statutory minimum terms and conditions of employment that apply under the federal workplace relations system.

The guaranteed legislated minimum entitlements are:

- minimum rates of pay and casual loadings.
- maximum ordinary hours of 38 hours per week (plus reasonable additional hours)
- four weeks of paid annual leave (with an additional week for shift workers)
- ten days of paid personal/carer's leave (with provision for two additional days of unpaid carer's leave and two additional days of paid compassionate leave per occasion)
- 52 weeks of unpaid parental leave (which may be taken as maternity, paternity or adoption leave)

Employee-employer relations. Employers and employees are required to first attempt to resolve industrial disputes at the workplace level. If the dispute can genuinely not be resolved at this level it is referred to an "agreed provider", which can include the Australian Industrial Relations Commission.

Union representation. The role of unions has changed enormously in the last 30 years in that membership can run as low as 25 per cent of employees in some industries and is virtually unknown in others.

The *Workplace Relations Act* recognises a legitimate role for unions and employer organisations. Freedom of association laws ensure that an employer cannot dismiss an employee because he or she is, or is not, a member of a union. All employees have access to remedies for breaches of freedom of association provisions. The right to take lawful industrial action when negotiating a new workplace agreement is also protected by law.

Union membership in Australia is not compulsory, however a general preference for unionism exists among workers in the 'blue collar' industries and those in the public sector. Union representation is not present in all places of employment. The IT and E-commerce sectors are generally devoid of union representation, as are small independent businesses.

Workers councils are not common.

Working conditions

In addition to wages and salaries, fringe benefits may be given to employees at all levels.

Workers compensation insurance. No-fault insurance systems are instituted in each state to provide compensation to employees who are injured at work or travelling to or from their place of employment. Such insurance is compulsory for employers, with premiums that vary from industry to industry.

Superannuation and pensions. Employers are obliged to make superannuation contributions to a registered fund on behalf of employees. The normal retirement age is 65, but employees may retire as early as 55 in some industries. The Federal Government has power to supervise the conduct of trustees and their managing of superannuation, pension and other retirement funds. Under the Superannuation Guarantee legislation, a mandatory superannuation levy (9.5 per cent of an employee's earnings) is payable by all employers who fail to make contributions to a registered superannuation fund or a retirement or savings account on behalf of employees.

Working hours. Federal legislation provides for a standard working week of 38 hours. Although employees in a number of industries work a 35 or 37 hour week, there is a trend in professional industries for averages of 50 hours or more.

Public holidays. The number of public holidays varies from state to state. The amended *Workplace Relations Act* defines seven specific days to be observed nationally and then defers to any other declared state public holiday law.

Annual leave. Minimum annual vacation provisions have been set by the new legislation. The standard is four weeks paid annual vacation, and a vacation bonus of 17.5 per cent of base weekly pay termed 'holiday-pay loading'. However, this is not applicable across the board and may be modified for an industry or by negotiation between employers and employees.

Long-service leave. Entitlements are usually based on a ratio of two months leave for 10 years continuous service, although the qualifying period of service will vary according to the applicable state government legislation or agreement.

Sick leave. The minimum entitlement is 10 work days per year, which accumulates if not taken.

Equal opportunity. Equal opportunity legislation prevents discrimination on the basis of sex, race, sexual preference, religion, marital status and age.

Termination of employment. Some employees are entitled to be paid an additional amount when their employment is terminated especially if they are made redundant. Redundancy payments may be subject to concessional tax rules.

Social Security. The Australian Social Security system is non-contributory. Payments are made from overall consolidated revenue.

Employers' payroll responsibilities

Australian employers are required to deduct tax from payments to employees and, using official schedules to calculate the correct amounts, remit them to the Australian Taxation Office (ATO). This system is known as 'PAYG withholding'.

Pay-As-You-Go

Registration. An employer (which may include an individual, company, partnership or trust) who is required to pay PAYG withholding must be registered with the ATO. The employing entity must apply for registration by the first day on which it is required to withhold an amount.

Examples of withholding payments are:

- a payment of salary or wages to an employee;
- a payment of remuneration to a company director;
- an employment termination payment;
- a payment for unused leave on an individual's retirement or on termination of employment;
- superannuation payments to temporary residents departing Australia permanently;
- a payment for a supply where the payee does not quote its Australian Business Number (ABN) (see Chapter 12 - GST and other indirect taxes);
- a payment arising from an investment where the payee does not quote a tax file number (TFN); and
- certain payments to foreign residents or received on behalf of foreign residents.

As a general rule, there is no requirement to withhold an amount from a payment if all of it is exempt income of the payee. This could include a living-away-from-home allowance, and other types of fringe benefits such as expense-payment fringe benefits.

TFN Declarations. An individual who receives, or is likely to receive, a payment for work or services, or a retirement payment, must give the payer a TFN declaration in the approved form. In relation to a voluntary agreement to withhold, the voluntary agreement should disclose the payee's ABN.

An individual can choose whether or not to provide a TFN but, if one is not provided, the payment is subject to withholding at the top marginal rate of 45 per cent (plus the applicable medicare levy). To avoid this, an individual should complete a TFN declaration each time a new relationship is commenced with a payer, such as starting a new job.

The payer must send the TFN declaration to the ATO within 14 days.

Determining the amount to withhold. ATO withholding schedules for weekly, fortnightly, or monthly payments should be used to determine the amount to be withheld from a withholding payment according to the payer's payment period.

Payer's obligations. A payer of a withholding payment has various obligations including:

- registering as a PAYG withholder;
- to pay withheld amounts to the ATO, the timing of the payment being dependent on whether the entity is a large, medium or small withholder;
- to provide certain information to the ATO; and
- to provide certain information to the payee.

Pay-As-You-Go *continued*

The table below lists the due date for payments and the methods of payment:

Withholder Status	Test	Due Date of payments	Method of Payment
Large	Amounts withheld during a financial year exceeds $1 million	Varies but generally between 6 and 9 days of the withholding date	Electronic
Medium	Amounts withheld during a financial year between $25,000 and $1 million	21st or 28th day after the end of the month in which amount withheld	Electronic or cheque/ cash
Small	Amounts withheld during a financial year less than $25,000	21st or 28th day after the end of the quarter in which amount withheld	Electronic or cheque/ cash

The extended dates (to the 28th day) apply to any entity that has a Business Activity Statement (BAS) or Instalment Activity Statement (IAS) quarterly obligation under the GST laws.

Obligation to provide information to the ATO

An employer or entity that must pay an amount (even if it is a nil amount) to the ATO must notify the ATO of the amount. The notification must be in the approved form and lodged on or before the day on which the amount is due.

Annual reports. An entity that makes a payment subject to PAYG withholding must give an annual report to the ATO. The report would usually comprise:

- copies of all payment summaries that the entity issued in respect of the financial year for payments to employees, reportable fringe benefits amounts and other payments; and
- an annual reconciliation statement (known as a PAYG Payment Summary Statement).

The financial year begins on 1 July each year and ends on the following 30 June.

Where the report relates to payments to employees, reportable fringe benefits amounts and other payments, the due date is the following 14 August. Where the report relates to payments for a supply and the recipient does not quote an ABN, as well as dividend, interest and royalty payments, or superannuation payments to someone departing Australia, the due date is 31 October after the previous 30 June.

Annual payment summary. This states:

- the payer and recipient;
- the payer's ABN;
- the recipient's TFN or ABN (where provided);
- the total of the withholding payments (if any) made by the payer and the total of the amounts withheld by the payer from those withholding payments;
- the financial year in which the withholding payments were made;
- the reportable fringe benefits amount (if any) for the income year; and
- other information that the ATO requires.

Employers' payroll responsibilities *continued*

Obligation to provide information to the ATO *continued*

A payer must give a payment summary (and a copy) to the recipient if:

- during the year, the payer made a withholding payment in respect of the recipient;
- the recipient is an individual and has a reportable fringe benefits amount for the income year in respect of their employment by the payer; or
- during the year, the payer received a withholding payment in relation to a dividend, interest or royalty payment when the recipient is a foreign resident.

Generally, the payment summary must be given to the employee within 14 days after the end of a financial year.

Where a payer makes a withholding payment for a supply (under the GST rules) to a recipient who does not quote an ABN, the payer must give the recipient a payment summary when making the payment, or as soon as practicable afterwards. The payment summary must cover only that payment.

Recipient's rights and obligations. A recipient of a withholding payment also has rights and obligations, including:

- the right to a tax credit for amounts withheld;
- the right to a refund from the payer when amounts are withheld in error; and
- the obligation to keep certain records for five years after the financial year-end.

Fringe Benefits Tax

Fringe benefits tax (FBT) is payable by employers on the value of certain benefits, known as 'fringe benefits', which have been provided to employees or associates in respect of their employment.

The FBT year commences on 1 April and ends on the following 31 March.

Fringe benefits are any benefits other than salaries or wages and contributions to complying superannuation funds, which are provided by:

- the employer;
- an associate of the employer; or
- another person under an arrangement with the employer.

