



BUSINESS INVESTMENT GUIDE: AUSTRALIA



BD WELSH

Committed to Local and Global Business

© BD Welsh | 2025

About BD Welsh

BD Welsh was established in 1992 in Sydney to provide professional accounting and business services. We help companies in Australia as well as those from overseas setting up in Australia.

The firm's bilingual and multilingual team represents outstanding skill and knowledge across our core services; Accounting, Audit and Assurance, Business Set Up, Commercial Representation, Migration Services, and Taxation.

Our principal, Brian Welsh, CA, is a fluent Japanese speaker while other staff speak Japanese, Mandarin and Spanish. We keep up with our professional areas of expertise both here and internationally.

BD Welsh offers a unique blend of strengths – the ability to provide our clients with professional services on a par with the Big 4 accounting and business services firms but with far greater personal attention.

Brian Welsh and our senior team stay involved in each client assignment from beginning to end. We also draw on the strengths of the entire team to collaborate on client matters. In addition to our highly skilled team, we draw on our well-established networks to help clients. This includes law firms, business consultants, real estate agents and specialists in the areas of mergers & acquisitions and research and development.

BD Welsh has extensive experience helping businesses from Japan. We also work with clients from other countries and maintain strong international relationships with accounting firms in Asia and Latin America.

We are located in Chatswood, Sydney's third largest commercial district, about 8 km north of Sydney's Central Business District.

Contents

1. Australia – An Overview

1.1 Australia's Opportunities for Investment and business	7
1.2 Geography and population	8
1.3 Government	9
1.4 Economy and Industries	11
1.5 Legal system	12

2. Foreign Investment Legislation

2.1 Foreign Investment by Sector	16
2.2 Foreign Investors	18
2.3 Significant actions and notifiable actions	19
2.4 Threshold tests	21
2.5 Agribusiness	21
2.6 Agricultural land	21
2.7 Business	21
2.8 Exemption certificates	21
2.9 Commercial real estate	22
2.10 Vacant commercial land	22
2.11 Developed commercial land	22

3. Choosing a Business Structure

3.1 Australian companies	25
3.2 Proprietary company	25
3.3 Public company	26
3.4 Foreign company branch	27
3.5 Representative office	27
3.6 Joint venture (JV)	28
3.7 Sole trader	28
3.8 Partnership	28
3.9 Trusts	29

Contents

4. Corporate Tax

4.1 Income tax	31
4.2 Tax losses	31
4.3 Capital gains tax	31
4.4 Interest income	32
4.5 Group taxation	32
4.6 Dividends paid by an Australian company	33
4.7 Debt funding of an Australian company	33
4.8 Taxation of financial arrangements (TOFA)	34
4.9 Transfer pricing	34
4.10 Stamp duty	35
4.11 Land tax	35
4.12 Payroll tax	35

5. Goods and Services Tax (GST)

5.1 Who is required to register for GST?	37
5.2 Different types of supply for GST purposes	38
5.3 GST on real property	39

6. Personal Taxation

6.1 Income tax for Australian residents	41
6.2 Tax implications for temporary residents	41
6.3 Superannuation	42
6.4 Fringe benefit tax	43
6.5 Net capital gains	43

7. Tax Incentives

7.1 R&D tax incentives	45
7.2 Depreciating Assets	46
7.3 Early Stage Venture Capital Limited Partnership (ESVCLP)	46
7.4 Early Stage Innovation Company (ESIC)	48
7.5 Offshore banking units	48



Contents

8. Financial System

8.1 General	50
8.2 Regulation of financial markets	50
8.3 Foreign banks operating in Australia	51
8.4 Regulation of related activities	52
8.5 Exchange Controls	52
8.6 Borrowing from an Australian Bank	53
8.7 Equity fundraising	53
8.8 Listing on the Australian Securities exchange (ASX)	54

9. Intellectual Property

9.1 Trademark protection	56
9.2 Copyright protection	57
9.3 Design protection	57
9.4 Patent protection	58
9.5 Registering a domain name	59

10. Immigration

10.1 Overview	61
10.2 Temporary work visa (short stay)	62
10.3 Long stay work visa	62
10.4 Employer sponsored permanent residency	65
10.5 Business and Investment visas	65

11. Importing and Exporting

11.1 Tariff protection	68
11.2 Classification of goods and rates of duties	69
11.3 Tariff concession system	69
11.4 Customs valuation	69
11.5 Dumping	70
11.6 Controls and requirements for particular types of imports	70
11.7 Export controls	70
11.8 Free Trade Agreements	71





| AUSTRALIA – An Overview



Australia supports trade liberalisation and is heavily involved in regional and global trade and plays an active role in the World Trade Organisation (WTO), G20 and Asia-Pacific Economic Cooperation (APEC).

Australia is also uniquely positioned geographically as a hub to the Asia-Pacific region with access to both the Indian and Pacific oceans and is a key part of most major international shipping routes.

1.1 Australia's Opportunities for Investment and Business

Australia has long been considered an attractive region for doing business. While Australia's small population of roughly 25.6 million accounts for just 0.3 per cent of the global total, this belies its significant economic standing in the world as the world's 13th largest economy, accounting for approximately 1.8 per cent of the world's total GDP at an estimated US\$1.3 trillion (2021). In support of Australia's sound financial standing, it has been given the top international investment rating of AAA for Standard & Poor's, Moody's and Fitch.

Australia's robust economy is underpinned by a wealth of multicultural talent with the world's 4th highest secondary education enrolment rates and more than 40 per cent of the workforce holding a tertiary level qualification. Adding to these strong socio-economic credentials, Australia's labour force is also one of the most skilled, diverse and employable in the world.

Australia is also classified as a "very easy" market for new businesses to enter per the World Bank's "Doing Business 2020" report, as it is ranked 3rd out of 190 countries for starting a business and 14th in ease of doing a business. This is largely supported by having a stable Federal government and a transparent operating environment together with one of the most sophisticated financial services industries in the Asia-Pacific region, ranking sixth overall out of 140 countries by the World Economic Forum for financial market development.

1.2 Geography and Population

Australia is the world's largest island and smallest continent and encompasses a landmass of 7,682,300 square kilometres making it the world's sixth-largest country after Russia, Canada, China, the US and Brazil.

Broadly speaking, Australia has two different types of climate. The northern region of Australia tends to have a tropical climate with a wet season from November to April, and a dry season from May to October.

In contrast, the southern regions of Australia experience four seasons with a distinct Summer from December to February, and winter from June to August. Sub-zero temperatures are rarely reached, though higher mountainous regions experience some level of snowfall.



The country is divided into eight states and territories. The population, which currently stands at roughly 26 million people is heavily concentrated in urbanised cities with eight per cent of the population estimated to live within 100 kilometres of the coast, mainly on the east. Australia also has one of the most multicultural communities in the world – more than 26 per cent of Australians are born overseas.

Australia is also well recognised for offering one of the best lifestyles in the world thanks in large part to a temperate climate combined with high education rates and an extensive public healthcare and social welfare system.

1.3 Government

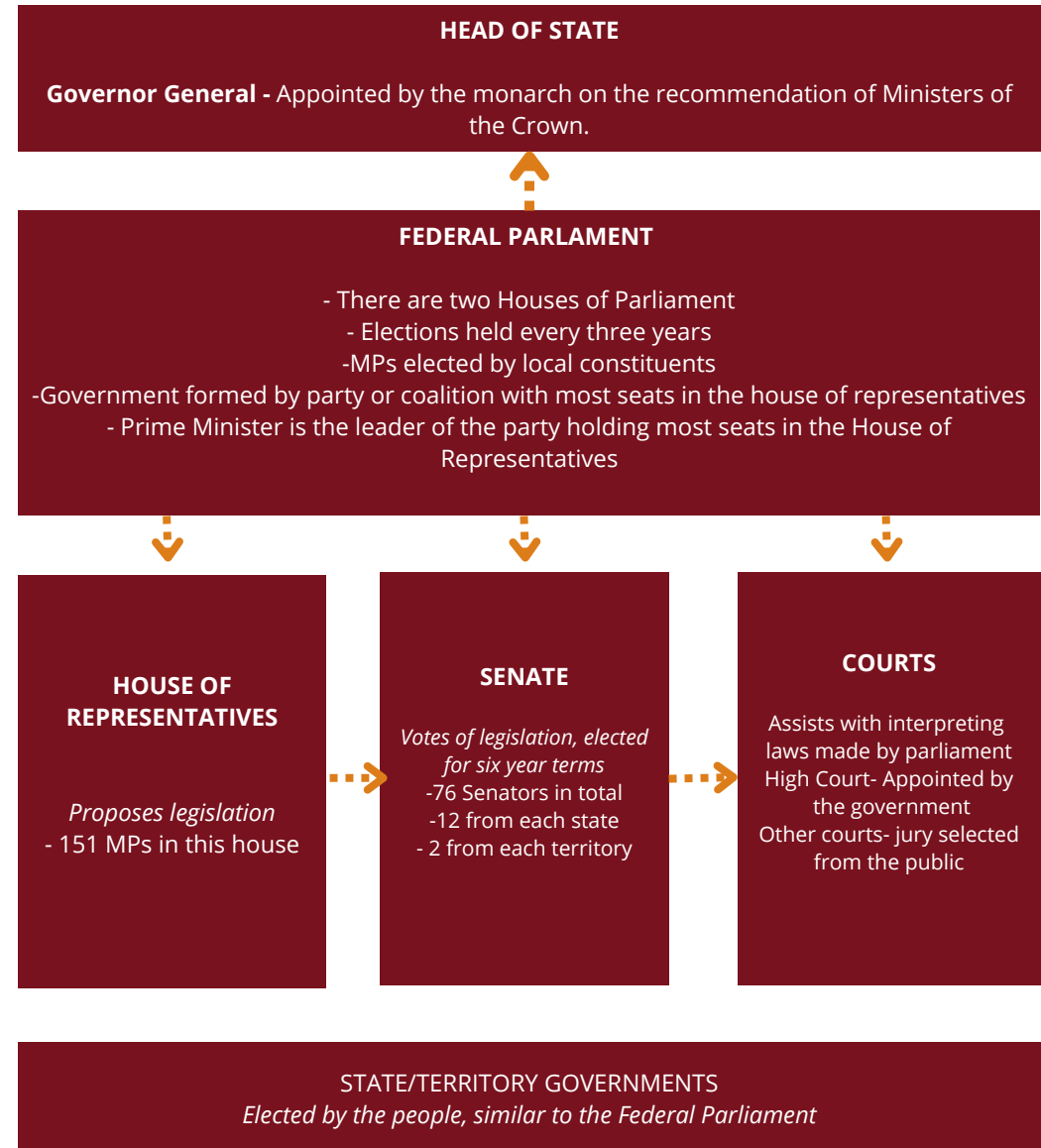
Australia obtained de-facto independence from Britain in 1901, when the federation formed and its own constitution was adopted. The head of state is the current British monarch represented by the Governor-General of Australia

Australia has three levels of government: federal (referred to as Commonwealth), state and territory, and local. The monarch is also represented in the Australian states by governors. The Governor-General is appointed by the monarch on the recommendation of Ministers of the Crown and represents the monarch with the power of assent in regard to Commonwealth legislation.

Federal Parliament consists of two chambers: the Senate (referred to as the upper house) and the House of Representatives (lower house). The role of the Parliament is to propose legislation in accordance with its powers under the Constitution of the Commonwealth of Australia. In addition it serves as a forum for the debate of public policy.



THE AUSTRALIAN GOVERNMENT SYSTEM





The senate is made up of 76 publicly elected senators, 12 from each state and 2 each from the territories. The role of the Senate is to serve as a check on government by scrutinising bills, government administration, and government policy in general.

