

Doing business in Australia

What you need to know for compliance and reporting; structure of business entities; and strategic plans for growth and expansion into Australia



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THE NAME IN AUDIT



A relationship-based advisory accounting firm



Independent audit specialists

Contents



4	Welcome to Australia	11	Residency
6	Registration requirements	12	Employment considerations
7	Structure of business entities	14	Funding
8	Compliance: Tax and Audit	14	Foreign investment
10	Transfer pricing	15	Australian Expertise

Welcome to Australia

Growth

Australia has a population of 24 million and grows at the rate of around 1.5% pa, which is above the world rate of 1.2% pa, and among the highest in the OECD. Net international migration comprised about 55% of Australia's growth in population in 2015-16 (Business Insider Australia).

Australia's population has become increasingly concentrated in major cities, with Sydney's population at 5 million, while Victoria is experiencing the most rapid population growth, due to international migration.

Australia is blessed with abundant and diverse natural resources that attract high levels of foreign investment which includes extensive reserves of coal, iron ore, copper, gold, natural gas, uranium, and renewable energy sources. Australia also has a large services sector and is a significant exporter of natural resources, energy, and food.

The Australian GDP currently represents 2.16% of the world economy with long term average growth rate of about 2.75%.

Australia enjoys a unique strategic trading position of being geographically part of Asia while also aligned with the West.

Investment

Australia has an open foreign investment policy and welcomes foreign investment.

Australia provides a safe, easy, low-risk environment in which to invest and do business:

- 26 years of uninterrupted growth
- Globally significant industries
- Talented workforce
- Connected to Asia
- A secure place to do business
- Focused on innovation.



Financial Reporting

Australia aims to promote investor confidence and integrity in the economy, corporations and in capital markets. A proponent of this is clear and consistent financial reports prepared in accordance with legislative requirements.

The same reporting standards apply in all Australian states and territories. Businesses in Australia may be required to report to the Australian Taxation Office (ATO), the Australian Securities and Investments Commission (ASIC) and/or the Australian Securities Exchange (ASX).

Australia has tax treaties with more than 40 countries, including all our major trade and investment partners.



Australia is the 6th largest country in the world, with the continent covering 7.6 million km²



Registration

One of the first considerations when looking at establishing a business in Australia is whether you need to register with the relevant authorities.

The key registrations are:

- Tax registrations with the Australian Taxation Office (ATO), including Tax File Number and other tax registrations
- Legal registrations with Australian Securities and Investment Commission (ASIC)

Tax registrations

A liability to tax (and a requirement to register with the ATO) will exist if you derive Australian sourced income or carry on your enterprise in Australia. Specific tax requirements will require an analysis based on the facts of each case, case law, corporation's law and relevant double taxation agreements.

Tax File Number (TFN)

To lodge an income tax return in Australia you will need a tax file number (TFN), a unique number issued by the ATO to individuals and organisations for identification and record-keeping purposes. Companies, trusts and partnerships have their own TFN.

Before you will be issued an Australian TFN, you will need to provide evidence of your identity.

Australian Business Number (ABN)

The ABN is a unique 11-digit identifier that makes it easier for businesses and all levels of government to interact. A non-resident entity may be entitled to an ABN where either it is carrying on an enterprise in Australia or in the course of carrying on an enterprise, it makes sales that are connected with Australia.

You generally need to quote an ABN on your invoices or other documents relating to sales you make to other businesses. Without an ABN, other businesses may have to withhold tax from their payment to you at the rate of 49%.

Before you will be issued an Australian ABN, you will need to provide evidence of your identity.

Additional registrations can be obtained at the same time as obtaining an ABN including Goods and Services Tax (GST), Fringe benefits Tax (FBT) and Pay as You Go Withholding Tax (PAYGW) – all of which are covered in more detail later on in this guide.

Legal registrations

A requirement to establish a legal presence in Australia is dependent on whether the intended activities constitute 'carrying on a business' in line with the Corporations Act. Factors include nature, duration and frequency of activities in Australia.