The benefit may be provided to an employee, including company directors, and an associate of the employee, such as a family member.

Calculating FBT. The taxable value of fringe benefits provided by an employer is calculated for Type 1 and Type 2 benefits which are grossed-up by specified factors. The grossed-up value is multiplied by the FBT tax rate of 47 per cent (49% for the 2016-2017 year) to determine the FBT payable by the employer.

For example, in the 2017 FBT year, there were two possible gross-up rates depending upon whether or not GST input tax credits were able to be claimed by the employer on the fringe benefits provided to employees. The two gross-up methods are as follows:

TYPE 1 AGGREGATE FRINGE BENEFIT AMOUNT

The gross-up rate of 2.0802 (2.1463 for the 2016-2017 year) is used to calculate the Type 1 Aggregate Fringe Benefit Amount where GST input tax credits are able to be claimed by an employer registered for GST on benefits (Type 1 benefits) provided to an employee (or their associate).

The Type 1 Aggregate Fringe Benefit Amount is calculated by multiplying the taxable value of all Type 1 fringe benefits by the Type 1 gross-up factor of 2.0802. This gives the grossed-up value of Type 1 fringe benefits.

TYPE 2 AGGREGATE FRINGE BENEFIT AMOUNT

The gross-up rate of 1.8868 (1.9608 for the 2016-2017 year) is used to calculate the Type 2 Aggregate Fringe Benefit Amount where GST input tax credits cannot be claimed by an employer on benefits (Type 2 benefits) provided to an employee.

Type 2 Aggregate Fringe Benefit Amount is calculated by multiplying the taxable value of all Type 2 fringe benefits by the Type 2 factor of 1.8868. This gives the grossed-up value of Type 2 fringe benefits.

The sum of the grossed-up values of Type 1 and Type 2 Aggregate Fringe Benefit Amounts is an employer's fringe benefits table amount. An employer is liable for FBT at 47% of this amount.

Car fringe benefits. A fringe benefit arises when a car owned or leased by an employer is made available to an employee for private use, such as one garaged overnight at an employee's home. The provision of a motor car to an employee under a novated lease agreement also gives rise to a car fringe benefit.

Where an employer pays an employee's car lease payments, without a novated lease in place, an expense payment benefit arises instead of a car fringe benefit.

FBT applies to:

- sedans;
- station wagons;
- panel vans (see exemption below);
- utilities (see exemption below); and
- other vehicles designed to carry less than one tonne, or fewer than nine passengers.

An exemption from FBT is provided for commercial vehicles designed to carry more than 1 tonne or more than eight passengers, and taxis, utilities, panel vans or other vehicles designed to carry less than 1 tonne. The exemption applies where the private use of those vehicles is only travel to and from work, or is minor, infrequent and irregular private travel.

The two methods for calculating the FBT on car fringe benefits are the 'statutory method' and the 'operating cost method'.

Statutory method. To calculate the taxable value of a fringe benefit under this method, the GST-inclusive cost price of the motor vehicle (or if leased, the vehicle's GST-inclusive market value when first leased) is multiplied by a statutory fraction. The cost price of a motor vehicle includes GST, non-business accessories and delivery charges but excludes stamp duty and registration costs.

Reduction in taxable value. The taxable value of a car benefit is reduced to take into account the days during the FBT year the car was not provided for the employee's use.

A record should be kept of the days the car is not available for private use by an employee. This may reduce FBT otherwise payable. A car is available for private use if available to the employee for part of a day. Examples of when a car would be considered not available for private use are when under repair after an accident or garaged at the employer's premises.

Where a motor vehicle has been held for four years before the beginning of an FBT year, the original cost or leased value, can be reduced by one-third in calculating the taxable value of fringe benefits.

Employee contributions, known as a recipient's payment, may reduce the taxable value of the private use of a car. An employer is liable for GST in respect of employee contributions paid to them towards a Type 1 fringe benefit. An employer is not liable for GST in respect of employee contributions towards a Type 2 fringe benefit. The total amount of the contribution reduces the taxable value of a car fringe benefit, irrespective of whether the contribution relates to a Type 1 or Type 2 fringe benefit.

Employers' payroll responsibilities *continued*

Fringe Benefits Tax *continued*

A recipient's payment can also arise for payments by an employee to third parties in respect of the employer-provided car (for example, fuel costs paid to a petrol station). No GST liability arises for an employer in respect of recipient's payments to third parties.

Operating cost method. The taxable value of car fringe benefits under this method is calculated by multiplying the total operating costs (including recipient's payments by employees to third parties) by the percentage of private use from logbook records. This taxable value may then be reduced by any employee contributions made towards the costs of operating the vehicle.

Operating costs include lease payments or other funding costs (such as deemed interest and depreciation), registration, fuel, repair and maintenance costs, and insurance.

The operating cost method may result in a lower taxable value than the statutory method where the percentage of business use of the vehicle is substantial.

To use the operating cost method, a logbook must be kept for the first year and then every five years. The logbook must be kept for a minimum of 12 consecutive weeks to determine the business usage percentage. That percentage must be compared in each FBT year with estimated business kilometres, particularly if there have been variations in the pattern of use. A record must be kept of the odometer reading on acquisition and disposal and at the beginning and end of the FBT year. Documentary evidence must also be kept of all expenses incurred.

Other fringe benefits

Entertainment fringe benefit. An entertainment benefit provided to an employee is generally subject to FBT. Examples include attendance at sporting events and parties and meals. Entertainment benefits with a value of less than $300 per employee that are irregular and infrequent, as well as meals and alcohol consumed by employees while travelling in the course of their employment, may not be subject to FBT.

Expense payment fringe benefit. Where an employer pays an expense on behalf of an employee, or reimburses an employee for private expenditure, FBT is payable on the private portion of that expense. The taxable value of the benefit is reduced where the employee would have been entitled to a once-only tax deduction if the employee had incurred the expense. In this event, the employee must complete a declaration. This is known as the 'otherwise deductible' rule.

Loan fringe benefit. FBT applies to any loan to an employee where interest has not been paid, or where interest is charged at a rate less than the ATO's statutory rate. If interest is charged on the loan, FBT also applies if that interest is not paid for more than six months. Cash drawings by the directors of a company may constitute loan fringe benefits. The 'otherwise deductible' rule may reduce the value of a loan fringe benefit to nil if the employee would have been entitled to an income tax deduction had the employee incurred interest on the loan.

Debt waiver fringe benefit. FBT applies where an employee has been released from repaying an amount owing to an employer. The taxable value is the amount of the forgone debt.

Housing fringe benefit. FBT is usually payable where employees are provided with residential accommodation which constitutes their usual place of residence.

Board fringe benefit. A board fringe benefit arises where meals are provided to employees also given residential accommodation. There must be an entitlement to at least two meals a day, on the employer's premises, and not part of a social function.

Living away from home allowance. FBT may be payable where an employee is required to live away from their usual residence for work and receives an allowance as compensation for additional non-deductible expenses and other additional disadvantages experienced. Valuable concessions apply to exempt from FBT certain components of living away from home allowances provided to employees.

Property fringe benefit. FBT may be payable where employees are provided with free or discounted goods or services other than those consumed on the employer's premises.

Car parking fringe benefit. FBT applies where car-parking facilities are made available to employees to park on the employer's premises and there is a commercial parking station within a 1-kilometre radius. For a liability to arise, the parking station must charge more than the ATO's statutory rate for all-day-parking at the start of the FBT year.

Car-parking benefits will be exempt from FBT where:

- the car is not parked at a commercial parking station, but at the employer's premises; and
- the employer is not a public company, or subsidiary of a public company; and
- the employer is either a "small business entity" or the employer's income in the financial year ending before the beginning of the FBT year is less than $10 million.

Residual fringe benefits. Where an employee receives any other non-cash benefit, an FBT liability may arise. For example, the private use of a motor vehicle that is not a car, such as a motorcycle or truck, may give rise to a residual fringe benefit.

Other FBT information

Taxis. Taxi travel is exempt from FBT if it is a single taxi trip beginning or ending at the employee's place of work. Taxi travel is also exempt if undertaken to a place to which an employee must go as a result of sickness.

Third parties. An employer will be subject to FBT on certain benefits provided by a third party where the employer arranges for the provision of the benefit.

Flight reward programs. Benefits received by employees because of their participation in a frequent-flyer program are not subject to FBT where they result from a personal contractual relationship. This is subject to two limited exceptions including where an employer earns flight rewards and provides those rewards to an employee who is a family member in respect of their employment.

A payment by an employer for an employee's membership of a frequent-flyer program may be subject to FBT, the taxable value of which will depend on the extent of private use.

Record keeping. To simplify record keeping, certain employers need only retain FBT records for a 'base year' where:

- the employer carried on business throughout the base year;
- lodged an FBT return;
- retained all FBT records; and
- benefits provided did not exceed a certain threshold ($7,642 for the current FBT year).