The House of Representatives consists of 151 members voted for by the Australian people in general elections held approximately every three years. After an election, the political party (or alliance of parties) holding the most seats in the House of Representatives becomes the governing party (the Australian Government) and the leader of that party (voted by the party's members) becomes the Prime Minister.

The party (or coalition of parties) which has the most non-government members in the House of Representatives is known as the Opposition.



1.4 Economy and Industries

Australia has a flexible market driven economy that promotes new and expanding enterprises. According to the world Bank the Australian economy has had an increase in GDP of around US \$415 billion in 2000 to US \$1.32 trillion in 2020. It is regarded as a high-income economy, with a GDP per capita estimated to be US \$51,692 in 2020.

Australia has a relatively stable inflation rate, with an average annual inflation rate of 2.45% since 1990. It also has a very low level of government debt among advanced economies, with the Australian Government's net debt sitting at roughly 43% of GDP in 2022, well below the 89% average forecast for advanced economies.

The economy is primarily services based which employs roughly 80 per cent of Australia's workforce and contributes over half of Australia's GDP. The sector is diverse and includes both private and public agencies including major corporations providing services related to telecommunications, transport, banking, insurance, hospitality, education, accommodation and health.

In addition to services, the Australia economy has recently benefitted from a strong resources sector, with total exports increasing by a factor of five over the past 20 years.

Australia is a major exporter of natural resources such as iron ore, coal, uranium, natural gas, aluminium, gold and lithium. Minerals and energy exports earned around AUD 309 billion in 2021. Australia currently has several long-term deals (spanning more than 20 years) to supply nations such as South Korea, Japan, China and India.

The Australian economy is also fueled by a robust agriculture sector, with 55% of Australia's land (427 million hectares) used for agriculture production with 70% of agricultural output exported.

Roughly 90 per cent of Australia's agricultural land use is allocated to animal grazing on native pastures and it is estimated that the highest value of production for the use of grazing is cattle, wheat, dairy, vegetables, fruits and nuts, followed by lamb meat and wool. Often referred to as the agribusiness and food sector, the sector generated a turnover of up to AUD 278 billion for 2021.



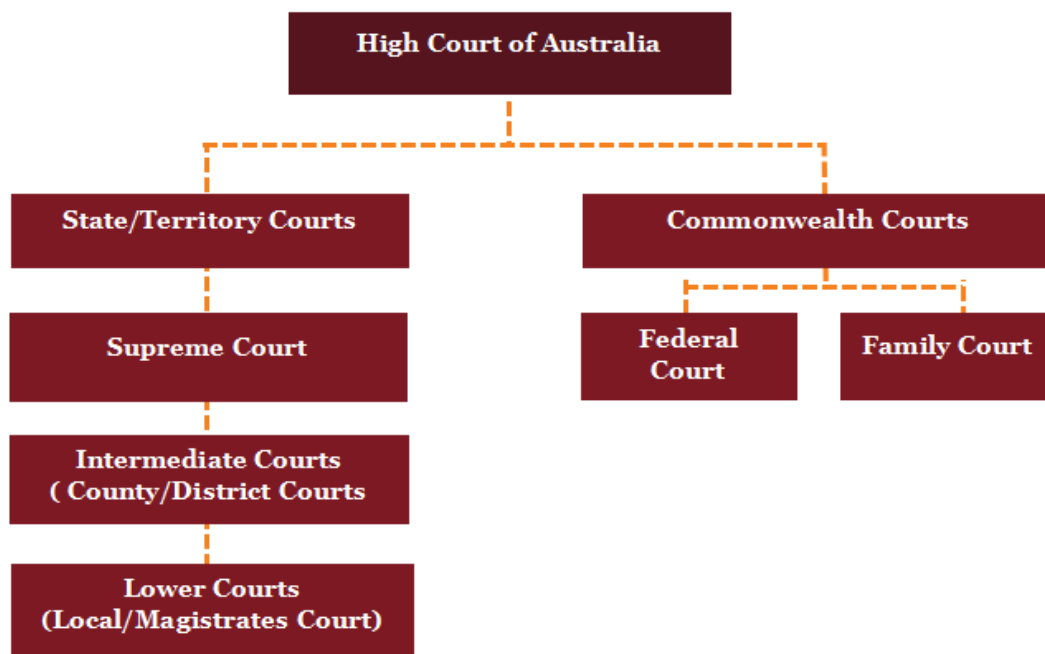
Australia also has an emerging fintech industry, growing from a AUD 250 million industry in 2015 to AUD 4 billion in 2021. Specialist areas include payments, business lending, personal finance management, regtech, blockchain and instalment finance – commonly referred to as ‘buy now pay later services’.



1.5 Legal System

Australia's legal system is similar to the legal system of Britain, under which laws are created and amended not only by parliament but also through decisions made by the courts ('Common Law'), which are independent from the parliament and the executive. Australia's legal system consists of 'statutes' which are passed by the federal and state parliaments that work alongside the Common Law. A statute sets out standards and expectations which serve to govern and regulate Australian society.

The Australian Court System



The major legislation regulating the financial industry is the *Corporations Act 2001*, the *Banking Act 1959*, *ASIC Act*, *Taxation Administration Act*, *GST Act*, *Australian Consumer Law* and the *Insurance Act 1973*.

To create a new law a 'Bill' (a draft Act) is debated in parliament and must be passed by a majority in both houses of parliament and sent to the governor general for formal approval. Where legislation is outdated or irrelevant that legislation can be amended or repealed by parliament within reasonably short time.

The court system of Australia is structured as a hierarchy, with the various courts having different jurisdictions and levels of power. The highest level of power is the High Court of Australia, which is the final court of appeal and which addresses constitutional matters as well.

Beneath it are the Commonwealth Courts, which oversee matters related to federal law, and the State and Territory Courts which oversee matters related to state-level law. Each state also has a Supreme Court (including Courts of Appeal) and its own court system including District or County Courts, and local Magistrate's Courts.

An aerial photograph of a wind farm during the 'golden hour' of sunset. In the foreground, a large white wind turbine is partially visible, with its nacelle and one blade extending towards the left. In the background, another wind turbine stands tall against the bright, hazy sky. The landscape below is a mix of green grassy fields and dense forests, with long shadows cast across the terrain. The overall atmosphere is warm and serene, with a strong orange and yellow color palette.

| FOREIGN
INVESTMENT

2. Foreign Investment Legislation

The Australian government welcomes foreign investment that is consistent with its national interests and acknowledges the considerable contribution it makes to Australia's economic growth and prosperity.

Foreign investment in Australia is regulated by the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA). Certain foreign acquisitions of Australian shares and assets including property, leasehold interests in land, security interests in land (e.g. mortgages) are reviewed by the Australian Foreign Investment Review Board (FIRB).

The Australian Federal Treasurer administers FATA and FIRB policy, with assistance from the Foreign Investment Review Board (FIRB).



Certain foreign investment proposals require notification to FIRB and the Treasurer's approval before implementation is permitted.

In practice, most applications do not raise national interest concerns and generally receive approval.

2.1 Foreign Investment by Sector

The total amount of approved investment value was at AUD 233.0 billion for the 2021 financial year. The largest sector by value of foreign direct investment in Australia for 2021 was the commercial real estate sector at AUD 82.0 billion.

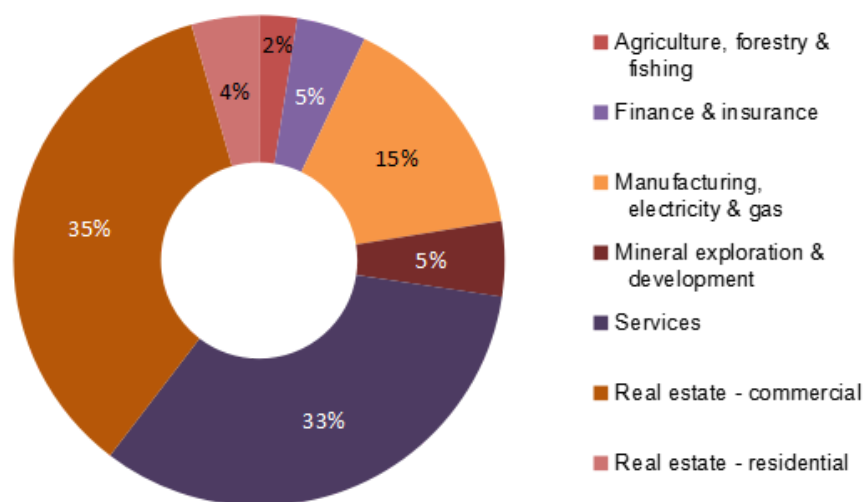
This was followed by the services sector which attracted AUD 76.9 billion worth of foreign direct investment. The services sector includes accommodation, communications, construction and health. The manufacturing, electricity and gas sector also attracts a significant amount of foreign direct investment (AUD 35.3 billion for 2021).

In the agriculture, forestry and fishing sector there were 190 approvals granted for AUD 5.8 billion worth of proposed investment.



Investment applications in this sector have remained reasonably stable since 2016-17 with approximately 200 applications per year.

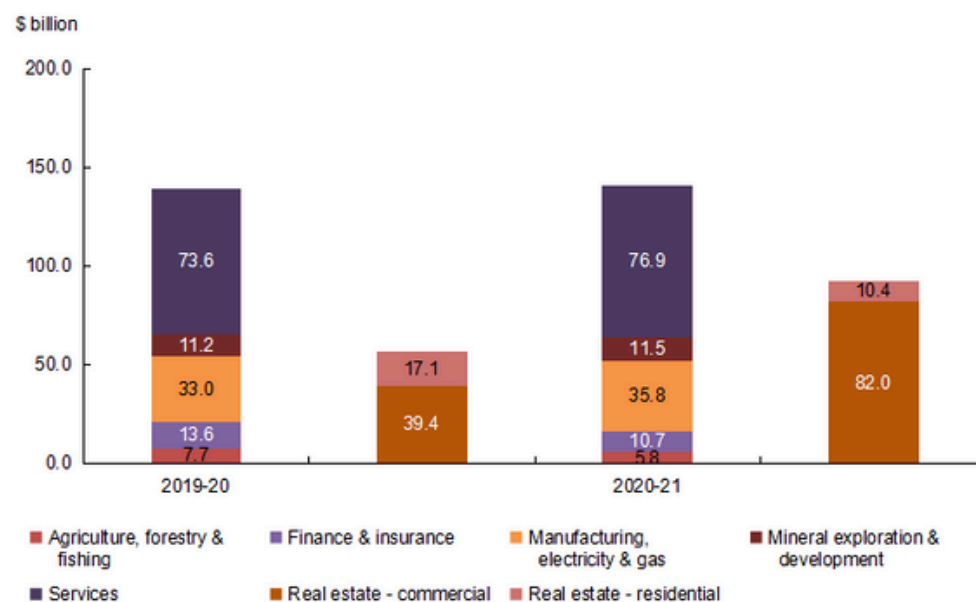
Chart 1.1 Share of total value of approvals, by industry sector in 2020-21



Source: Foreign Investment Review Board. Annual Report 2020-21

Approvals by Industry Sector

Chart 1.2 Approvals value by industry sector, in 2019-20 and 2020-21



Source: Foreign Investment Review Board. Annual Report 2020-21

2.2 Foreign Investors

The FIRB policy applies to foreign investors considered as 'foreign persons'. A 'foreign person' includes foreign individuals, corporations, trusts, governments and partnerships.

Individuals that are not ordinarily a resident in Australia are considered as foreign persons. This includes expatriate Australian citizens.