Company and business names

A national register of company and business names registered in Australia is administered and maintained by ASIC. A business name is available for registration by an entity if it:

- Is not already registered
- Is not identical or nearly identical to a name already registered to another entity, and
- Does not include words or phrases that are restricted, offensive or could imply a connection to a government or similar organisation.

If a company wishes to trade using a name other than its registered company name, then the trading name must be registered as a business name. A registered business name does not create a legal entity nor grant any proprietary or intellectual property rights in the name itself.

Australian Company Number (ACN)

Australian company number is a unique 9 digit number issued by ASIC to every company registered under the Corporations Act.

Australian Registered Body Number (ARBN)

ARBN is a unique 9 digit identifier for foreign companies registered with ASIC to conduct business in Australia.

Australia was the second country in the world to give women the right to vote in 1902.

Structure of business entity

Structure of business entity

Businesses can be conducted in Australia as a sole trader, in partnership, through a trust, through a joint venture or as a corporation. Most foreign companies conduct their Australian business through a wholly or partly owned subsidiary or through an Australian branch.

So we will cover the consideration of these two most common forms of business vehicles.

a) Branch office (registered foreign company)

Establishing a branch office may be preferable to incorporating a subsidiary company in some circumstances. For example if one of the objectives is to consolidate the financial results of the company in the overseas company reports and to reduce some of the administrative burden in Australia of managing a separate entity.

To operate as a branch office, the foreign company must register as a foreign company with ASIC under the Corporations Act. This creates a public record of the foreign company's presence in Australia, however as per the table below it does not create a separate legal presence for the company.

Registration requirements and fees are applicable to become a foreign company under ASIC, as well as a

requirement to establish a registered office and appoint a local agent.

Once successfully registered, the foreign company will receive an Australian Registered Business Number (ARBN) and must comply with annual reporting requirements such as lodging its annual accounts with ASIC.

b) Subsidiary company incorporated in Australia

Foreign companies may establish an Australian subsidiary by registering a new company under the Corporations Act with ASIC. Companies incorporated in Australia are issued with a unique 9 digit Australian Company Number (ACN).

The Corporations Act sets out that a company may be:

- Unlimited with Share Capital
- Limited by shares
- Limited by guarantee
- No liability (only applies in specific circumstances).

The most common form of business entity in Australia is a company limited by shares – either proprietary company or public company.

A subsidiary that is incorporated in Australia is an Australian resident for tax purposes. Generally a subsidiary will be taxable in Australia on its worldwide income and capital gains, subject to specific exceptions.

	Branch office	Subsidiary
Legal Status	No separate legal entity, an extension of the Foreign entity conducting business in Australia. Legally the foreign entity is liable for actions of the Australian branch.	Separate legal entity in its own right. Legally the subsidiary company is liable for its own actions and creditors are likely to have recourse to company assets only.
Registration process	Does not involve incorporating a separate legal entity, however generally need to register as a foreign company with ASIC and obtain an ARBN.	Company setup with ASIC under Corporations Act. Obtain an ACN and governed by company constitution.
Compliance	Maintenance of registration as foreign company with ASIC. Lodge consolidated financial reports with ASIC on an annual basis.	
Reporting	Income of Australian branch included in financial statements of foreign entity owner.	Financial statements prepared for subsidiary company and tax return lodged for net profit in Australia with the ATO.
Taxation	Varies depending on existence of permanent establishment.	Taxed in Australia on income less deductions.



Compliance: Tax and Audit

Tax in Australia

To work out if your income is taxable in Australia, initially confirm whether your country has a tax treaty with Australia.

If you are from a treaty country and carry on business through a permanent establishment in Australia, the income from those operations carried on in Australia is subject to Australian income tax. Any assets you own as part of the permanent establishment may be subject to Australian capital gains tax when you sell or dispose of them.

Permanent establishment

A permanent establishment includes a fixed place of business through which business is carried on either wholly or partially. It also includes:

- Sales outlets
- Branches
- Offices
- Workshops
- Factories

- Places of management
 - The place of business of dependant agents who have authority to conclude contracts on behalf of the enterprise and habitually exercise that authority.
- If you are from a non-treaty country, income from an Australian source is generally taxable in Australia. This includes income from:

- Business operations in Australia
- Australian contracts, such as export contracts made in Australia
- Services performed in Australia
- Personal activities exercised in Australia.