The employer's aggregate fringe benefits amount for the base year can then be used to calculate FBT liability for the current year and the next four years. An employer may choose to use its current year aggregate fringe benefits amount to determine its FBT liability if that amount is less than the base year amount. FBT records for the base year must be kept for five years.

Employers' payroll responsibilities *continued*

Base year records cannot be used to determine an employee's reportable fringe benefits.

The peculiar aspect of these rules is that accurate records must be kept to determine whether the thresholds are exceeded and for reportable fringe benefits. Our recommendation is that accurate records be maintained each year.

Reportable fringe benefits amount (RFBA). Employers must maintain records to determine the value of benefits provided to employees. If an employee receives benefits with a taxable value more than $1000 in the FBT year, the grossed-up value of those benefits must be shown on the employee's payment summary for the financial year ending on the following 30 June. For this purpose, the gross-up rate is always 1.8868. The amount shown is the RFBA. The fringe benefits reporting exclusion threshold is $2,000.

Even though these reportable benefits appear on employee payment summaries, they are not included in the employee's assessable income and are not subject to income tax. However, the RFBA is taken into account when determining an employee's liability for Medicare Levy and Superannuation Contributions Surcharge, entitlements to some government benefits, child support obligations and the HECS-HELP student loan repayments.

Other RFBA information

All taxable fringe benefits are included in an employee's RFBA except car parking, remote area housing, meal entertainment and benefits wholly or partly attributable to entertainment facility leasing expenses.

Benefits provided to an associate of an employee are treated as being provided to the employee for RFBA purposes.

Particular difficulties will arise in the case of shared benefits such as pool cars. In these cases, the amount allocated to employees must 'reasonably reflect' each employee's share of the benefit.

Benefits such as electronic diaries, laptops and mobile phones are exempt from FBT and do not have a taxable value. Consequently, these benefits need not be reported for RFBA purposes.

Employers who are entitled to the FBT rebate or threshold exemption must still report the RFBA for an employee.

An employee leaving during the FBT year may request a payment summary in writing. The summary must show the relevant RFBA.

Superannuation guarantee

Under Federal superannuation guarantee legislation, employers must provide a minimum level of superannuation support for eligible employees, equal to 9.25 per cent of base earnings. Contributions must go to a complying superannuation fund or retirement savings account.

Most employees are able to choose the superannuation fund into which their employer contributions are paid. If an employee does not make a choice, the contributions will be paid into a fund chosen by the employer.

Employers are required to make superannuation contributions at least every quarter to obtain income tax deductions for them. If employers fail to meet this obligation, the superannuation guarantee charge may be applied. This has three components – the employer's shortfall by not paying minimum superannuation contribution, an interest component and a penalty.

An employer may make contributions to a superannuation provider within 30 days of the contributions due date which may offset the portion of any superannuation guarantee charge for the quarter that relates to that employee.

Payroll tax

Payroll taxes are imposed by each of Australia's eight state and territory governments on wages, in cash or kind. Employers are liable for payroll tax when their total Australian payrolls exceed exemption thresholds which vary between states and territories. If an employer is a member of a group, the total Australian wages paid by all members of the group determines whether the employer should register for payroll tax.

A particular allowance or benefit that is subject to payroll tax in one state or territory may be exempt in another. Variations include:

- the definition of 'wages';
- the tax-exempt threshold;
- allowable deductions applying to the threshold; and
- the applicable rate of tax.

Payroll tax liability. Most employer-employee relationships are readily identifiable. The various legislatures deem certain relationships to be that of an employer-employee so that payments are subject to payroll tax. For example, where independent contractors provide services in a work-related contract, the relationship may be deemed to be one of an employer-employee nature.

Employers who are not members of a group must register within seven days after the end of a month in which they commence to pay wages, where average wages exceed the thresholds shown below.

Payroll tax rates vary from 4.75 per cent in Queensland to 6.85 per cent in the Australian Capital Territory.

State	Registration Threshold ($)	Annual Wages Threshold ($)	Payroll Tax Rates %
New South Wales	63,699 (31 day month)	750,000	5.45
Victoria	52,084 monthly	625,000	4.85
Queensland	91,666 monthly	1,100,000[1]	4.75
South Australia	50,000 monthly	600,000	4.95
Northern Territory	125,000 monthly	1,500,000	5.50
Western Australia	70,833 monthly	850,000	5.50
Tasmania	106,164 (31 day month)	1,250,000	6.10
ACT	166,166 monthly	2,000,000	6.85

Notes:

1. For Western Australia the full exemption from payroll tax of annual wages of $850,000 is reduced by a factor once an employer's actual payroll exceeds $850,000 so that the exemption cuts out entirely once the employer's annual wages bill reaches $7.5 million.

Employers' payroll responsibilities *continued*

Payroll tax *continued*

Most States advise employers that they must register when wages exceed the applicable monthly exemption levels.

In all states and territories the deduction available is first calculated on total Australian wages. The result is then reduced on a pro-rata basis by comparing the wages the employer paid in a particular state or territory with the total Australian wages.

Wages. The definition of 'wages' generally includes any wages, salaries, commissions, bonuses or allowances paid or payable in cash or kind.

In all jurisdictions, fringe benefits and superannuation contributions are included as wages. In some, such as NSW, trust distributions made in lieu of wages may be included.

Retirement planning

Australia's retirement income policy is predicated on a compulsory minimum level of superannuation support for most employees and tax concessions to encourage people to use superannuation to build wealth for retirement.

As well, a means-tested social security system is intended to provide a base level of financial support for Australians in retirement and additional concessions which encourage people moving into retirement to convert their superannuation funds into pensions.

What is superannuation? In Australia, superannuation is a concessional taxed structure and long-term savings vehicle designed to build up funds for retirement. The Federal Government's Retirement Incomes Policy has the long-term objective of moving retired Australians off dependence on the age pension and increasing the level of national savings.

The Government's Superannuation Guarantee means that most employees have a minimum level of super contributions made on their behalf by their employers. In addition, there are various tax deductions and rebates available to make saving via superannuation attractive. Individuals can make their own super contributions, either on behalf of themselves or their spouses.

While many investors will contribute to superannuation via employer funds, industry funds or public offer funds, there is a growing trend for investors to take control of their own superannuation through self-managed funds. These can have up to four members all of whom must be trustees. This imposes responsibilities that they need to consider before establishing such a fund.

Two broad issues govern superannuation in Australia - accumulation and payment.

Accumulation of superannuation benefits

The Federal Government adopts a 'carrot-and-stick' approach to ensure that individuals contribute sufficiently to fund their own retirement. The 'carrot' is the enticing offer of a generally lower rate of tax on income generated from superannuation funds.

The 'carrot'. Legislation introduced in 2007 has brought a lower, simpler tax position for income of superannuation and pension funds (generally far less than most individuals would pay at individual tax rates). These are:

UNDER AGE 55

	Accumulation Phase	Pension Phase
Tax on Earnings	15% (10% on capital gains from assets held for over 12 months)	0%
Tax on Lump Sums/Pensions Lump Sum Tax (refer Section 2)	Generally taxable at marginal tax rates but offset by a tax free amount (refer Section 2)	

AGE 55- 59

	Accumulation Phase	Pension Phase
Tax on Earnings	15% (10% on capital gains from assets held for over 12 months)	0%
Tax on Lump Sums/Pensions Lump Sum Tax (refer Section 2)	Taxable at marginal tax rate but offset by a tax-free amount and a 15% tax offset	

Retirement planning *continued*

Accumulation of superannuation benefits *continued*

AGE 60 AND OVER

	Accumulation Phase	Pension Phase
Tax on Earnings	15% (10% on capital gains from assets held for over 12 months)	0%
Tax on Lump Sums/Pensions Lump Sum Tax (refer Section 2)	Nil (refer Section 2)	0% (refer Section 2)

Superannuation savings are usually made through superannuation trust funds and if these funds meet prescribed government standards, they are eligible for tax concessions. The major attraction of superannuation is that benefit payments (lump sums or pensions) are be tax free when paid to members aged 60 and over. In accumulation mode, there is a maximum of 15 per cent tax on earnings and a 10 per cent tax on capital gains made by the fund on assets held for at least 12 months. Over the long term the compounding effect of the low tax rates is quite substantial compared with investments outside superannuation. Balanced against this is the fact that superannuation benefits are preserved until a condition of release, such as retirement, occurs.

For many Australians, superannuation offers an excellent means of accumulating capital for retirement without the same tax impost as other tax structures.

The 'stick'. This takes the form of the 'Superannuation Guarantee', or compulsory superannuation. The scheme requires all employers to provide a minimum level of superannuation support in each financial year for their employees, with limited exceptions.

Employers who fail to provide the prescribed minimum level of support are liable to a Super Guarantee charge as well as additional penalties.

The scheme applies to all employers and covers full time, part time and casual employees, with limited exceptions.