A corporation, trust or partnership is a foreign person if:

- a minimum of 20% shareholding is held by a single Foreign individual, foreign corporation or foreign government, or
- a minimum of 40% shareholding is held by investors made up of Foreign Individuals , foreign corporations or foreign governments.

All 'foreign government investors' are also foreign persons.

2.3 Significant actions and notifiable actions

The FATA distinguishes between "significant actions and notifiable actions".

Only notifiable actions have a compulsory requirement of notification to the Treasurer. Notification to the Treasurer does not apply for significant actions.

However, should the Treasurer not be notified, the Treasurer will have the power to block, unwind or place conditions on a significant action if it is considered as contrary to the national interest.

It should also be noted that investments in particular sectors will be subject to more stringent legal requirements. For example, an investment of 5% or more in an entity or business within the media sector requires FIRB approval, regardless of the total value.

Notifiable Actions

A notifiable action is an investment by a foreign person where there is a mandatory requirement for the Treasurer to be given notification of the proposed action before that action can be taken.

Subject to the threshold tests being met, a foreign person must obtain FIRB approval prior to acquiring:



- a “direct interest” in an Australian corporation, unit trust or business that is an agribusiness;
- a “substantial interest” in an Australian corporation or unit trust (which is not an agribusiness); or
- an interest in Australian land, depending on certain exemptions

A person acquires a “direct interest” in an Australian entity or business if it acquires:

- an interest of 10% or more in the entity or business;
- an interest of 5% or more in the entity or business and has entered into a legal arrangement relating to person’s business and the entity or business; or
- if the person is in a position to influence or participate in the central management and control of the entity or business, or influence, participate in, or determine the policy of the entity or business.

A person holds a “substantial interest” in an entity or trust if the person (together with its associates) holds an interest of 20% in the entity, or for a trust if the person (together with its associates) holds a beneficial interest in 20% or more of the income or property of the trust.

In the case of corporate reorganisations, it is important to note that intra-group transfer of an Australian entity or business between two commonly controlled Australian entities may be a notifiable action should the threshold test be met along with a foreign substantial foreign interest in the group.

Significant Actions

Certain actions by a foreign person may be classified as a 'significant action'. However, they will only be classified as significant actions should the investment exceed the prescribed monetary threshold. These include:



- Acquisition of Australian land;
- Acquisition of a direct interest in Australian agribusiness;
- Acquisition of an interest in securities of an entity with a relevant Australian nexus (broadly, an Australian entity, a foreign corporation that holds Australian land or securities in an Australian entity, or a holding entity of such an entity), even if the interest acquired is less than a substantial interest of 20%;
- Actions relating to the acquisition of interest in Australian business assets resulting in change of control in the business;
- Actions relating to the acquisitions of interests in or issue of securities in an entity; and
- Altering the constituent documents of an Australian entity which enables a foreign person to control senior officers of the entity.

Furthermore, generally there must be a 'change in control' involving a foreign person for a transaction involving an Australian entity or business to be deemed a significant action. This rule does not apply however to the acquisition of an Australian agribusiness so that, to the extent the threshold test is met, the acquisition by a foreign person of a direct interest in an Australian agribusiness is a significant action.

2.4 Threshold tests

If a non-government foreign investor is involved in transactions within one of the categories of actions discussed above, it will only be subject to a notifiable action or significant action if the value of the transaction, entity or business exceeds a certain monetary threshold, further to any exemption that may apply.

2.5 Agribusiness

Approval is generally required for proposed direct interests in an agribusiness where the value of the investment is more than \$55 million. Investors from Australia's trade agreement partners are exempt and a \$0 threshold applies to foreign government investors.

2.6 Agricultural land

Generally, if the cumulative value of a foreign person's agriculture land holdings exceeds \$15 million, approval will be required for proposed investments in agricultural land. Investors from Australia's trade agreement partners are exempt and a \$0 threshold applies to foreign government investors.

In addition, all acquisitions of interests in agricultural land by foreign persons must be notified to the Australian Taxation Office Register of Foreign Ownership, regardless of whether they require approval and regardless of value.

2.7 Business

Prior approval is generally needed for proposals to acquire an interest of 20 per cent or more in any business valued at over \$252 million (or the higher threshold of \$1,094 million for agreement country investors from Chile, China, Japan, Korea, New Zealand and the United States).

All foreign government investors are required to get approval to acquire a direct interest in an Australian entity or an Australian business or to start a new Australian business, regardless of the value of the investment.

2.8 Exemption certificates

Under the foreign investment framework each proposed acquisition of an interest in land by a foreign person must be separately notified, unless otherwise exempt. However, foreign persons making multiple acquisitions can apply for an up-front approval for a program of land acquisitions without the need to seek separate approvals.

Under Section 58 of the Foreign Acquisitions and Takeovers Act 1975 a foreign person is allowed to apply for a certificate in relation to acquisitions of one or more kinds of interests in Australian land, and the Treasurer to grant such a certificate.



2.9 Commercial real estate

Foreign persons may be required to notify and receive a 'no objections' notification before acquiring an interest in commercial land in Australia. Different rules apply depending on whether the land is vacant or not, whether the proposed acquisition falls into the category of sensitive commercial land that is not vacant, as well as the value of the proposed acquisition.

Commercial land is defined as land in Australia (including any building on the land) or the seabed of the offshore area, other than land:

- used wholly and exclusively for a primary production business;
- on which the number of dwellings that could reasonably be built is less than 10; or
- on which there is at least one dwelling (except commercial residential premises).

2.10 Vacant commercial land

Commercial land is vacant if there is no substantive permanent building on the land that can be lawfully occupied by persons, goods or livestock.

Foreign persons generally need to notify before acquiring an interest in any vacant commercial land, regardless of the value of the proposed acquisition (\$0 threshold).

'No objections' notifications will normally be subject to conditions that the foreign person: commences continuous construction of the proposed development on the land within five years of the date of approval; and does not sell the land until construction is complete.

2.11 Developed commercial land

Foreign government investors are required to notify before acquiring any interest in developed commercial land, regardless of the value (\$0 threshold) and their country of origin.

Foreign persons need to notify before acquiring an interest in developed commercial land only if the value of the interest is more than the relevant notification threshold.

The general notification threshold for developed commercial land is \$252 million unless the proposed acquisition is considered to be sensitive, in which case the threshold is \$55 million.

If the foreign person is from an agreement investor country, the threshold is \$1,094 million regardless of whether the land is considered sensitive.



A top-down view of a dark wooden desk with a black leather folder, a silver pen, a black smartphone, and a silver laptop keyboard.

| Business Structure

3 . Choosing A Business Structure

Various business structures are available for you to choose from when establishing your business in Australia. The business structure you choose will depend on various factors, including the strategy of your business in Australia. You may choose to establish a branch office or an entirely new business. Or, you may intend to be a publicly listed company on the Australian Securities Exchange (ASX). Most foreign companies that carry on business in Australia operate through a wholly or partly owned subsidiary or through an Australian branch.

Below is a list of the most common business structures in Australia:

- Australian company.
 - Proprietary
 - Public
- Foreign Company Branch
- Representative Office
- Joint Venture (JV)
- Sole Trader
- Partnerships
- Trusts

The Australian regulatory system allows for changes to be made to the structure of your business as the company grows, to meet the needs of your objectives. Note that each structure will be subject to varying tax and auditing requirements, assets protection as well as ongoing costs.



3.1 Australian companies

The most common form of a company in Australia is a company limited by shares which takes the form of either a proprietary company or a public company.

3.2 Proprietary company

Proprietary companies are often used for the purpose of private ventures or as subsidiaries of public companies. There are no restrictions on the size of a proprietary company. However, a proprietary company can have no more than 50 non-employee shareholders.

Proprietary companies must have at least one resident director, but are not required to have a company secretary, unless they choose to appoint one. In the case that a company chooses to appoint a secretary, that person must be an Australia resident.

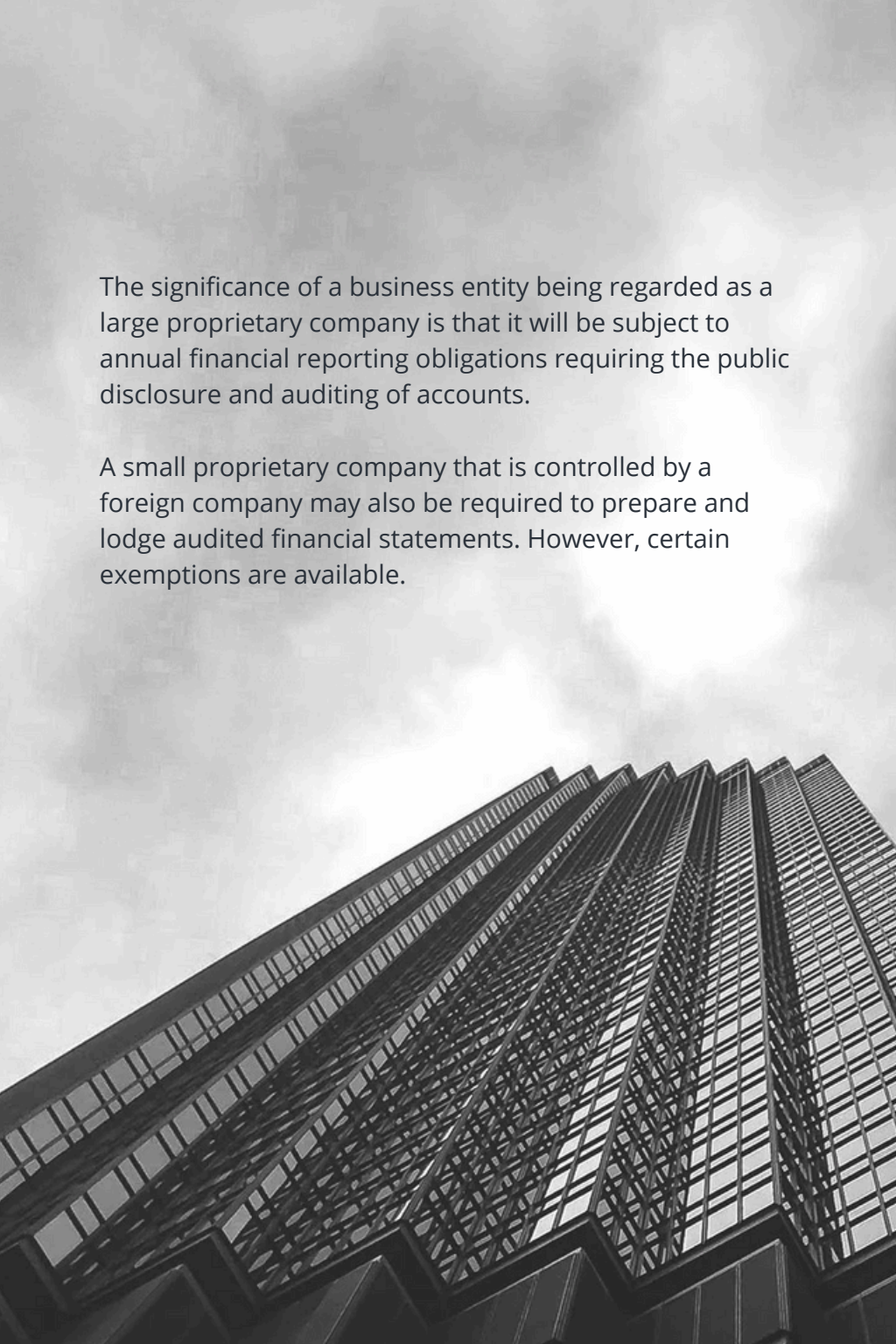
The main benefit of a proprietary company is that it provides limited liability for its members. This means that if a company is to wind up, members will only be exposed to any paid or unpaid amounts on their shares.