Even if you don't have Australian income tax obligations, you may have other tax obligations relating to:

- Goods and Services tax (GST)
- Employing staff.

GST

GST is a broad based tax of 10% on most goods, services and other items sold or consumed in Australia.



You must register for GST in Australia if you are carrying on an enterprise, and your GST turnover from sales that are connected with Australia (the indirect tax zone) and made in the course of your enterprise is A\$75,000 or more. The threshold is A\$150,000 if you are a non-profit body.

You can choose to register voluntarily if your enterprise turnover is below the registration threshold. Note that in working out your GST turnover, export sales are included even though they are GST free, as they are connected with Australia.

An entity that is registered for GST needs to include GST in the price of most goods and services sold, and is able to claim credits for GST included in the price of most of its business purchases. These transactions need to be reported to the ATO through an activity statement each month or quarter, and net GST remitted as a payment to the ATO at the date the activity statement is lodged.

To register for GST you must have an Australian Business Number.

Audit requirements in Australia

A foreign-controlled Australian entity may require its annual financial report to be statutorily audited under various federal and state based legislation. In case such

Canberra was selected as the capital because Sydney and Melbourne argued over which city should be the capital of Australia.

a foreign-controlled Australian entity is a proprietary company limited by shares, it will most likely need to be audited annually under the Corporations Act 2001, which is a federal legislation. Further, the foreign-controlled Australian company will also need to lodge its audited annual financial report with the Australian Securities and Investments Commission (ASIC) within four months of the end of the relevant financial year.

However, under certain circumstances, a foreign-controlled proprietary company limited by shares may be eligible for audit and ASIC lodgement exemptions. These exemptions are available to proprietary companies that fall below certain thresholds based on a combination of gross revenue, gross assets and / or number of employees. Specific advice for your individual circumstances is available from the Enspira and Assura teams.



Transfer pricing

Australia's transfer pricing rules seek to avoid the underpayment of tax in Australia by having businesses' price related party international dealings according to what is expected from independent parties in the same situation.

Pricing for international dealings between related parties should reflect the right return for the activities carried out in Australia, the Australian assets used (whether sold, lent or licensed), and the risks assumed in carrying out these activities.

You should carefully consider terms and conditions of any international dealings with related parties to ensure your business outcomes properly reflect economic activity in Australia.

Australia's double tax agreements and domestic law require pricing of goods and services and allocation of income and expenses between related parties to accord with the arm's length principle.

The arm's length principle uses the behaviour of independent parties as a guide or benchmark to determine the pricing of goods and services and how

income and expenses are allocated in international dealings between related parties. It involves comparing what a business has done and what an independent party would have done in the same or similar circumstances. This principle is supported by all OECD countries.

As many factors may influence prices or margins, you need to closely examine the dealings you are comparing and the circumstances of the parties involved. This comparison with arm's length activity means it is difficult to achieve absolute precision and certainty.

In assessing compliance with the arm's length principle, you should exercise commercial judgment about the nature and extent of documentation appropriate to your particular circumstances. Both the ATO and the OECD state that businesses should not be expected to prepare or obtain documents beyond the minimum needed to reasonably assess whether their dealings with related parties comply with the arm's length principle.

Businesses risk a transfer pricing audit if they do not have proper processes to determine arm's length prices and cannot demonstrate the methods they have used to determine their prices.



Over 200 different languages and dialects are spoken in Australia including 45 Indigenous languages. The most common non-English spoken languages are Italian, Greek, Cantonese, Arabic, Vietnamese and Mandarin. The largest Greek population in the world beside Athens in Greece can be found in Melbourne Victoria.

Residency determination

You need to know the residency status of your business entity to determine your Australian income tax obligations.

Foreign resident entities are generally taxed in Australia on any income that has an Australian source. Australian resident entities are generally taxed on their worldwide income. The residency rules for the various entity types available in Australia are as follows:

Sole traders and ordinary partnerships

Businesses operated as a sole trader or an ordinary partnership have their income tax obligations based on individual residency.