Employers are not required to provide support to:

- employees paid less than $450 a month;
- employees under 18 years of age and working less than 30 hours a week; and
- persons paid for private or domestic work for less than 30 hours a week for a non-business employer.

Since 2002, employers have been required to contribute a percentage of an employee's per annum base earnings to a complying superannuation fund. The percentage was initially 9 per cent but was increased to 9.25 per cent from 1 July 2013 and increased again on 1 July 2014 to 9.5 per cent. The rate will be further increased to 10 per cent from 1 July 2021 and will eventually be fixed at 12 per cent as from 1 July 2025.

Many Australian employees are able to choose the superannuation fund to which their employer directs superannuation guarantee contributions on their behalf.

Eligibility to contribute to superannuation is a function of the individual's age and employment status.

Accumulation of superannuation benefits *continued*

People below age 65 do not have to meet an ongoing employment or work test. For people 65 and older, there is an additional level of ongoing work that is required to be met in order for them to be eligible to contribute funds into superannuation.

In addition to superannuation tax concessions, individuals can also access various tax deductions or tax rebates for various contribution strategies.

Non-concessional contribution limits. Investing funds into superannuation without claiming a tax deduction is an undeducted or non-concessional contribution. Limits for making non-concessional contributions are:

	Work Test Requirement	Non-concessional Contribution Limits
Age < 65	Not required	$100,000 per person per year. (or up to $300,000 averaged over 3 years to be made in any one financial year).
Age 65-74	40hrs in a continuous 30 day period of time in a financial year	$100,000 per person per year.
Age 75 >	Not applicable	Not allowed to contribute

From 1 July, 2017 the non-concessional cap amount that a person can "bring forward" (and whether they have a two or three year bring-forward period) depends upon their total superannuation balance at the end of 30 June of the previous financial year.

Tax deductions. An employer can claim a full tax deduction, up to the new contribution limits, for paying superannuation on an employee's behalf up to the age of 75. This covers the mandated Superannuation Guarantee contribution, and any contributions made through a salary sacrifice arrangement (to be described in more detail later in this section).

An individual who has limited or no superannuation support from any employer, such as a person who is self-employed, can claim a full tax deduction for personal superannuation contributions, within certain limits.

Contributions by self-employed persons are treated in the same way as contributions made by employers. They are eligible for a full tax deduction up to the limits until age 75. Personal deduction eligibility is determined by a person's total assessable income and reportable fringe benefits as is attributable to employment as an employee compared to all their income.

Salary sacrifice. Salary sacrifice to superannuation involves sacrificing part of a person's pre-taxed employment income to make a preserved contribution. Based on the person's tax rate, the result reduces assessable income, while increasing contributions to the superannuation environment. By reducing their pre-tax salary, an employee can effectively achieve a tax deduction for contributions to superannuation.

Concessional Contribution limits. Deductible contributions are known as concessional contributions. A limit of up to $25,000 per person per year applies from 1 July 2017, regardless of age.

Tax File Numbers. TFN's are required to be provided to a member's superannuation fund to make superannuation contributions. Where no TFN has been provided, the fund is required to deduct additional tax of 31.5 per cent on concessional contributions and reject non-concessional contributions.

Retirement planning *continued*

Accumulation of superannuation benefits *continued*

Contributions tax. When a superannuation contribution is claimed as a tax deduction, it is taxed at a rate of 15 per cent when received by the fund and deducted from a member's account balance. Non-concessional contributions, which are contributions for which no tax deduction has been claimed, are not subject to the contributions tax.

From 1 July 2007, excess contributions over the deductible limit will be effectively taxed at the top marginal rate plus Medicare levy. The Federal Government has decided the additional liability for tax will be levied on the individual. Employers who contribute in excess of the limits for employees are allowed a tax deduction for the additional contributions above the deductible contribution limit.

Excess contributions above the concessional contributions cap will attract excess contributions tax of an additional 31.5 per cent to the member. The member is personally liable to pay the excess contributions tax and will receive a release authority from ATO which the member can present to the trustee of the fund to pay the tax or refund the tax already paid by the member. Concessional contributions above their caps may also count towards the non-concessional cap.

Spouse contributions. A person may be able to make substantial non-concessional contributions to superannuation on their spouse's behalf (including same-sex couples). This can be an effective strategy in splitting a person's retirement income and reducing or even eliminating tax payable on that income.

The person making the contribution can be of any age, but must be earning at least $1 of income. The receiving spouse must be under age 65 or gainfully employed for at least 40 hours in a period of not more than 30 consecutive days in the financial year in which the contribution is made if they are between age 65 and less than 70.

A person is able to split contributions up to the lesser of:

- 85 per cent of their concessional contributions; and
- their concessional contributions cap for the financial year.

A person cannot split any non-concessional contributions with a spouse.

Accumulation of superannuation benefits *continued*

A tax rebate of up to $540 is potentially available to the contributing spouse on eligible spouse superannuation contributions (as long as the spouse's assessable income is not greater than $13,800 p.a). Using a spouse splitting strategy provides access to a spouse's pension tax exempt or lump sum threshold and potentially greater asset protection in the event of bankruptcy.

Co-contribution superannuation strategy. A Government co-contribution has been available from 1 July 2003 to certain taxpayers with employer superannuation support who make personal non-concessional contributions to a complying superannuation fund or retirement savings account.

This strategy offers the individual matching contributions from the government of up to a cap of $500 for $1,000 of personal contributions invested.

Self-employed persons are not eligible for the Government co-contribution.

How does the co-contribution reduce with income?

For the 2017/18 financial year the lower income threshold is $36,813 and the higher income threshold is $51,813. The co-contribution is 50% of eligible personal contributions up to a maximum of $500. This amount is reduced by 3.333 cents for each dollar by which total income exceeds the lower income threshold.

Preservation

This section briefly discusses preservation of superannuation benefits including a summary of preserved, restricted non-preserved and unrestricted non-preserved benefits.

An individual's entitlement in a superannuation fund may comprise one or more of the following categories of benefits

- Preserved benefits (PB)
- Restricted non-preserved benefits (RNP)
- Unrestricted non-preserved benefits (URNP)

Preserved benefits. Preserved benefits must generally remain in the super fund, until a client's retirement after age 55, or the applicable preservation age.

Restricted non-preserved benefits. Restricted non-preserved benefits are not preserved benefits but are not able to be cashed until a condition of release is satisfied (generally easier than the release conditions for Preserved Benefits).

Unrestricted non-preserved benefits. Unrestricted non-preserved benefits do not need to be preserved because a condition of release has already been met and no cashing restrictions apply (potentially subject to any restrictions in the fund's trust deed).

Payment of superannuation benefits

Once a condition of release is met, an individual can opt to have their benefits paid as either a lump sum or as a pension. Or, the funds can remain in the superannuation system until their death.

From 1 July 2007, superannuation benefits paid from a taxed source either as a lump sum or as a pension are tax free for people aged 60 and over.

Retirement planning *continued*

Employment termination payments

An employment termination payment is paid consequence of the termination of an employee's employment and includes:

- 'golden handshakes'
- other payments on termination of employment

Employment ETPs cannot be rolled into superannuation and do not include lump sum payments for unused or annual leave or long service leave or the tax free part of a genuine redundancy payment or early retirement scheme.

The tax treatment of an ETP will depend upon whether it is a life benefit ETP or a death benefit ETP.

A life benefit ETP can have two components, the tax free component and the taxable component. The tax free component comprises the pre-July 1983 segment and any invalidity segment.

Employment Termination Payments / ETPs

Component	Assessable	Tax Treatment
Exempt (post June 1994 invalidity and pre-July 1983 amounts)	Not assessable	Not applicable
Taxable		
Under age 55	100%	
Up to $200,000		30%*
$200,000 +		45%*
Age 55 and over		
Up to $200,000		15%*
$200,000 +		45%*
** Plus Medicare levy (may also be subject to the budget repair levy).*		

The tax treatment of a death benefit ETP, which is paid by the deceased's employer, will depend upon whether the payment is made to a dependent or a non-dependent.

Lump sum withdrawals from Super Fund

Lump sum withdrawals from superannuation comprise two components – tax free and taxable.

Age	New Component	Tax Rate
All ages	Tax Free	0%
Under preservation age (currently 55)	Whole component	Taxable 20% (plus 1.5% Medicare Levy)
55 - 59	Taxable - first $200,000* Over $200,000	0% 15%**
60 and over		0%

*LRT – Low rate threshold $200,000 (2017/18)
** Indexed to AWOTE in $5,000 increments

From 1 July 2007, superannuation benefits must be paid in the same proportion of taxable and tax free components as the superannuation interest.

Employer termination payments *continued*

Personal injury contributions. Contributions made within 90 days of receiving a lump sum workers compensation payment, or the date of the agreement or court order for compensation or damages as a result of personal injury will not be taxed by the fund and do not count towards any cap.