Proprietary companies can also either be classified as either a large or small proprietary company.

A proprietary company is considered to be a large proprietary company if it satisfies at least two of the three following criteria:

- The aggregated revenue for the financial year of the company and any entities it controls is AUD50 million, or more.
- The value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is AUD25 million, or more.
- The company and any entities it controls have a minimum of 100 employees at the end of the financial year.

If a proprietary company does not satisfy at least two of the three aforementioned criteria, it will be classified as a small proprietary company.



The significance of a business entity being regarded as a large proprietary company is that it will be subject to annual financial reporting obligations requiring the public disclosure and auditing of accounts.

A small proprietary company that is controlled by a foreign company may also be required to prepare and lodge audited financial statements. However, certain exemptions are available.

3.3 Public company

Public companies are often used for larger ventures requiring investment capital. There are no restrictions on the number of members/shareholders a public company may have.

Public companies are required to have at least three directors of which two must reside in Australia and a minimum of one company secretary is also required. The company secretary must ordinarily reside in Australia.

A public company is eligible to issue a prospectus for the offer of securities and are permitted to list on the Australian Securities Exchange (ASX).

As well as being able to undertake public fundraising activities, a public company has access to the equity crowd-funding regime that reduces a number of regulatory disclosure requirements.

Eligible public companies under this regime can raise up to AUD5 million per year in funds through equity crowdfunding, with retail investors able to invest up to AUD10,000 per issuing company per year.



3.4 Foreign company branch

A foreign company can trade in Australia by registering as a foreign corporation with ASIC. A foreign corporation is not required to operate within an Australian business structure, however the company must be compliant with Australian law. A registered office must also be located in Australia and a local agent must be appointed.

An Australian branch may be preferable to incorporating a subsidiary if one of the objectives is to consolidate the financial results of the company in the place of residence of the overseas company and to avoid some of the administrative burdens of managing another separate entity.

If a foreign company chooses to directly conduct business itself in Australia and not through a subsidiary, it must be registered as a foreign company under the Corporations Act.

The foreign company must lodge an application form with ASIC along with certified copies of the original certificate of incorporation in its place of origin and its constitution or equivalent constituent documents. In certain cases, other documentation may be required as well.

3.5 Representative office

In the case where a foreign company does not wish to carry on business in Australia it may seek to establish a representative office. Such an office may only engage in activities which do not constitute it carrying on a business (such as promotional activities).

The Corporations Act provides a list of activities that do not constitute carrying on a business. These include, as an example, maintaining a bank account or conducting isolated transactions.



If a foreign company is found to have a place of business in Australia it will be deemed to carry on a business in Australia. Furthermore, should a representative office wish to engage in any activities that constitute carrying on a business, an Australian branch will have to be registered.

3.6 Joint venture (JV)

A JV can be established as either an incorporated company or it may be unincorporated. Joint Ventures are designed to pool different skills or assets (or both) into a business from two or more parties (either individuals or entities) while allowing each party to retain its separate identity.

This type of business structure is suited towards undertaking a business or commercial activity for a finite period of time with the goal to share in the product or end result of the joint venture. A joint venturer is both a principal and agent to the other joint venturers and must act within the scope of the joint venture agreement.

There is no governing law or official register for joint ventures. Joint ventures are bound in contract, and the principles of general law will apply. Under a joint venture agreement, liability is shared amongst the joint venturers. Incorporated joint ventures using a public company as a business structure will also have the option to access funds from the general public.

Incorporated joint ventures, utilising a large proprietary company or a public company are required to disclose their financial statements.

3.7 Sole trader

An individual can register as a sole trader to conduct business in Australia.

There is no legal distinction between the business and the individual, the sole trader is personally liable for all debts and obligations related to the business.

A sole trader has few reporting requirements and is generally a low-cost structure. A separate business bank account is not required for sole traders.

However, this structure does not allow you to split any of the business' profits made with any family members and makes the individually personally liable to pay tax on all the income derived.

3.8 Partnership

A Partnership involves an association of two or more parties – up to 20 (either individuals or entities) carrying on business as a partnership.

Like a sole trader structure, partners are jointly and severally liable for the debts of the business. It is therefore important to consider who you enter into a partnership with, as all partners are equally liable for the actions of other partners.

A partnership arrangement is primarily based in contract. Thus, it is essential have a clearly drafted partnership agreement in place in order to establish the basis of the relationship between all parties involved in the partnership.



3.9 Trusts

A trust involves the trustee (usually either an individual or corporate entity) holding particular assets under their own name but for the benefit of a group of persons or beneficiaries. Generally speaking, the trustee is not entitled to use of the assets for their own benefit. However, there are exceptions especially in the case of unit trusts. Unlike a company, a trust itself is not treated as a separate legal entity and therefore must contract through its trustee acting in that capacity.

This form of business is usually set up for the ability to lower tax requirements as well as provide increased asset protection. A trust itself does not pay any income tax on profits so long as the profits of the trust have been fully distributed to the beneficiaries in the relevant financial year. There are various trust arrangements to choose from. Under a unit trust, investors' economic interests and control in the vehicle is represented by units. This type of trust is generally used for medium to large-scale investment properties. Another common trust arrangement is a discretionary trust, which allows the trustee to decide which beneficiaries will receive capital and income distributions. This includes the amount of the distribution.



| Corporate Tax

Direct Tax

4.1 Income Tax

For a company to be treated as a resident in Australia for income tax purposes it must be:

- Incorporated in Australia; or
- Carry on a business in Australia and either:
- Its central management and control is based in Australia; or
- Voting power is controlled by the shareholders who are residents of Australia.

A company that is a resident of Australia is subject to Australian income tax on their worldwide income. However, non-resident companies are only subject to tax on Australian source income. Companies in Australia pay a flat rate of tax of **30%** on their taxable income. However, small business companies, those with an aggregated turnover under **AUD50 million**, are subject to a reduced tax rate of **25%**.

4.2 Tax Losses

Generally, tax losses of an Australian resident company may be carried forward indefinitely and be offset against taxable income. However, a “continuity of ownership” test (more than 50% of voting, dividend and capital rights) or a “similar business” test must be satisfied in order for the tax losses to be utilised and carried forward to offset future assessable income. The similar business test allows improved access to tax losses for companies (and certain trusts) that have changed ownership.

Under the similar business test, companies have access to tax losses where their business, while not the same, uses similar assets and generates income from similar activities and operations. The similar business test generally applies to income years starting on or after 1 July 2015.

In addition, where no capital gains are available, capital losses can be carried forward indefinitely as well.

4.3 Business Capital gains tax

Australian resident companies will generally be liable to pay Capital Gains Tax (CGT) in the event of a disposal of an Australian asset at the corporate tax rate.

A CGT asset is defined widely as any kind of property or legal or equitable right. This includes land and buildings, shares, goodwill, options, foreign currency, etc.

Residents are subject to tax on all capital gains. Non-resident companies that hold investments in a capital account are generally exempt from Australian CGT where they dispose of Taxable Australian Property.

This broadly consists of:

- Australian real property; or
- Non-portfolio interests (10 per cent or more) in entities where the value of the interest is wholly or principally attributable to Australian real property.

The buyer is generally obliged to withhold 12.5 per cent of any sale proceeds from the disposal of Taxable Australian Property. The seller will need to file a tax return with the ATO in order to claim back any withheld amounts in excess of their final tax liability.

Capital gains are levied at prevailing income tax rates but discounts may apply for qualifying capital gains of individuals, trusts, complying superannuation funds, approved deposit funds, pooled superannuation trusts and life insurance companies. Any realised capital losses may only be deducted against capital gains. If a capital gain arises from transactions between companies in the same tax consolidated group, it will be disregarded for income tax purposes.

Where an Australian company realises a capital gain on the disposal of shares in a subsidiary company, the assessable gain may be reduced to the degree that it is attributable to active business assets of the subsidiary. In order to qualify for this reduction, the parent must have held an interest of 10 percent or more in the subsidiary for a period of 12 consecutive 12 months out of the 24 months preceding the CGT event.

4.4 Interest Income

Interest income is considered ordinary assessable income. Interest income from carrying on a banking business is generally treated as active income.

4.5 Group Taxation

Australia has a system of consolidated income taxation (tax consolidation) for wholly owned (100 per cent owned) Australian group companies, partnerships and trusts.

Australian subsidiaries that are 100 per cent owned by a foreign company and that are without a common Australian head company between the non-resident parent company and the Australian resident subsidiaries may also apply for a tax consolidation regime.

Groups that choose to consolidate are required to include all 100 per cent owned entities. The identity of the head company is important for various reasons. Under the single entity theory, the entities in the corporate group are considered as divisions of the head company.

The identity of the head company will therefore determine the tax treatment of the group as a whole.

Consolidated groups must file a single tax return and calculate their taxable income or loss. Information related to Intra-group transactions is not required.

Forming or joining a tax consolidated group also allows the resetting of the tax cost base of certain assets.

In order for an entity to be a member of a consolidated group, a single resident head company and resident wholly-owned subsidiaries are required.

The multiple entry consolidated ('MEC') group rules extend the ability to consolidate beyond groups that have one resident Australian holding company and allow foreign wholly-owned Australian companies to group for income tax purposes.

Example

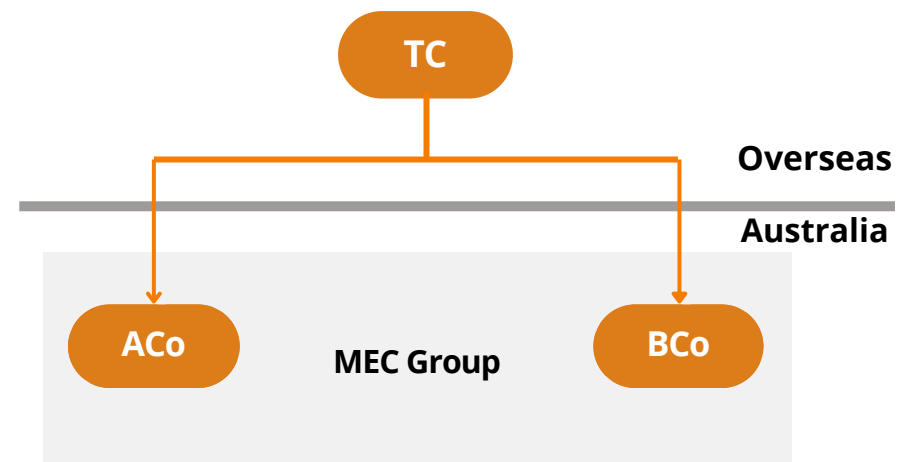
Forming a MEC group

Structure of a MEC group

The top company, 'TC', is the ultimate foreign parent company. Company A (ACo) and Company B (BCo) are the Australian-resident companies that constitute the TC's first tier of investment into Australia and are referred to as 'tier-1' companies. If a tier-1 company satisfies all requirements to be a member of an MEC group, it is an 'eligible tier-1 company'.

Either ACo and BCo can be the head company of the consolidated group as neither has any membership interests owned by another member of the MEC group.

Note that tier-1 companies do not require wholly-owned subsidiaries to form a MEC group. However, there must be a minimum of two eligible tier-1 companies in order to form an MEC group.



4.6 Dividends paid by an Australian company

In Australia, dividends which have been subject to Australian corporate tax are deemed as fully franked dividends. Where an Australian subsidiary has paid fully franked dividends to a foreign parent company, no withholding tax is payable.

In the case where dividends are unfranked, a dividend withholding tax of 30 per cent (or as reduced under the relevant double tax treaty) is payable on the unfranked amount. This rate may however, be reduced under the provisions of a tax treaty.