A company is a resident of Australia if:

- It is incorporated in Australia, or
- Although not incorporated in Australia it carries on business in Australia and has either:
 - Its central management and control in Australia
 - Its voting power controlled by shareholders who are residents of Australia.

A Corporate limited partnership is a resident of Australia if either the partnership:

- Was formed in Australia
- Carries on business in Australia, or has its central management and control in Australia.

A trust other than a unit trust is considered an Australian resident in any given income year if either:

- A trustee of the trust estate was a resident at any time during the income year or
- The central management and control of the trust estate was in Australia at any time during the income year.

A Unit trust is considered an Australian resident if:

- One of these requirements was satisfied:
 - Any property of the unit trust was situated in Australia.
 - The central management and control of the unit trust was in Australia.
- And also one of these:
 - The trustee of the unit trust carried on a business in Australia.
 - One or more Australian residents held more than 50% of the beneficial interests in the income or property of the trust.

The concept of 'property' is broad and is not restricted to tangible property. It may include items such as trading stock, cash and software.

Employment considerations

If you employ workers in Australia, or you employ a contractor wholly or principally for labour, you may have employer obligations for:

Superannuation – generally, employers must contribute to the retirement savings of their Australian workers.

The compulsory rate is currently 9.5%.

Pay as you go withholding – if your worker is an employee, you generally have to withhold amounts from payments you make to them and send the withheld amount to the Australian Tax Office.

Fringe Benefits tax (FBT) – if you provide benefits to your workers or their associates in place of, or in addition to, salary and wages, you may also have FBT obligations.

Payroll Tax – if wages paid reach a set threshold, payroll tax is payable. The specific rates and thresholds vary on a state by state basis.

Workers compensation – Employers are obliged to pay work cover insurance premiums on behalf of their staff to provide cover for any workplace accidents or injuries.

Obligations as an Employer

Different obligations apply whether you are employing an Employee or Contractor?

Employee:

- TFN declaration form to be completed and returned to the ATO within 14 days of employment starting
- Ensure you are registered for PAYG Withholding
- Determine if employee is eligible for Superannuation Guarantee

- Determine if employee is eligible for Super Choice and which fund to use
- Determine if any Fringe Benefits will be provided to the employee and if so ensure you are registered for FBT
- If entering into a salary packaging arrangement ensure it is documented.

Contractor:

- Consider voluntary agreement with contractor – if entering one then register for PAYG Withholding
- Determine if contractor is considered an employee for Superannuation purposes

Your Role and Obligations as an Employer

Fair employment legislation and National Employment Standards (NES):

- Be aware of equal employment opportunity and anti-discrimination legislation, as well employment standards generally as governed by NES

Providing a safe workplace:

- As an employer you must observe and meet Occupational Health and Safety requirements in respect of your employees

Resident versus non-resident employees:

- If hiring people from overseas, ensure they have the appropriate visas



If employees, will you hire:

- Full-time vs part-time vs casual
- Will you hire apprentices? Investigate government incentives and financial assistance available.

Remunerating your employees

- Ensure you are observing minimum conditions and requirements set out in any relevant industrial award or agreement
- Remunerate in accordance with the employment contract

PAYG Withholding obligations:

- Calculate and deduct tax applicable on earnings, taking note of Withholding Declarations and Withholding Variations provided
- PAYG Withholding that has been deducted from payments to workers is submitted to ATO on activity statements on a regular basis depending on your ATO registration
- Annually provide a PAYG Payment Summary to relevant workers
- Annually provide a PAYG Withholding Annual Report to the ATO.

Mandatory superannuation:

- Calculate and pay superannuation for staff on a quarterly basis
- Comply with new Superannuation Guarantee reporting rules.

Insuring your employees:

- Workers' Compensation insurance
- Public Liability insurance.

Fringe Benefits Tax:

- Pay FBT instalments quarterly if reported on activity statements
- Annually lodge Fringe Benefits tax return and pay any liability owing
- Annually include staff reportable FBT on PAYG Payment Summary.

Australia has the world's highest proportion of migrant settlers in a developed nation with over 25% of Australians born in another country.