Taking superannuation benefits as a pension. Income streams are mainly associated with retirement and commonly will take over where salary and wages cease. Retirement income streams provide clients with investments that allow them to obtain regular income and capital payments, and therefore a basis for managing income and spending patterns.

There are broadly two types of income streams: pensions and annuities. Pensions are paid out of a superannuation fund and may include a public offer, government or even a self-managed superannuation fund. Annuities are generally paid from a life insurance company where the 'annuitant' enters into a 'contract of insurance' with the insurer or other 'registered organisations' such as a friendly society.

Specific types of income streams are classified as:

- Account based pensions
- Allocated pensions and annuities
- Life expectancy and fixed term pensions and annuities
- Lifetime pensions and annuities
- Market linked pensions and annuities, also known as term allocated pensions and annuities

Only account based pensions can now be commenced from within a superannuation fund.

For persons aged under 60, payments received from these income streams are included in assessable income and are subject to tax. However, many income streams are afforded the luxury of a deductible amount that is returned to the member or annuitant, tax free.

Life expectancy, lifetime and term allocated pensions and annuities that meet certain conditions may also be classified as 'complying' which allowed them to be granted concessional treatment under the social security assets test. These types of pensions and annuities can no longer be created from within superannuation.

A further significant taxation benefit is that the superannuation fund is not taxed on its earnings for that amount of capital that is backing a pension. Therefore, instead of 15 per cent tax on earnings for funds held in the accumulation section of superannuation, a pension will not be taxable at all on either distributions or capital gains of the underlying fund assets.

Age	Tax Treatment of pension
Below preservation age* (currently age 55)	Marginal Tax Rates and no tax offset
Age 55 – 59	Marginal Tax Rates and 15% tax offset
Age 60 and over	Tax Free

* Your preservation age depends on the date a person was born. If a person was born before 1/7/1960, their preservation age is 55. The preservation age is then increased each year so that all persons born after 30 June 1964 will have a preservation age of 60.

In summary, income streams can provide for an extremely tax effective vehicle for generating retirement income.

Retirement planning *continued*

Employer termination payments *continued*

Account-based pensions. Account based pensions require payments of a minimum amount to be made at least annually, allowing pensioners to take out as much as they wish above the minimum (including cashing out the whole amount); an amount or percentage of the pension cannot be prescribed as being left-over when the pension ceases; and the pension can be transferred only on the death of the pensioner to one of their dependants or cashed as a lump sum to the pensioner's estate. The payment rules will specify minimum limits only (see table below). No maximum limit applies, with the exception of pensions which are commenced under the transition to retirement income stream rules. Transitions to retirement income streams have a maximum annual payment of 10 per cent of the account balance at the start of each year.

Age	Minimum % of allocated pension account balance
Under 65	4%
65-74	5%
75-79	6%
80-84	7%
85-89	9%
90-94	11%
95 or more	14%

Transition to retirement pensions allow no more than 10 per cent of the account balance (at the start of each year) to be withdrawn in any one year.

Death benefits. A lump sum death benefit payment will be tax free if paid to a person who is a dependant. The definition of dependant will be based on the definition used in the Income Tax Assessment Act. If the lump sum death benefit is paid to a non dependant, the taxable component will be taxed at 15 per cent.

Reversionary pensions. The taxation of a death benefit paid as a reversionary pension will depend on the age of the primary and reversionary beneficiary. If the primary beneficiary was aged 60 or over at the time of death, then payments to the reversionary beneficiary will be tax free. If the primary beneficiary was under age 60 at the time of death, the pension will be taxed at the reversionary beneficiary's marginal tax rate (less any deductible amount and pension rebate) unless, or until, the reversionary beneficiary is aged 60 and over, in which case the pension becomes tax free.

Death benefits will be able to be paid as a pension to a dependant if the member dies before commencing a pension. These pensions will be taxed in the same way as a reversionary pension – see above.

Death benefits will be able to be paid as a pension to a dependant child, although when the child turns 25 the balance in the fund will have to be paid as a lump sum (tax free) unless the child was permanently disabled.

A pension will not be able to revert or be paid to a non dependant upon the death of a person. These pensions will be paid out to the non-dependant as a lump sum.

GST and other indirect taxes

The Goods and Services tax (GST) is an indirect consumption tax imposed by the Federal Government and is similar to the Value-Added Tax adopted in other countries.

Goods and Services Tax

State Governments, who share directly in the benefits of GST collections, do not impose a similar tax. Some state taxes, which were in place when GST was introduced, continue to be imposed which are based on consumption, such as stamp duty.

Taxpayers who make a supply of goods or services, which are taxable supplies, are generally required to pay GST. For this reason, GST is usually passed on to the customer and identified as such on the tax invoice.

In determining the net amount of GST to be paid to the ATO in any tax period, taxpayers are entitled to a credit for any GST paid by them in respect of creditable acquisitions during that period.

Tax is collected on a self-assessment basis. Businesses submit regular GST returns to the ATO, usually on a monthly or quarterly basis.

Basic principles. The standard rate of GST is 10 per cent. That is, if goods are supplied for a consideration of $1,100, the amount of GST would be $100 being 1/11th of the total consideration ($100), if the supply is taxable.

You make a taxable supply if you meet four basic criteria:

- you make a supply for consideration;
- in the course or furtherance of an enterprise that you carry on;
- the supply is connected with Australia; and
- you are registered, or required to be registered, for GST.

A supply is not a taxable supply to the extent that it is GST-free or input taxed.

The terms "supply" and "enterprise" are widely defined.

Connected with Australia. Generally, goods are connected with Australia if the goods are delivered, or made available to the recipient in Australia.

A supply of real property is connected with Australia if the property or the land to which it relates is in Australia.

A supply of anything other than goods or real property is connected with Australia if the thing is done in Australia, or the supplier makes the supply through an enterprise that the supplier carries on in Australia (e.g. the Australian branch of a UK law firm giving advice to an Australian client).

The term 'carries on in Australia' is defined by reference to the term 'permanent establishment' as defined under Australian income tax law.

Registration. You cannot be registered for GST unless you are carrying on an enterprise (i.e. a business and certain other prescribed activities). You are required to be registered for GST when your level of turnover exceeds a registration turnover threshold (currently an annualised rate of $75,000 in taxable supplies, providing you are not a non-profit body).

You may choose to register for GST, even though you may not be required to be registered (e.g. you may not have exceeded the turnover threshold).

If you operate through an agent, the agent may be registered on your behalf.

GST and other indirect taxes *continued*

Goods and Services Tax *continued*

Taxpayers may choose to register for GST where they are making GST free supplies for which they have the right to claim input tax credits.

GST-free supplies. Where supplies are GST-free, the actual supply is free of GST and, in addition, a credit is available to the person making the supply for any GST paid on inputs, providing the input is incurred for a creditable purpose. The effect of this is that the person making the final GST-free supply becomes entitled to a credit equal to the full amount of any cumulative GST which may have been paid in getting the goods to the current state and no GST will have been paid in respect of the supply.

Supplies which are GST-free include supplies made for basic human needs, e.g. certain food items (generally uncooked), health services, education, childcare, religious services and charitable activities, supplies by local governments, e.g. water, sewerage and drainage rates and strategic supplies such as exports for consumption outside Australia, supplies of businesses as a going concern, farm land and the cost of certain transport.

Input taxed supplies. Where supplies are input taxed, the actual supply is not subject to GST, and credit is not available to the person making the supply for any GST paid on inputs. Such supplies include financial supplies such as dealings in securities and dividends, interest, etc., the supply of residential rent and/or premises, precious metals, school canteens and fund raising events conducted by charitable institutions.

Input tax credits. Taxpayers are entitled to claim input tax credits if the acquisition of the supply is for a creditable purpose. A supply will be for a creditable purpose, to the extent that you acquire it in carrying on your enterprise.

The acquisition will not be for a creditable purpose, to the extent that the acquisition relates to making supplies which would be input taxed. Unless specific approval has been given, taxpayers are not entitled to claim an input tax credit, unless they are in possession of a tax invoice in relation to the supply.

The GST law contains specific requirements for what must be included in a tax invoice.

Importations. GST is payable when goods are imported into Australia for home consumption (within the meaning of the *Customs Act 1901*), for use in or for purposes of on-selling in Australia.

Where goods are taxable imports, the GST is payable by the importer and not by the supplier.

Goods imported into Australia which would have been GST-free or input taxed, or which are non-taxable importations, are not subject to GST. There are specific non-GST taxable importations. These are defined by reference to certain categories of goods referred to in the *Customs Tariff Act 1995*.

GST is payable when goods are cleared by Customs in most circumstances.

GST returns. Taxpayers who are registered for GST must lodge GST returns for each tax period, even if no net tax is payable. Payment of GST is required to be made by the due date, regardless of when the actual GST return is lodged. Returns are generally required to be made quarterly. Monthly returns are required when the annual rate of taxable supply of an enterprise exceeds $20 million. Returns can be lodged electronically.