Australia also does not have a double taxation of dividends through the imputation system. Companies that attach 'franking credits' (representing corporate income tax paid) will pay zero additional tax in respect of the dividend income.

Dividends received by an Australian resident company from non-resident companies are treated as non-assessable, non-exempt income if the non-resident company holds a minimum participation interest of 10 percent.

4.7 Debt funding of an Australian company

Where an Australian company pays interest to a foreign non-resident lending entity a withholding tax of 10 per cent is imposed unless an exemption applies. However, if the beneficial owner of the non-resident lender has a permanent establishment in Australia and the interest is connected with the permanent establishment, it will be exempt from paying interest withholding tax.

Under debt and equity classification rules there are conditions where interest payable can be treated as a dividend. If interest is paid on instruments classified as equity interests, it will not be deductible for the entity paying the return, but may be frankable. Dividends paid on interests that are classified as debt interests may be deductible to the entity making the payment, but are not frankable.

Thin capitalisation rules apply to the total debt of the Australian operations of multinational groups (including branches of those groups). The rules aim to prevent excessive gearing of an Australian entity. Interest deductions cannot be made to the extent that borrowing exceeds the safe-harbour ratio. The safe harbour threshold is approximately 60 per cent of the entity's Australian net assets, and applies to the Australian group on an associate-inclusive basis.

Where borrowing exceeds the safe-harbour ratio, multinational groups are not affected by the rules if they can satisfy the arm's length debt test or the worldwide gearing test described below.

- The arm's length debt test permits the taxpayer to determine the maximum level of debt that an arm's length lender would loan to the Australian group on a stand-alone basis. Supporting documentation is required as evidence of the arm's length analysis.
- The worldwide gearing test permits taxpayers to gear to a similar gearing level to the global gearing level, including the instance of this surpassing the safe harbour threshold.

4.8 Taxation of Financial Arrangements (TOFA)

Special rules apply for the taxation of financial arrangements (TOFA). Six tax-timing methods for determining gains and losses are applied in respect of financial arrangements. The default methods are the accruals method and realisation method.

The accruals method, in general terms will apply to spread an overall gain or loss over the life of the financial arrangement where there is a reasonable level of certainty that the expected gain or loss will actually occur. If a gain or loss is not sufficiently certain, it is dealt with under the realisation method.

4.9 Transfer Pricing

Australian transfer pricing rules adopt the arm's length concept. In essence, the arm's length concept states that the value of the transactions between associated enterprises should not be distorted by a special relationship existing between parties.

In the case that a taxpayer has cross border related party dealings totalling more than AUD2 million, the details of the nature and the total amount of the dealings must be disclosed to the ATO in the International Dealings Schedule (IDS) of the tax return.

In Addition to this, Australia has enacted legislation to adopt Country-by-Country (CBC) reporting requirements for years beginning on or after 1 January 2016.

This requires taxpayers classified as "significant global entities" (i.e. part of a consolidated group with annual global income of AUD 1 billion or more) to prepare the following within 12 months of the end of the given financial year:

- **CbC report** – includes financial, tax, and headcount information for each country the group operates in. If the group is filing the CBC report in a country where there is already in place a CbC automatic exchange agreement between the overseas country and Australia, it will only need to provide the ATO with these offshore filing details (via the Local File), rather than lodging the CbC Report with the ATO;
- **Master File** – includes an overview of the multinational's global business, its organisational structure and its transfer pricing policies. A copy of the Master File must be lodged with the ATO as an attachment to the Local File; and
- **Local File** - includes detailed information of the Australian taxpayer's intercompany transactions. The required format and content of the Australian Local File involves an electronic filing of the information in XML format using the specific software and lodgement platform approved by the ATO.

The CbC reporting requirements apply in addition to the existing transfer pricing documentation requirements.

Transfer pricing documentation is not mandatory; however, it is a requirement to prepare transfer pricing documentation which addresses the Australian rules prior to filing the income tax return to be eligible to establish a 'reasonably arguable position' (RAP) in respect of a transfer pricing issue.

Indirect tax

4.10 Stamp duty

Stamp duty is a state based tax levied on transactions that typically involve the direct or indirect transfer of the following items:

- Land;
- Certain types of personal property, goodwill and intellectual property;
- Shares in companies and units in unit trusts;
- insurance policies; and
- Motor vehicles.

Some of these transactions however, may be exempt from stamp duty depending on which state or territory the transfer took place in. The stamp duty rate applied may also vary depending on which state the transfer took place in.

The highest effective rate of duty is 5.95%, as at the date of this current guide.

In addition to this, a surcharge rate for foreign buyers of residential property applies in most states. These surcharge rates added on top of the usual duty rate and can be as high as 8 per cent.

The definition of residential property is quite broad and can include development sites and forms of “commercial residential property” such as retirement villages and student accommodation, although much depends on the state and particular facts of the project.

4.11 Land Tax

Land tax is a state and territory based government tax that charges tax on the owner's of land that is not a principal place of residence or is used for primary production.

The rate of land tax varies across Australia and the rate payable generally increases according to the value of the property.

The amount of land tax payable is calculated according to the aggregate land values of all taxable lands owned by a taxpayer in a particular year over relevant thresholds.

Foreigner owners of land in the state of New South Wales and Victoria must also pay a surcharge. However, the surcharge only applies to residential property owned in New south Wales. Whereas the surcharge applies to all types of property in Victoria at a rate of 1.5 per cent. In Queensland a 1.5 per cent surcharge applies to individuals only.

4.12 Payroll tax

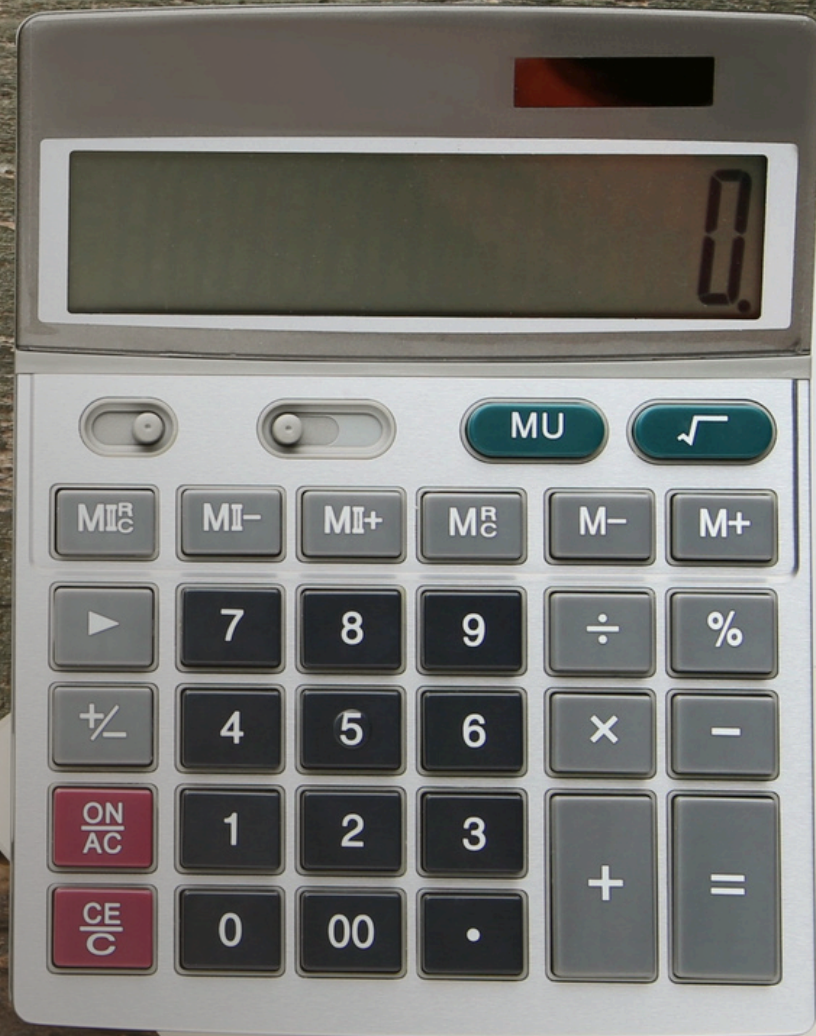
Payroll tax is a state based tax levied on employers on wages paid or payable to employees, when the total wage bill of an employer (or group of employers) exceeds the tax-free threshold respective of each state's agreed amount. These thresholds range from AUD600,000 to AUD2 million.

The rules regarding exactly what income is liable to payroll tax are mostly similar between states, however, the rates of payroll tax vary in each state. Payroll tax is levied as a flat rate between 4.75 per cent and 6.85 per cent.

Payroll tax applies regardless of whether an employee is paid from a foreign or local payroll. In some states such as New South Wales and Tasmania, concessions in the form of payroll tax rebates are available to employers who increases their overall employee headcount in that state. The current rebates can be as high as AUD5,000 for each new employee.



| Goods & Services Tax



GST

5. Goods and Services Tax

Goods and Services TAX (GST) is a broad-based tax on the supply of goods and services in Australia. GST is based on the value added tax (VAT) model adopted in most countries throughout the world. In Australia, GST is levied at a standard rate of 10 per cent of the taxable value of most goods, services, rights and property in Australia (including imports). Generally GST is not charged for exports of goods and services consumed outside of Australia.

An entity that is registered for GST will generally be able to claim an input tax credit (a GST refund) for any purchases that include GST.

The one exception to this rule is where the business's purchases relate to the production of the input taxed supplies. However, there are several concessions available that allow reduction of the impact of this rule. Generally, a time limit of four years is available for business that make input tax credit claims.

5.1 Who is required to register for GST?

An entity is required to register for GST if it is carrying on an enterprise and its turnover for GST purposes is above the registration turnover threshold. The current threshold is AUD75,000 (AUD 150,000 for non-profit bodies). Entities below the threshold can still register for GST voluntarily if they are carrying on an enterprise anywhere in the world. Non-resident entities may consider registering for GST for the purpose of claiming GST refunds on business inputs acquired in or imported into Australia.

Entities registered for GST, are required to complete a Business Activity Statement (BAS) form and submit it to the ATO at the end of each tax period. Entities with an annual turnover below 20 million must submit the BAS on a quarterly basis, unless they elect to have monthly tax periods. Entities with an annual turnover above AUD 20 million are obliged to have monthly tax periods and file its monthly BAS electronically. Small business voluntarily registered for GST are only required to report and pay GST on an annual basis.

5.2 Different types of Supply for GST purposes

Some supplies will be “GST-free”. Where supplies are GST-free, the supplier is not liable to remit GST on the supply. However, no restrictions apply for the business to claim input tax credits for GST paid on costs relating to producing the GST-free supply.

Below is a list of supplies treated GST-free (subject to certain conditions):

- Export of goods;
- International air and sea travel;
- Domestic air travel if part of an international trip;
- Most health, education and child care services;
- Most food; and
- Water, sewerage and drainage

Other GST-free supplies include, but are not limited to:

- The sale of an existing business (referred to under legislation as “the supply of a going concern”);
- The initial supply of precious metals;
- Supplies through inwards duty-free shops;
- Grants of freehold and similar interests by the government;
- Certain cross-border supplies with an ultimate recipient in Australia who is registered for GST;
- Certain supplies of services for consumption outside of Australia; and
- Certain supplies of farm land.

Some supplies are “input taxed”. This means the supplier does not pay GST on the supply, but is generally cannot claim input tax credits on anything acquired to produce the supply.

The following are examples of input-taxed supplies:

- Certain types of financial services;
- Residential rents and the supply of residential premises other than the sale of a new residential premises (which is treated as taxable); and
- The subsequent supply of precious metals after the initial supply of the precious metal.