Funding

Debt vs equity

Australia's approach to debt and equity funding requires appropriate classification of each instrument as either debt or equity. This classification is important as payments made towards debt interests are tax deductible, and returns paid on equity interests are not tax deductible.

The legislation provides a number of tests to determine the classification of interests, with factors considered including the applicable interest rate, formal loan documentation and existence of other interests. Given the different tax impact of payments towards

debt or equity, it is recommended you determine how the business will be funded as part of the plans for establishing an Australian presence.

Thin capitalisation

If you have claimed interest or other debt deductions in Australia totalling more than A\$2m in the income year, the thin capitalisation rules may limit your debt deductions.

This may apply in circumstances where you:

- operate a foreign entity with investments in Australia
- are an Australian entity with overseas branch operations or control an overseas company, or
- are a foreign controlled Australian entity.

Foreign investment

Investing in Australia

Owning real property in Australia

- If an individual or entity receives rental income from a property located in Australia it must declare the net income in an Australian tax return
- If an individual or entity sells a property located in Australia, the sale must be reported in an Australian tax return as a capital gain.

Where a foreign resident disposes of certain taxable Australian property, the purchaser is required to withhold an amount from the purchase price and pay that amount to the Australian Taxation Office (ATO). Changes to the threshold and rates were announced in the May 2017 federal budget, as follows:

- real property disposals from 1 July 2017 where the contract price is \$750,000 and above (currently \$2 million)

- all contracts settled from 1 July 2017 that the Foreign Residents Capital Gains Withholding (FRCGW) applies to will be subject to a withholding tax rate of 12.5% (currently 10%).

Foreign investment review board

Foreign residents cannot buy an established residential dwelling in Australia, either as an individual or through a company or trust structure.

To purchase other types of property such as new dwellings, vacant land and property that is to be redeveloped, approval must first be sought from the foreign investment review board. There are some exceptions for temporary residents.

Foreign residents who acquire an interest in Australian real property will need to obtain an Australian tax file number, report any income from renting or selling the property in an Australian tax return, and pay any tax owing.

Australian Expertise

Enspira Financial and Assura Audit Group

We pride ourselves in our extensive expertise in business, audit and tax advisory. We offer a high quality, professional service across all relevant industry sectors and develop practical solutions to enable the achievement of client aspirations.



Craig Stanmore
CEO of Enspira

Craig Stanmore has over 25 years of experience in helping clients achieve their aspirations. Craig has a track record of growing businesses through strategic planning and has a knack for leveraging strategic alliances.

Heading up the Advisory division of Enspira, Craig is a Fellow of Chartered Accountants Australia and New Zealand, a Registered Tax Agent, a Registered Statutory Auditor and a Registered Financial Planner.



Rebecca Collins
Head of Melbourne

Rebecca is a Chartered Accountant with a passion for helping clients achieve their aspirations. Rebecca is skilled in all facets of tax and strategic planning, and has a knack for looking at the big picture to help clients plan ahead. Her warm, friendly and fun-loving nature makes working with her not feel like work at all!



Catherine White
Head of Sydney

Catherine heads up the Compliance division of Enspira and you can rest assured you are in very safe hands with Catherine's exceptional technical skills in tax. Catherine answers particularly challenging tax questions and better still, has an art for explaining the complex in a simple, easy-to-understand way. Catherine has a Masters in Taxation and is a Fellow of the Tax Institute, as well as a Chartered Accountant. Most importantly, you'll enjoy her open, friendly nature - she's a pleasure to deal with.



Hanoze Udachia
CEO of Assura

Hanoze is a Chartered Accountant with over 16 years of professional public practice experience. His work experience includes audits of listed public companies, large proprietary companies, not-for-profit organisations, trust accounts and superannuation funds within a large range of industries as well as conducting due diligence reviews, business valuations, investigating accountant's reports and much more.

Useful websites

www.austrade.gov.au | www.ato.gov.au | www.asic.gov.au | www.asx.com.au

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Disclaimer: This guide is current as at May 2017 and is not intended as specific advice.
Please contact Enspira Financial / Assura to discuss your individual situation