GST groups. Companies, partnerships, trusts and individuals who satisfy the GST regulations, may form a GST group. The representative member of the group is responsible for lodging group returns and meeting all GST obligations on behalf of the group. Intra-group transactions are ignored for GST purposes.

To qualify as a group member, companies are only required to be a 90 per cent owned company. Entities can only be members of one GST group. All entities of a group must be registered for GST and have the same accounting period.

Goods and Services Tax *continued*

Amendments to returns. Specific rules apply for adjustments for GST where there is a change in the basis upon which the GST has been calculated.

Accounting for GST

Accounting for GST is usually on an accruals basis. Charities may account for GST on a cash basis. Other taxpayers may choose to account for GST on a cash basis where their annual threshold does not exceed $2 million, they account for their income on a cash basis and the Commissioner of Taxation determines, in writing, that the enterprise which you carry on is the kind of enterprise in respect of which such choice can be made.

Record-keeping. Taxpayers are obliged to maintain records in support of all GST transactions for a period of five years. These records must be made available in the event of a GST audit. No claim can be made for an input tax credit unless the taxpayer is in possession of a tax invoice.

Penalties. Penalties apply for breaches of the GST law, including incorrect registration, late lodgement of returns and late payment of GST.

Other taxes

Australia maintains relatively high tariff barriers compared with other countries. It is a signatory to the World Trade Agreement.

Many goods are subject to import duties. The rate of duty is determined by tariff classification which can be found in the *Customs Tariff Act 1995*.

Australia is interested in signing Free Trade agreements with other countries.

Stamp Duty. Stamp duty is imposed on dutiable transactions in the state where the transaction has its situs. It is imposed under the laws of the various states and territories in Australia and is payable on the value of the transaction, inclusive of GST.

There are different rates of duty applicable to different types of transactions. In addition, the rates vary between states and territories. Stamp duty is usually payable by the transferee. There is no Federal stamp duty. There is no stamp duty on the sale of shares in publicly listed companies.

When GST was introduced in 2000, the states and territories agreed to reduce and eliminate many of their existing taxes and duties. Progress in this area has been slow.

Payroll tax. Most states and territories impose a tax on employers based on the payment of wages and salaries over prescribed thresholds. The rates and thresholds vary marginally between the states and territories. Related entities are grouped to determine whether the thresholds have been exceeded.

State governments have been known to negotiate special deals in relation to payroll tax to encourage significant new enterprises to become established in their jurisdictions.

Payroll tax is dealt with in detail in Chapter 10.

Land tax. Land tax is levied on non-exempted land owned at 31 December of the previous year, where the value of land held by the land owner exceeds a certain threshold.

The tax is due from landowners and certain lessees, based on a valuation determined by each state's Valuer-General. The rules vary from state to state.

Local government taxes. Local Governments impose rates and taxes on residents of their council areas. These rates and taxes are based on services provided and may be imposed on the value of property owned by taxpayers, or on a usage basis.

GST and other indirect taxes *continued*

Other taxes *continued*

HECS-HELP. This is a loan program to help eligible supported students to pay their student fee contribution amounts. Students who do not pay the fee `up front' have several options available to progressively pay off their debt.

Foreign investment and exchange controls. Generally the rules and regulations governing foreign investments have been relaxed. The exclusions to this are urban real estate, banking, civil aviation and media.

The Reserve Bank of Australia administers the exchange controls regulations within Australia. However, most exchange controls have also been relaxed in recent years.

The *Financial Transaction Reports Act 1988* (formerly the *Cash Transaction Reports Act 1988*) was introduced by the Federal Government to counter tax evasion, the cash economy and money laundering. Under the legislation, the Australian Transactions Reporting and Analysis Centre (`AUSTRAC') was formed to compile, analyse and disseminate information it receives in consultation with the Commissioner of Taxation. Effectively all transactions, other than exempt transactions, must be reported.

Reportable transactions which the Act encompasses include:

- cash dealings – currency transactions exceeding A$10,000;
- transfers of A$10,000 or more of Australian or foreign currency in or out of Australia; and
- receipts of A$10,000 or more of Australian or foreign currency from outside Australia.

Cash dealers are under further obligations to report transactions where there are reasonable grounds to suspect that the information may be relevant to an offence against a Commonwealth law.

Non-bank cash dealers in Australia must also report details of international funds transfer instructions that they remit and receive.

Cross-border taxation for corporations

This chapter considers the Australian tax rules pertaining to international taxation. As with other comparable tax regimes, the Australian tax rules on international taxation are complicated and have been changing rapidly in recent years.

Residence of companies. A company is resident in Australia if:

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

The place of central management and control will usually be where the directors meet to conduct the business of the company, but ultimately, it is a question of fact and degree to be decided in each case. Residency may be divided between two places, in which case the company will be a tax resident in two separate jurisdictions.

Liability to tax. Generally speaking, Australian resident companies are liable to Australian corporate tax on their worldwide income and capital gains, wherever arising and regardless of whether or not remitted to Australia.

In contrast, a non-resident company is generally liable to Australian company tax only on ordinary and statutory income from Australian sources, subject to certain exceptions or modifications (such as an applicable double tax agreement.

Financial year. The Australian financial year runs from 1 July to 30 June and income tax returns are based on the same period. However, application may be made to the Commissioner of Taxation for a substituted accounting period. This is normally granted where it is desired that the substituted tax year coincides with the tax year of an overseas parent company.

Tax rates. An Australian resident company is subject to Australian company tax at the rate of 30 per cent on its income and capital gains from all sources, whether in or out of Australia.

Prima facie, the taxation treatment of assessable income arising from a foreign company's Australian operations, whether derived through a subsidiary or branch (e.g. where it constitutes a permanent establishment of the foreign company for the purposes of Australia's DTA with the relevant country or under Australia's domestic tax rules), is subject to tax at the same rate of 30 per cent.

Purchase of local businesses or property. The Australian Government has enacted the Foreign *Acquisitions and Takeovers Act*, which regulates the purchase by foreign residents, including corporations, of Australian businesses or shares in Australian companies. The Act is administered by the Foreign Investment Review Board whose approval is specifically required (in many instances) in regard to the acquisition by foreigners of businesses and shares in Australian companies. Permission is also required (in many instances) where foreigners, including foreign corporations and trusts, seek to acquire Australian real estate.

Capital Gains Tax and non-residents. New rules which apply to CGT events happening on or after 12 December 2006 ensure that foreign resident taxpayers will only pay Australian CGT on the disposal of "taxable Australian property".

Generally speaking, taxable Australian property is defined as real property located in Australia and the assets used in carrying on a business through a permanent establishment in Australia.

Cross-border taxation for corporations *continued*

However, the rules also include the following types of assets;

- "Indirect Australian real property interests" - broadly where a non-resident has a 10 per cent or more interest in an entity and more than 50 per cent of the market value of the entity's assets are attributable to Australian real property;
- options and rights to acquire Australian real property, assets used in carrying on a business through a permanent establishment in Australia or indirect Australian real property interests;
- mining, quarrying or prospecting rights and information where the minerals, petroleum or quarry materials are situated in Australia; and
- assets where the person ceases to be a resident and where the taxpayer chooses to defer the CGT liability under the election available under the Australian tax rules.

As will be noted from the above, the range of assets on which a foreign resident will now be subject to Australian CGT has been narrowed considerably from the former rules, which were significantly wider

Funds remitted into or out of Australia. Australian exchange regulations are concerned with the transmission of Australian money into or out of Australia. Foreign or domestic currency amounts of $AU10,000 or more exported from Australia or received from outside Australia, will have to be reported to the Australian Transaction Reports and Analysis Centre.

Consolidation regime. From 1 July 2002, the Australian tax consolidation regime allows wholly-owned Australian groups to operate as a single entity for income tax purposes. Entry into the tax consolidation regime is optional, but irrevocable. Consolidation is a replacement for, rather than an alternative to, the "grouping" provisions which previously applied. Consolidation is available to Australian-owned groups and the wholly owned Australian-resident subsidiaries of foreign-owned groups.

Anti-avoidance rules

Australia has numerous anti-avoidance rules. The following information is of particular relevance to foreign investors.

Transfer pricing. All related-party, cross-border transactions between companies that operate in Australia, whether Australian or foreign owned, must be undertaken on an "arm's length" basis. Legislative provisions exist which allow the Commissioner of Taxation to adjust consideration received or payable to an "arm's length" price. Companies must keep detailed and appropriate documentation of intra-group cross-border pricing and be able to demonstrate how the pricing satisfies the arm's length principle. Penalties apply for non-compliance.

There are some carve-outs and *de minimis* concessions which reduce compliance obligations in this area, particularly for smaller businesses.

Australian foreign exchange rules. The treatment of foreign exchange gains or losses is now governed under the new Taxation of Financial Arrangements (TOFA) regime.