Supplies that are not for consideration, not made through an enterprise or not connected with Australia are generally GST free.

These include:

- The receipt of dividends;
- Supplies between members of a GST group or between non GST registered entities; and
- Gifts or donations.

5.3 GST on Real property

The sale of a freehold or other interest in land by a GST registered entity is required to pay GST under the general rules. The parties have the option to apply the margin scheme provisions to calculate a reduced amount of GST on the supply, so long as the supply is eligible and the supplier and recipient agree in writing that the margin scheme is to apply.

Under the general GST rules, GST is calculated on the full selling price of the property. Where the margin scheme is applied, the amount of GST payable is **one-eleventh of the margin** of the sale of the property. The margin is generally calculated as the **difference** between the **sale** price and the amount paid to **purchase** the property.

Under a margin scheme transaction, the buyer cannot claim any input tax credits for the GST paid on the margin.

The margin scheme will be of particular relevance in cases where the purchaser would not have been entitled to claiming any input tax credits.

For example where:

- A developer sells new residential units;
- A project builder sells house and land packages; or
- Land is sold to an unregistered purchaser.

Developers may consider applying the margin scheme in the event of sales to purchasers who are unable to claim input tax credits.



| Personal Taxation

Personal income tax is payable by individuals on an annual basis (For Australia, the tax year generally ends 30 June for individuals).

Residents who are not temporary residents are subject to tax on their worldwide income as well as taxable capital gains (although a foreign tax credit is available within limits).

6.1 Income tax for Australian residents

The following table sets out the individual tax rates for individuals of Australian resident status for the 2023-2024 Financial Year:

Taxable Income	Tax on this income
0 – AUD18,200	Nil
AUD18,201 – AUD45,000	19 cents for each \$1 over \$18,200
AUD45,001 – AUD120,000	\$5,092 plus 32.5 cents for each \$1 over \$45,000
AUD120,001 – AUD180,000	\$29,467 plus 37 cents for each \$1 over \$120,000
AUD180,001 and over	\$51,667 plus 45 cents for each \$1 over \$180,000

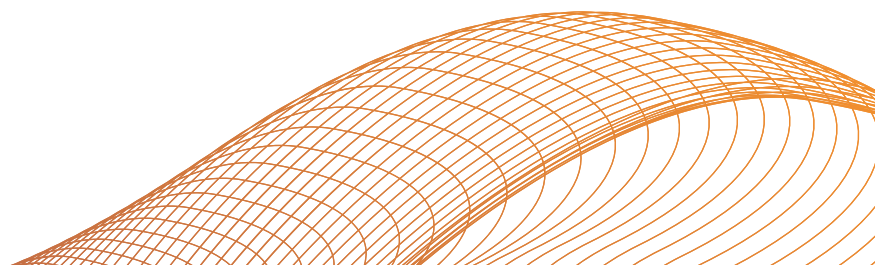


6.2 Tax implications for temporary residents

An individual is a temporary resident if they hold a temporary resident visa, and do not have a spouse (either married or de facto) who is an Australian citizen or Australian permanent resident.

Temporary residents are not subject to the accruals taxation system for the transfer of property or services to foreign trusts, or where they hold a substantial interest in controlled offshore companies.

Inbound expatriates who are temporary residents are not required to pay tax on any foreign sourced income and are subject to capital gains tax on a narrower range of assets.





6.3 Superannuation

Under Australian legislation, each employer is required to make a compulsory contribution into an Australia approved retirement fund (a complying Australian superannuation fund) on behalf of each employee. The current rate is set at 11 per cent of salary up to a specified salary cap per quarter for the year ended 30 June 2023.

However, certain exemptions apply for inbound expatriates, including where they have transferred from a country with which Australia is a party to a social security agreement. Senior executives holding temporary resident visas may also be exempt. In addition, temporary residents who have made superannuation contributions can withdraw superannuation benefits upon permanent departure from Australia, while being subject to a final “departing Australia superannuation payment” tax of 35 per cent.

6.4. Fringe benefit Tax

Fringe benefit tax (FBT) is a tax on non-cash benefits provided by an employer to an employee or associate of an employee, previous employee or future employee.

Common items generally affected by FBT include:

- motor vehicles;
- allowances paid to employees;
- accommodation costs;
- low or no interest loans;
- payment or reimbursement of private expenses; such as medical insurance.

FBT is levied on the employer and is payable based on the benefit paid by the Australian company and an overseas company where the employee is working in Australia.

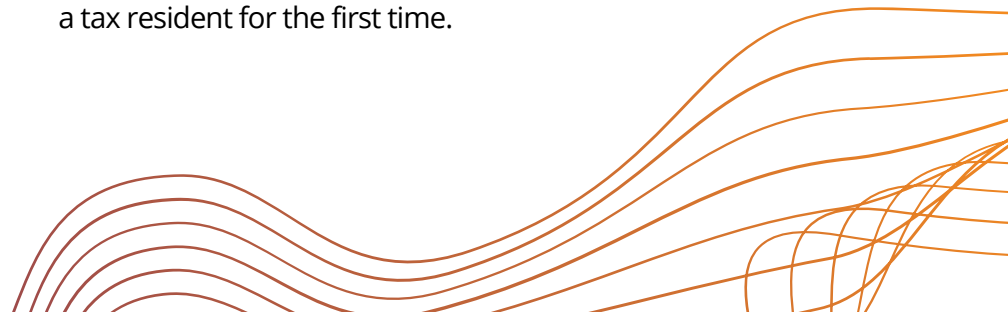


6.5 Net capital gains

Any realised capital gains derived from the disposal of an asset acquired after September 1985 is generally included in assessable income. If the asset has been held for a period of more than 12 months (subject to certain exemptions) only 50 per cent of the net capital gain is assessable.

The 50 per cent discount however, is generally not available for foreign residents and temporary residents in respect of capital gains which accrue after 8 May 2012.

On the other hand, foreign residents and temporary residents are subject to capital gains tax on a narrower range of assets. Special rules also apply for the valuation of assets for capital gains tax purposes, where an individual becomes a tax resident for the first time.





| Tax
Incentives

7.1 R&D Tax Incentive

Australia offers a very generous tax rebate under the Research and Development (R&D) tax incentive program, which is designed to encourage investment in R&D related activities.

The definition of qualifying R&D activities consists of experimental activities carried out to generate new knowledge without the outcome of those activities being known in advance.

The tax benefits from the program is made up of the following two core components:

- 43.5 per cent refundable tax offset for companies with an aggregated turnover of less than AUD20 million per year. Companies that are in a tax loss position may also 'cash out' the R&D tax offset against the tax losses.
- 38.5 per cent non-refundable tax credit for companies with an aggregated turnover of AUD 20 million or more per year. (Companies can also carry forward unused offset amounts to future income years).

The maximum expenditure eligible for the R&D tax incentive is AUD 100 million (until 30 June 2024).

Eligible companies must register their R&D activities with the Department of Innovation and Science (**AusIndustry**) each year within 10 months of the company's year-end to access the program.

To be eligible to claim the R&D Tax Incentive, companies must be incorporated in Australia and meet certain eligibility criteria. For example, the activities must be undertaken on behalf of the registered claimant company and the claimant company should:

- have R&D activities in a year of income that meets the technical eligibility threshold tests;
- bear the financial risk of the R&D activities;
- have effective control of the conduct and direction of the R&D;
- be entitled to effective ownership of the results of the R&D; and
- the R&D results must be exploited on normal commercial terms and to the benefit of the Australian economy.



Companies can also claim activities that are undertaken outside of Australia if 50 per cent of the costs are incurred in Australia and if certain eligibility criteria are met. Seeking professional advice to access the program is recommended as there are many threshold eligibility requirements to consider.

7.2 Depreciating assets

Taxpayers can claim deductions for any decline in the value of assets such as buildings, motor vehicles, furniture and machinery and equipment.

Businesses with a turnover of AUD 10 million or less from 1 July 2016 onwards, or with a turnover of AUD 2 million for previous income years may use simplified depreciation rules under which:

- An immediate deduction may be claimed for a depreciating asset which costs below AUD 20,000 that were acquired and installed ready for use on 12 May 2015 till 30 June 2019;
- Other depreciating assets are pooled into a general small business asset pool with a 15 per cent deduction claimed in the first year, and a diminishing value rate of 30 per cent on the opening pool balance claimed each year after that; and
- If the balance of the pool at the end of the year is below AUD 20,000, the balance is deductible in that income year.

Other business entities must use either the “straight line” or “diminishing value method” to depreciate a depreciating asset over its useful life. Under the straight line method the value of a depreciating asset decreases uniformly over its effective life, while the diminishing value method assumes that the value of a depreciating asset decreases more in the early years of its effective life.

7.3 Early Stage Venture Capital Limited Partnership (ESVCLP)

The Early Stage Venture Capital Limited Partnership program aims to stimulate Australia’s early stage capital venture sector by allowing generous tax concessions for funds approved under the relevant registration and investment criteria.

An ESVCLP is a venture capital fund that is legally structured as a limited partnership and registered with Innovation and Science Australia (ISA) in accordance with Venture Capital Act 2002 (Cth) Act. An ESVCLP is a tax flow-through vehicle, meaning that it will not be subject to tax at the partnership level.

Other benefits of an ESVCLP include the following:

- Income and Capital gains earned as a result of investment in an ESVCLP are exempt from tax in Australia in the hands of the partners;
- Limited partners receive a non-refundable carry forward tax offset of up to 10 per cent of their eligible contributions;
- General partners of an ESVCLP operating as a Venture Capital Management Partnership (VCMP) can claim their carried interest on capital account rather than revenue account. A VCMP is a limited partnership that is a general partner of an ESVCLP and only carries on activities related to being a general partner of that ESVCLP. No registration requirements exist for a VCMP; and
- ESVCLPs are not required to divest an eligible venture capital investment if it exceeds \$250 million, though capital gains tax implications still arise.

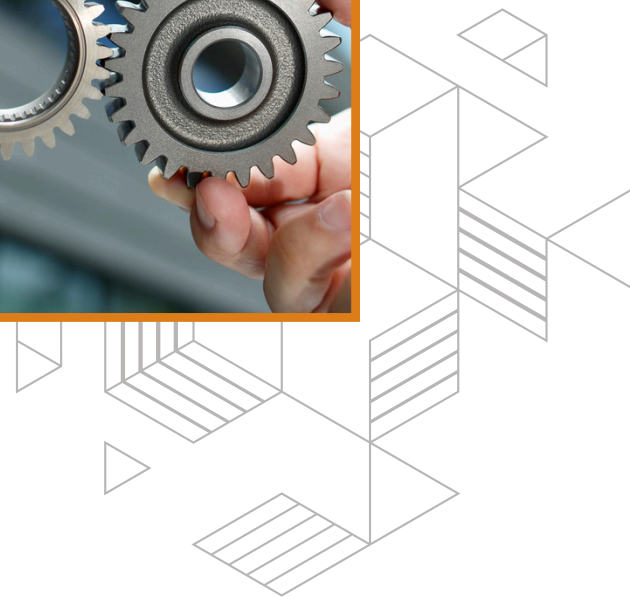
ESVCLPs must provide an investment plan and partnership deed approved by ISA prior to undertaking any investment related activities.

Other legislative requirements also apply to ESVCLPs which restrict both the financial structure of ESVCLP along with the nature of the investee entities.