The TOFA measures prescribe the way in which foreign exchange gains and losses are identified and calculated and provide strict timing rules for ascertaining when foreign exchange gains and losses are recognised for tax purposes. The measures also set out new rules for translating amounts of foreign currency to Australian dollars for Australian tax purposes.

Debt and equity rules. The Australian Debt/Equity rules provide tests under which an interest is characterised as debt or equity for Australian taxation purposes. The object of these rules is for the underlying substance of the arrangement to give rise to the debt/equity classification rather than the legal form of the arrangement.

Anti-avoidance rules *continued*

The effects can be summarised as:

- interests classified as debt interests for tax purposes will give rise to the result that:
- returns on the interest may be tax deductible (subject to the deductibility and thin capitalisation rules); and
- franking rules will not apply to such interests; and
- interests classified as equity interests for tax purposes will give rise to the result that:
- returns on the interest will not be tax deductible; and
- franking provisions may apply to such interests.

Thin capitalisation. The debt and equity rules are also used to identify debt for the purposes of the Australian thin capitalisation rules. The rules operate when the amount of debt used to finance the Australian operations exceeds specified limits. The rules disallow a proportion of the otherwise deductible finance expenses attributable to the Australian operations of both Australian and foreign multinational investors.

A thinly capitalised company is one whose assets are funded by a high level of debt and relatively little equity. The Australian thin capitalisation rules can apply to Australian based corporate groups investing overseas, their associate entities, foreign controlled Australian entities and foreign entities investing directly into Australia. The Australian thin capitalisation rules seek to limit the amount of interest bearing debt used to fund those Australian operations or investments. They do so by disallowing the debt deductions an entity can claim against Australian assessable income, when the entity's debt level exceeds certain limits.

For foreign owned groups investing into Australia, the Australian thin capitalisation rules will be subject to the "maximum allowable" test. The maximum allowable debt of a foreign owned company investing in Australia is the greater of;

- "Safe harbour debt amount" (the amount of debt used to finance the investment will be excessive when it is greater than that permitted by the safe harbour gearing ratio of 3:1); and
- the arm's length amount (essentially the amount of debt that could have been borne by an independent party operating under the same conditions and terms).

As a practical matter, in the overwhelming majority of cases, foreign owned companies simply use the safe harbour debt amount in order to avoid the compliance issues involved.

There are also special rules and tests for banks and finance companies.

Controlled foreign companies (CFC) legislation. Under the Australian CFC rules Australia has a sophisticated regime for taxing foreign entities controlled by Australian residents. Under the CFC rules Australian resident shareholders of Australian- controlled companies located in low tax jurisdictions are effectively taxed on unremitted profits on an accruals basis. More specifically, the rules seek to tax Australian shareholders on their share of a non-resident CFC's "tainted income" as it is earned, unless that income is comparably taxed offshore or the CFC derives its income almost exclusively from foreign active business activities. This result is achieved by "attributing" tainted income to the Australian resident controllers of the CFC.

Tainted income is generally income from investments or arrangements likely to be significantly affected by taxation considerations, such as interest, dividends, royalties or amounts arising from related party transactions.

The application of the Australian CFC rules has, in recent times, been improved (see planning points for foreign investors in this chapter).

Cross-border taxation for corporations *continued*

Anti-avoidance rules *continued*

Foreign investment funds. The Australian Foreign Investment Fund (FIF) measures are designed to counter tax-avoidance opportunities that may not be caught by the CFC rules. The FIF measures apply where a foreign company or trust, although not "controlled" by Australian residents, is an attractive investment vehicle because it allows for the accumulation of income offshore in low tax or tax-free countries, thereby allowing the investor to minimise or defer payment of Australian tax.

The FIF rules were repealed with effect from the 2010/11 income year onwards.

Double-tax agreements and tax deduction

The Federal Government collects tax from non-residents for certain Australian sourced income by a withholding tax system. Basically, the payer of this income is required to withhold a designated percentage of the income and pay it over to the ATO. The withholding tax rate varies depending upon the type of income and the country of residence of the recipient (as the rate may be prescribed in the relevant agreement).

The following table provides an overview of the relevant rates for treaty and non-treaty countries.

Type of Income	Amount Withheld
Interest	10% (reduced in very limited circumstances in some of the more recent DTA's)
Dividends *	30% (reduced to 15% under most DTA's – a number of exceptions exist)
Royalties	30% (reduced to 10% under most DTA's)

*Note that provided dividends paid to non-residents are "fully franked" (tax paid) they can be remitted free of dividend withholding tax.

In recent years, Australia has started to update its DTAs with certain countries, so as to achieve better withholding tax rates. This has already been achieved in respect of the United States and United Kingdom DTAs.

Australian conduit foreign income rules. Australia has recently introduced a dividend withholding tax exemption for the portion of a dividend made by an Australian company declared by the entity to be "conduit foreign income".

A distribution can only be declared to be "conduit foreign income" when made after 14 December 2005. Any such conduit foreign income is treated as "non-assessable, non-exempt income" of the foreign resident.

Generally, conduit foreign incomes are the following types of income that are not taxed at the Australian corporate level;

- foreign branch income and foreign capital gains and certain non-portfolio dividends;
- the amounts by which a capital gain is reduced under certain Australian rules where an Australian corporate disposes of a non-portfolio interest in a foreign company which has an underlying active business; and
- foreign income that as a result of a foreign tax credit entitlement in Australia, is effectively freed from further Australian tax.

There are specific rules to prevent anti-streaming where, say, an Australian-owned company in receipt of such conduit foreign income has both domestic and foreign shareholders.

Planning points for foreign investors

Investment structure (branch vs subsidiary). There is no simple answer to the question of which is the best structure through which a foreign company should conduct its Australia operations. Many factors influence this decision including proposed future transactions, such as acquisitions, development or sale of assets, financing and capital or profit repatriation objectives. In addition, commercial matters such as the importance of an Australian incorporated presence may influence the decision.

Australian corporate subsidiaries are often selected as the vehicle for investment into Australia given the clearer position of companies under the DTAs Australia has executed with various countries.

Any tax losses incurred by either a branch or a subsidiary can be carried forward indefinitely where either the "same ownership test" or the "same business test" is met.

Branch profits of a foreign permanent establishment may be remitted offshore to a head office without any Australian branch profits tax or exposure to other withholding tax. Dividends paid by a subsidiary to an offshore shareholder are subject to dividend withholding tax to the extent they are not franked. There is no withholding tax to the extent that the dividends are fully franked (that is, sourced from profits which have been subject to Australian company tax of 30 per cent).

Where a branch structure is adopted, the branch will not be entitled to consolidate with any related Australian parties under the Australian tax consolidation regime (discussed above) and will not obtain the benefits of grouping under the consolidation regime.

Australia as a "holding company". Australia has introduced a "Participation Exemption" to reduce a capital gain (or a capital loss) an Australian resident company makes from disposing of some or all of a non-portfolio interest in a foreign company with an active underlying business. This measure applies to the disposal of foreign shares that occur on or after 1 April 2004 and is subject to certain conditions.

This measure is intended to provide greater flexibility in corporate restructuring decisions. It is also an important step towards encouraging conduit companies to be created in Australia.

Prior to the introduction of the participation exemption measures, an Australian company that sold shares in a foreign company would be subject to CGT on the disposal, regardless of what activities those companies were undertaking or where they were resident.

Use of units, trusts and limited partnerships. . Even though this chapter is primarily aimed at corporate issues, foreign groups may also wish to consider whether other entities may be more appropriate for their investment into Australia. For example, Australia also permits businesses to be operated by unit trusts or limited partnerships.

Depending on the foreign tax credit rules of the home jurisdiction, and assuming that there may be difficulties in claiming foreign tax credits from an Australian company, one of these structures may be a more tax effective vehicle.

Exemption of branch profits. Under rules applying on or after 1 July 2004, most foreign income and gains derived through a foreign permanent establishment in either a listed country (a country with a comparable income tax system to Australia) or an unlisted country will be generally exempt (subject to satisfying an "active income test").

Cross-border taxation for corporations *continued*

Planning points for foreign investors *continued*

General exemption for foreign non-portfolio dividends. All non-portfolio foreign dividends paid on or after 1 July 2004 to an Australian corporate shareholder are exempt from Australian company tax. This provides an opportunity to repatriate dividends from foreign subsidiary companies free of Australian company tax.

Relaxation of CFC rules and tainted services income rules. In relation to CFC matters, the new rules:

- exclude service fees received from non-resident associates from the definition of "tainted services income"; and
- materially reduce the number of potentially attributable items for CFC's resident in listed countries.

Special incentives

R&D tax incentive. Eligible companies that conduct R&D activities are entitled to a tax offset. There are two types of tax offset; a 43.5 per cent refundable offset for smaller companies; and a 38.5 per cent non-refundable offset of larger companies with an aggregated turnover of $20m or more per annum.

Tax offset for film production. Companies can claim up to three refundable tax offsets for qualifying Australian production expenditure on films completed during the year. The offsets relate to Australian expenditure in making Australian films, for Australian post production and for post, digital and visual effects production expenditure.