These include the following:

- An ESVCLP must not invest in entities whose total assets are valued above AUD 50 million;
- The investee must not be listed on the stock exchange;
- The Investee must be an Australia business in its early stage of development;
- The investee's predominant activities must be eligible activities. Non-eligible activities include:
 - property development;
 - land ownership;
 - banking;
 - providing capital to others;
 - leasing;
 - factoring;
 - securitisation;
 - insurance;
 - construction, or acquisition of infrastructure or related facilities; and
 - making investments directed at deriving income in the nature of interest, rents, dividends, royalties or lease payments.
- The value of the total assets of the ESVCLP fund must be at least AUD 10 million and no greater than AUD 200 million; and
- Each partner's interest in the ESVCLP must not exceed 30 per cent of the total capital committed.

An ESVCLP must also lodge quarterly and annual reports with ISA.



7.4 Early Stage Innovation Company (ESIC)

The Early Stage Innovation Company (ESIC) program, as part of the National Science and Innovation Agenda (NISA), provides concessional tax treatments for investments related to qualifying early stage innovation companies (ESICs), such as start-ups, with high growth potential. Whether a company qualifies as an ESIC will be tested at the moment immediately after new shares are issued to an investor. The test also requires the ESIC to meet certain registration timing requirements, meet certain income and expense thresholds, fulfill certain innovation requirements and not have any equity interests listed on any stock exchange.

The investors of an ESIC will be eligible for the following:

- A 20% non-refundable carry-forward tax offset on the amounts paid for newly issued equity interests (shares) in the ESIC, with the offset capped at \$200,000 per investor per year (on an affiliate-inclusive basis); and
- Concessional capital gains tax (CGT) treatment for all interests in an Australian ESIC (including those exceeding AUD 200,000), if the investor qualified for the 20% non-refundable carry-forward tax offset. Any shares held for a minimum period of 12 months but less than 10 years are treated as tax exempt from any arising capital gains.

7.5 Offshore banking units

Under the Offshore banking unit (OBU) scheme, taxable income derived from pure offshore banking transactions by an authorised offshore banking unit in Australia are taxed at a concessional rate of 10% (as opposed to the corporate tax rate of 30%).

In addition, eligible offshore depositors are tax exempt from Australian interest withholding tax.

| Financial System



8.1 General

The Australian financial system primarily operates through financial intermediaries and financial markets. The main financial intermediaries include the banks, non-deposit taking institutions and financial institutions that provide funds management services such as superannuation and life insurance.

The financial markets are made up of exchanges and over the counter markets which allows participants to trade financial assets directly with each other.

In the private sector, there are four major local banks that operate nationally and provide a comprehensive range of services to customers, along with a number of smaller banks and deposit-taking institutions. The Australian government has in place a 'four pillars' policy which does not allow for any merger to occur between the four major banks. While this policy is not formally regulated it reflects the broad political unpopularity of bank mergers.

There are also several foreign-owned banks operating within the Australian market. Most foreign-owned banks are active in providing services by leveraging their overseas parent bank's client base, while providing various financial products and services to domestic clients based in Australia.

8.2 Regulation of financial markets

The Australian financial sector is regulated by the Australia Prudential Regulation Authority (APRA), the Reserve Bank of Australia (Reserve Bank) and the Australian Securities and Investments Commission (ASIC).

APRA is responsible for the prudential regulation of all banks, insurance companies, superannuation funds, credit unions, and friendly and building societies. It is also responsible for the collection of statistical data related to registered financial corporations, APRA-regulated entities and subsidiaries of authorised deposit-taking institutions (ADIs).

The Reserve Bank is Australia's central bank and banknote issuing authority which is responsible for the overall stability of Australia's financial system, through the regulation of the payments system as well as for setting monetary policy.

ASIC is an independent commission of the Australian government tasked as the corporate regulator of financial services, consumer protection and market integrity functions in respect of banks, finance companies, merchant banks, building societies, credit unions, friendly societies, superannuation interests, retirement savings accounts and general and life insurance products.

8.3 Foreign banks operating in Australia

Should an overseas bank wish to enter the Australian market it will require approval from APRA and ASIC. Once granted approval it may operate in Australia through the following structures:

- A locally incorporated subsidiary;
- A branch;
- A representative office; or
- Hold dual authority to operate both as a locally incorporated subsidiary and as a branch.

If the overseas bank is taking deposits as well as making advances it is deemed as being involved in “banking business”. To carry on banking business in Australia, foreign banks must obtain a banking authority issued by APRA. It should also be noted that only bodies corporate are permitted to carry on banking business in Australia.

Once a banking authority is granted by APRA it may later be varied, revoked, or added to at any time by APRA by notice in writing. Entities with a banking authority are given the right to operate under the term “authorised deposit-taking institution” (ADI). A business wishing to operate under the words “bank”, “banker”, or “banking” will however, require additional consent from APRA.

Should an enterprise also intend to provide financial services it may also require an Australian Financial Services Licence (AFSL) from ASIC. Generally,

An enterprise will be providing a financial service if they:

- Provide financial product advice;
- Deal in a financial product (e.g. acquire or apply for a financial product, issue or dispose of a financial product, or assist to do so;
- Create a market for a financial product;
- Operate a registered managed investment scheme; or
- Provide a custodial or depository service.

In addition, enterprises involved in credit activity with consumers (including businesses that supply goods on credit) may need an Australian Credit Licence (ACL) from ASIC. They must also be compliant with rules set out in the National Consumer Credit Protection Act and the National Credit code, including responsible lending requirements.



8.4 Regulation of related activities

Financial transactions reports

The Financial Transaction Reports Act 1988 (FTR Act) imposes certain obligations on entities known as 'cash dealers'. Under the FTR Act, all "cash dealers" must hold certain account information and signatory information in relation to each account held by them before they may allow any withdrawals from the account. They are also required to provide the following information to the Australian Transaction Reports and Analysis Centre (AUSTRAC):

- Significant cash transaction: transactions of AUD 10,000 or more or the equivalent of this amount in foreign currency; and
- Suspect transactions, which is any transaction that the cash dealer has reasonable grounds to suspect may involve criminal activity, including tax evasion.

The definition of a "Cash dealer" includes:

- ADIs (includes banks, building societies and credit unions), which are referred to as "financial institutions";
- Australian financial services licensees dealing in securities and/or derivatives;
- trustees or managers of a unit trust;
- persons carrying on a business of issuing, selling or redeeming traveller cheques, money orders or similar instruments;
- currency and bullion sellers;
- persons carrying on the business of collecting and holding currency on behalf of others, exchanging currency and remitting or transferring currency into or out of Australia.

- motor vehicle dealers acting as an insurer or insurance intermediary;
- bookmakers;
- persons carrying on a business related to gambling houses or casinos; and
- Lawyers, accountants and others that take monies on trust.

Avoidance of reporting requirements or provide false or incomplete information carries penalties in accordance with The Financial Transactions Reports Act.

8.5 Exchange controls

Exchange controls have been effectively removed in Australia for most transactions. This means both Australian currency and foreign currency may be freely sent out of Australia and brought in, subject to certain criteria. However, there is a requirement to report exports and imports of Australian and foreign cash amounts at or exceeding AUD 10,000 to the Australian Transactions Reports and Analysis Centre (AUSTRAC).

Austrac is an Australian government agency tasked with enforcing compliance with the Financial Transactions Reports Act 1988 (FTR ACT) and the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act).

Austrac does not have the power to restrict any financial transactions to or from Australia; instead, its role is limited to collecting data and forwarding it to various government bodies and security, social justice and revenue agencies.

8.6 Borrowing from an Australian bank

In Australia, loans can either be secured or unsecured. However, unsecured loans are mostly reserved for the highest of institutional credits which may result in pricing that is higher than a lender would offer for a secured loan. Unsecured loans may be accessible on the basis of a negative pledge from the borrower and possibly other members of the borrower group. Secured lenders are given priority of payment should the borrower become insolvent.

The majority of commercial borrowing in Australia involves banks using letters of offer prepared on bank standard paper, primarily produced by the lender itself though in some cases by the lender's external lawyers. Loans are made regularly available on both floating and fixed rates (the floating rate is more common). Facilities in Australia are often documented as bill facilities or cash advances.

Pricing is determined by the individual bank's lending rates or on screen rates. The most common screen rate in Australia is Thompson Reuters' Bank Bill Swap Bid Rate (BBSY).

When borrowing in Australia, security is likely to include one or more of the following:

- Guarantees;
- General security mortgages; and
- Real estate mortgages.

8.7 Equity fundraising

The issue of financial products in Australia is regulated by the *Corporations Act 2001* (Cth). A financial product is defined as a "facility" through which a person does any of the following:

- Makes a financial investment – an investor transfers funds to another party and that party uses it to generate a financial return or other benefit for the investor;
- Manages a financial risk – Avoids or restricts the financial consequences of particular circumstances happening; or
- Makes a non-cash payment.

Financial products include shares, bonds, life insurance, options, debentures, interests in managed investment schemes, and other types of security.

Generally, for a company to be permitted to issue a financial product in Australia to prospective investors, a disclosure document (such as a prospectus or information memorandum) must be provided. The purpose of a disclosure document is to assist investors to make an informed assessment of matters related to the company. A disclosure document generally is not required for offers to sell existing financial products.

8.8 Listing on the Australian Securities Exchange (ASX)

The Australian Securities Exchange (ASX) is Australia's national stock exchange. It is administered and supervised by ASX limited, which is a public company that is also listed on ASX. ASIC is responsible for the supervision of real-time trading on ASX and has regulatory oversight of ASX limited. The ASX is the 16th largest exchange in the world by market capitalisation and the 8th largest in the Asia region.

For an entity to list on ASX it must comply with the ASX Listing Rules. The ASX listing rules govern the following:

- Listing;
- Quotation;
- Reporting;
- Disclosure;
- Administration;
- General supervisory matters;
- Trading and settlement;
- Market Information; and
- Various requirements of a listed entity's conduct.

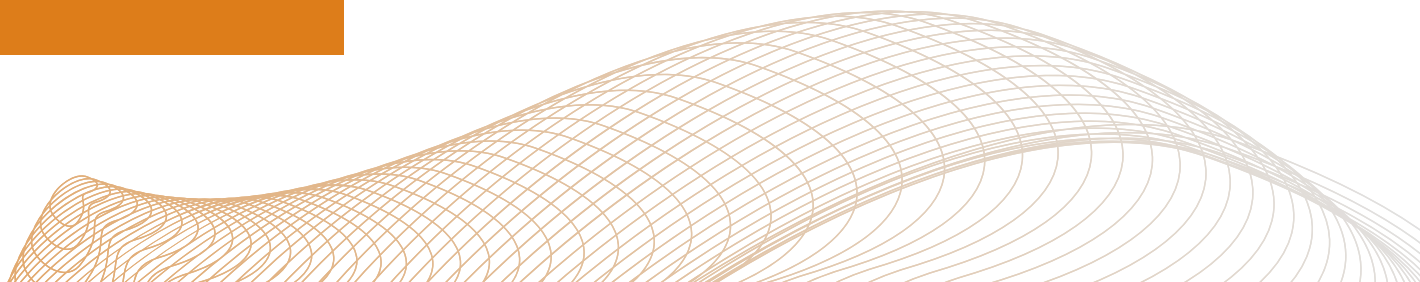
A foreign company may list its securities on ASX in two ways:

1. As an ASX Foreign Exempt Listing; or
2. Through General Admission.

A foreign entity already listed on an overseas exchange may be admitted as an ASX Foreign Exempt Listing if the entity's net tangible assets are at least AUD2 billion at the time of admission or the entity's operating profit is at least AUD200 million for each of the previous 3 financial years, among other requirements.

The benefit of an entity being listed on the ASX under the Foreign Exempt Category is that it will not be subject to most of the Listing Rules.