Offshore banking units. Offshore income (excluding capital gains) of an authorised offshore banking unit (OBU) operating in Australia is taxed at a concessional rate of 10 per cent. The other income and capital gains of the OBU are taxed at normal company rates.

Venture capital concessions. Incentives apply to encourage foreign investment into the Australian venture capital market and to promote the development of the Australian venture capital industry by encouraging international venture capital managers to locate in Australia.

Limited partnerships known as "corporate limited partnerships" are governed by special provisions, the broad effect of which is to treat them as companies for tax purposes. However, limited partnerships that are used to invest in Australian venture capital companies are treated as ordinary partnerships rather than corporate limited partnerships. As a result, the income, profits, gains and losses of the partnership flow through to the partners, who are taxed according to their tax status. A capital gains tax exemption (for certain gains made by foreign residents) also applies to venture capital investments.

Australian double-taxation Agreements (at 1 July 2018)

Argentina
Austria
Belgium
Canada
Chile
China
Czech Republic
Denmark
Fiji
Finland
France
Germany
Greece (but only for air transport)
Hungary
India
Indonesia
Ireland
Isle of Man
Italy
Japan
Kiribati
Korea
Malaysia
Malta
Mexico
Netherlands
New Zealand
Norway
Papua New Guinea
Philippines
Poland
Romania
Russia
Singapore
Slovakia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Taipei
Thailand
Turkey
United Kingdom
United States of America
Vietnam

Tax Information Exchange Agreements (TIEA)

Andorra	TIEA
Anguilla	TIEA
Antigua & Barbados	TIEA
Aruba	TIEA and additional benefits agreement
The Bahamas	TIEA
Bahrain	TIEA
Belize	TIEA
Bermuda	TIEA
British Virgin Islands	TIEA and additional benefits agreement
Brunei	TIEA
Cayman Islands	TIEA
Cook Islands	TIEA and additional benefits agreement
Costa Rica	TIEA
Dominica	TIEA
Gibraltar	TIEA
Grenada	TIEA
Guatemala	TIEA
Guernsey	TIEA and additional benefits agreement
Isle of Man	TIEA and additional benefits agreement
Jersey	TIEA and additional benefits agreement
Liberia	TIEA
Liechtenstein	TIEA
Macao	TIEA
Marshall Islands	TIEA and additional benefits agreement
Mauritius	TIEA and additional benefits agreement
Monaco	TIEA
Montserrat	TIEA
Netherlands Antilles	TIEA
Samoa	TIEA and additional benefits agreement
San Marino	TIEA
St Kitts and Nevis	TIEA
St Lucia	TIEA
St Vincent & the Grenadines	TIEA
Turks and Caicos Islands	TIEA
Uruguay	TIEA
Vanuatu	TIEA

Accounting standards (at 1 July 2018)

Statements of Accounting Concepts

SAC 1	Definition of the Reporting Entity
SAC 2	Objective of General Purpose Financial Reporting

Accounting Standards

Framework for the Preparation and Presentation of Financial Statements

AASB 1	First-time Adoption of Australian Accounting Standards
AASB 2	Share- based Payment
AASB 3	Business Combinations
AASB 4	Insurance Contracts
AASB 5	Non-current Assets Held for Sale and Discounted Operations
AASB 6	Exploration for and Evaluation of Mineral Resources
AASB 7	Financial Instruments: Disclosures
AASB 8	Operating Segments
AASB 9	Financial Instruments
AASB 10	Consolidated Financial Statements
AASB 11	Joint Arrangements
AASB 12	Disclosure of Interests in Other Entities
AASB 13	Fair Value Measurement
AASB 14	Regulatory Deferral Accounts
AASB 15	Revenue from Contracts with Customers
AASB 101	Presentation of Financial Statements
AASB 102	Inventories
AASB 107	Statement of Cash Flows
AASB 108	Accounting Policies, Changes in Accounting Estimates and Errors
AASB 110	Events after the Reporting Period
AASB 111	Construction Contracts
AASB 112	Income Taxes
AASB 116	Property, Plant and Equipment
AASB 117	Leases
AASB 118	Revenue
AASB 119	Employee Benefits
AASB 120	Accounting for Government Grants and Disclosure of Government Assistance
AASB 121	The Effects of Changes in Foreign Exchange Rates
AASB 123	Borrowing Costs
AASB 124	Related Party Disclosures
AASB 127	Separate Financial Statements
AASB 128	Investments in Associates and Joint Ventures
AASB 129	Financial Reporting in Hyperinflationary Economies
AASB 131	Interests in Joint Ventures
AASB 132	Financial Instruments: Presentation

Accounting standards (at 1 July 2018) *continued*

AASB 133	Earnings per Share
AASB 134	Interim Financial Reporting
AASB 136	Impairment of Assets
AASB 137	Provisions, Contingent Liabilities and Contingent Assets
AASB 138	Intangible Assets
AASB 139	Financial Instruments: Recognition and Measurement
AASB 140	Investment Property
AASB 141	Agriculture
AASB 1004	Contributions
AASB 1023	General Insurance Contracts
AASB 1031	Materiality
AASB 1038	Life Insurance Contracts
AASB 1039	Concise Financial Reports
AASB 1048	Interpretation of Standards
AASB 1049	Whole of Government and General Government Sector Financial Reporting
AASB 1050	Aministered Items
AASB 1051	Land Under Roads
AASB 1052	Disaggregated Disclosures
AASB 1053	Application of Tiers of Australian Accounting Standards
AASB 1054	Australian Additional Disclosures
AASB 1055	Budgetary Reporting
AASB 1056	Superannuation Entities
AASB 1057	Application of Australian Accounting Standards
AASB 1058	Income of Not-for-Profit Entities
AASB 1059	Service Concession Arrangements: Grantors

Accounting standards (at 1 July 2018) *continued*

AASB and UIG Interpretations

UIG Interpretation 1	Changes in Existing Decommissioning, Restoration and Similar Liabilities
UIG Interpretation 2	Members' Shares in Co-operative Entities and Similar Instruments
UIG Interpretation 4	Determining whether and Arrangement contains a Lease
UIG Interpretation 5	Rights to Interest arising from Decommissioning Restoration and Environmental Rehabilitation Funds
UIG Interpretation 6	Liabilities arising from Participating in a Specific Market- Waste Electrical and Electronic Equipment
UIG Interpretation 7	Applying the Restatement Approach under AASB 129
	Financial Reporting in Hyperinflationary Economics
UIG Interpretation 9	Reassessment of Embedded Derivatives
UIG Interpretation 10	Interim Financial Reporting and Impairment
UIG Interpretation 12	Service Concession Arrangements
UIG Interpretation 13	Consumer Loyalty Programmes
UIG Interpretation 14	AASB 119 -The Limit on a Defined Benefit Asset, Minimum Funding Requirements and Their Interaction
UIG Interpretation 15	Agreements for the Construction of Real Estate
UIG Interpretation 16	Hedges of a Net Investment in a Foreign Operation
UIG Interpretation 17	Distributions of Non-cash Assets to Owners
UIG Interpretation 18	Transfers of Assets from Customers
UIG Interpretation 19	Extinguishing Financial Liabilities with Equity Instruments
UIG Interpretation 20	Stripping Costs in the Production Phase of a Surface Mine
UIG Interpretation 21	Levies
UIG Interpretation 107	Introduction of the Euro
UIG Interpretation 110	Government Assistance – No Specific Relation to Operating Activities
UIG Interpretation 112	Consolidation – Special Purpose Entities
UIG Interpretation 113	Jointly Controlled Entities – Non-Monetary Contributions by Venturers
UIG Interpretation 115	Operating Leases – Incentives
UIG Interpretation 125	Income Taxes – Change in the Tax Status of an Entity or its Shareholders
UIG Interpretation 127	Evaluating the Substance of Transactions Involving the Legal Form of a Lease
UIG Interpretation 129	Service Concession Arrangements
UIG Interpretation 131	Revenue – Barter Transactions Involving Advertising Services
UIG Interpretation 132	Intangible Assets – Website Costs
UIG Interpretation 1003	Australian Petroleum Resource Rent Tax
UIG Interpretation 1019	The Superannuation Contributions Surcharge
UIG Interpretation 1030	Depreciation of Long-Lived Physical Assets: Condition-Based Depreciation and Related Methods
UIG Interpretation 1031	Accounting for the Goods and Services Tax (GST)
UIG Interpretation 1038	Contributions by Owners Made to Wholly-Owned Public Sector Entities
UIG Interpretation 1039	Substantive Enactment of Major Tax Bills in Australia
UIG Interpretation 1042	Subscriber Acquisition Costs in the Telecommunications Industry
UIG Interpretation 1047	Professional Indemnity Claims Liabilities in Medical Defence Organisations
UIG Interpretation 1052	Tax Consolidation Accounting
UIG Interpretation 1055	Accounting for Road Earthworks

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