This includes exemptions from continuous disclosure obligations and timetables for various corporate actions (such as dividend payments, rights, issues, reconstruction, etc.)





| Intellectual
Property

Australia has a legislative framework that protects creative works and inventions. Intellectual property (IP) laws in Australia encourage innovation and allow businesses to develop unique IP so that they can retain a competitive advantage. Intellectual Property in Australia includes patents, trademarks, copyrights and design.

The main purpose of IP laws in Australia are to assist entities that design or invent creative works generating income. A brief description of the major features of the laws related to Intellectual Property is set out below.

9.1 Trademark protection

A distinctive sign used or intended to be used in relation to particular goods and/or services can be protected in Australia under the Trade Marks Act 1995 (Cth). “Signs” are broadly defined under the Act as words, numbers, logos, names, colours, shapes, sounds and scents, as well as sensory marks, holograms, moving images and gestures. Registered trademarks can also be assigned and licensed and are renewable for a further 10 years upon payment of renewal fees. Trademarks are issued and protected nationally throughout Australia.

Registration of trademarks is not mandatory. However, the value they bring to businesses is significant.

In short, the benefits provided including the following:

- The exclusive right to use the registered trademark as a brand name for the goods and/or services specified in the registration;
- A stronger position for the owner to take legal action in the case of trademark infringement by a third party;
- As kept on public record, the trademark registration acts as a deterrent to others who may consider adopting an identical or similar mark.
- Trademarks are considered to be a readily identifiable intellectual property right that can be sold or used as security;

Registration of a trademark in Australia typically takes a period of between 8 to 10 months where no objections or oppositions are encountered. They can also be removed for non-use by a third party in the case where the registered trademark has been registered for a period of at least five years but not used during the last three years of the term, either by the owner or an authorised user.



9.2 Copyright protection

The Copyright Act 1968 (Cth) is the primary act that covers rules pertaining to copyright in Australia and is designed to protect copyright in literary, dramatic, musical and artistic works and subject matter other than works, such as cinematographic films and sound records. Copyright is normally granted in respect of original literary, musical and creative works and does not require registration. A Copyright license usually lasts for the life of the user plus an additional 70 years.

Australia is also a signatory to many international treaties dealing with copyright, including the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), the BERNE Convention, the Rome Convention and the Universal Copyright Convention and, as a result, works and other copyright subject matter created by the citizens of member countries or first published in any relevant member country are entitled to the same protection in Australia as if the original work had first been created and published in Australia.

Australian Copyright law also recognises the Electronic Rights Management (ERM) and technological protection measures which prevent digital piracy of literary works.

9.3 Design protection

Under Australian Intellectual Property Law a design is defined as: “the features of shape, configuration, configuration, pattern or ornamentation which give a product a unique appearance, and must be new and distinctive”.

Business owners have the option of filing a single design in relation to multiple products, or they may register multiple designs in relation to various products. Registration initially protects a design for five years commencing from the date the application was filed. Design registration can be renewed for a further five years.

9.4 Patent protection

Patent protection is regulated under the *Patents Act 1990* (Cth) which grants patent owners the exclusive legal right to designed to prevent third parties from manufacturing, using and/or selling an invention in Australia.

Intellectual Property Australia defines a patent as: “a right granted for any device, substance, method or process that is new, inventive and useful”.

According to Austrade, “an Australian patent provides a legal right to stop third parties from manufacturing, using and/or selling an invention in Australia”.

Once a Patent is registered, a license may be granted for someone else to manufacture the invention on agreed terms. Australian Patents are administered by the Patent Office of IP Australia. Standard patents are granted for a period of 20 years.

For an invention to be considered patentable it must satisfy the following conditions:

- It must be a “manner of manufacture”, (In other words, an artificially created state of affairs of economic significance);
- Be novel;
- Involve an “inventive step” (not be obvious in relation to a prior art base that existed before the priority date of the patent); and
- Be useful.

Inventions may also be protected at common law as confidential information. As long as the information related to the invention continues to be maintained as confidential, it can be protected indefinitely.

Australia is a party to the Patent Cooperation Treaty, which provides for the filing of international applications. The Australian Patent Office acts as an International Searching Authority (ISA), and an International Preliminary Examining Authority (IPEA) for international applications originally made in Australia.





9.5 Registering a domain name

A Domain name is considered in Australia as “a unique internet site address that allows others to access your website”. In Australia, internet addresses ending in ‘.au’ are registered in Australia and are administered and regulated by the .au Domain Administration (auDA).

Registering an .au domain involves consulting a registrar, and ensuring certain eligibility is met and the domain name is available.



| Immigration

10.1 Overview

Australia does not issue visas to foreign nationals upon arrival except for New Zealand passport holders, who are granted a Special Category visa (subclass 444) on their arrival in Australia, and APEC Business Travel Card holders. Thus, foreign nationals will generally need a visa prior to travelling to Australia regardless of the purpose of their visit.

However, Australia does have reciprocal visa arrangements with certain countries, which allows visitors from such countries to enter and stay in Australia for a maximum period of three months on a business visitor visa.

Holders of a business visitor visa are permitted to engage in business activities provided that you do not work for or provide services to another entity or sell any goods.

The activities which are allowed to engage in under this visa include exploring and making enquiries about business or employment opportunities, negotiation and signing a business contract, participating in an official government-to-government visit as well as in conferences, trade fairs or seminars, on the condition that you are not receiving remuneration from the organisers for your participation.

Proposed activities or events in Australia which do not follow the permissible business visitor activities are classified as work.



10.2 Temporary work visa (short stay)

The subclass 400 visa is a temporary visa which permits highly skilled individuals to work in Australia on behalf of their overseas business/employer for up to 3 months (in some cases 6 months). A stay period of six months may be granted on the condition that a strong business case is provided.

The work which a subclass 400 visa holder intends to undertake in Australia must be of a specialised nature and be non-ongoing. Non-ongoing means that the work/activity the visa is granted for will likely be completed within a period of 6 months or less, with no plan for the visa applicant to remain in Australia for the same nature of the work/activity after the end of the stay period.

To be eligible for the subclass 400 visa, an individual must demonstrate that they have unique specialised skills, knowledge or industry experience that cannot otherwise be found in Australia (within reason) that will benefit Australian business. The individual must also be outside Australia at the time of lodgement and the grant of the 400 visa. No employer sponsorship is required for the 400 visa.

The 400 visa holder must also be, and remain, employed by their overseas employer/business, which is engaged by an Australia business to deliver goods and services to an Australia business. It is important to note that the 400 visa program cannot be utilised to rotate different overseas workers through the one position on the 400 visa to carry out same nature of the work/activity.

The applicant of the 400 visa may apply for single entry or multiple entries into Australia. If multiple entries are granted, each new entry will not trigger a new period of stay.

This means upon the visa holder's first date of arrival in Australia the maximum stay period will be set.

10.3 Long stay work visa

The subclass 482 Temporary Skilled Shortage (TSS) visa program allows eligible businesses to employ skilled foreign nationals on a short-term (up to 2 years) to medium-long term (up to 4 years) basis, provided that a suitable Australian worker cannot be sourced.

The TSS visa allows the primary visa holder to:

- work for their sponsoring employer in their approved occupation;
- travel in and out of Australia throughout the visa validity period; and
- bring any dependants with them to Australia who will have full work and study rights.

The TSS visa program is divided into three stages, namely business sponsorship, nomination and the visa.

Stage 1: Sponsorship approval

The first stage involves an eligible employer applying for approval as a business sponsor. Both a start-up business or an established business can apply to become a business sponsor.

Foreign businesses not operating in Australia or without representation are also eligible to become a sponsor for the purposes of bringing in skilled foreign nationals to work in Australia for various purposes, which includes the establishment of business operations in Australia or the fulfilment of contractual obligations of Australian businesses.

Once a standard business sponsorship is approved, it is valid for a period of five years and the approved business sponsor may apply to nominate eligible foreign nationals in the eligible skilled occupations throughout the valid period of their business sponsorship.

Stage 2: Nomination

The second stage involves the approved business sponsor nominating an eligible skilled position for a prospective TSS visa applicant or current TSS visa holder.

When a sponsor decides to nominate the position, a payment must also be made by the sponsor to the Skilling Australians Fund (SAF). The SAF levy must be paid in full by the sponsor at the time of nomination and is tax deductible.

The maximum period the visa is valid for is determined by the number of years the sponsor needs to nominate the proposed position.

The maximum term of the visa is based on two skilled occupation code lists as mentioned below.

1. Short-term Skilled Occupation List (STSOL)

The Short-term stream visa applies for the occupations listed on the STSOL. Visas granted for eligible occupations listed on the STSOL are valid for a period of either one or two years, unless an International Trade Obligation (ITO) applies.

The visa may be renewed, but only once the visa applicant is in Australia.

In certain cases sponsors may nominate the positions for up to four years and allow the corresponding visa to be granted for up to four years. This is possible where the nominated foreign nationals are intra-corporate transferees from a country to which Australia has commitments under international trade obligations, and are nominated in occupations classified as Executive or Senior manager by the Department of Home Affairs.

Executive or Senior Manager occupations include:

- Advertising manager;
- Chief Executive or Managing Director;
- Chief Information Officer;
- Corporate General Manager;
- Finance Manager;
- Human Resources Manager;
- Corporate Services Manager;
- Sales and Marketing Manager; and
- Supply and Distribution Manager.

2. Medium and Long-Term Strategic List (MLTSSL) or Regional Occupation List (ROL)

The Medium-term stream visa applies for the occupations codes listed on the MLTSSL or ROL. The occupations on the MLTSSL and ROL may be nominated for a maximum of four years without limitation on the number of TSS visa renewals.

The ROL is applicable for applicants nominated by businesses to work in regional, remote and low population growth areas as classified by the Department of Home Affairs.



Before a business sponsor seeks to nominate a foreign national they must first demonstrate that they have tested the local labour market to seek and offer local Australians the employment opportunities.

To demonstrate such efforts, evidence must be submitted showing that a sponsor has advertised the nominated position in the Australian labour market for at least four weeks in a manner prescribed by the Department of Home Affairs before offering the position to foreign nationals. This requirement is commonly known as Labour Market testing.

Not all circumstances require Labour Market Testing, such as where applications are made to facilitate intra-company transfer or the proposed salary for the nominated position is at least AUD 250,000 per year.

Labour Market Testing is also not required where it would be inconsistent with Australia's international trade obligations, including Free Trade Agreements as well as the World Trade Organization (WTO) General Agreement on Trade in Services (GATS).

With regard to Australia's International Trade Obligations, nominations for the following are exempt from Labour Market Testing:

- Citizens of Japan, China or Thailand, or citizen/national/permanent resident of New Zealand, Chile or Korea
- A foreign national who is a current employee of the business sponsor's associated entity, which is located in Chile, Japan, China, Korea or New Zealand, or any ASEAN member country (Indonesia, Malaysia, Laos, Cambodia, Myanmar, Brunei, Thailand, Philippines, Singapore, Thailand and Vietnam);

- A foreign national who is a current employee of the business sponsor's associated entity or an overseas business sponsor operating in a WTO member country, where the nominated occupation is listed as an Executive or Senior Manager and will be in charge of the entire or a substantial part of the Australian operation; and
- A citizen of a World Trade Organization (WTO) member country who is being nominated by an employer who has worked for the employer on a full-time basis for the last two years prior to the application.

Regardless of whether a nominated foreign national will remain employed by the host company in Australia or by the parent company overseas, the sponsor must show that the employment terms and conditions offered to the foreign national will not be less favourable than what they would offer to a comparable local employee in Australia.

Stage 3: Visa

The final stage is for the nominated foreign national to be issued a valid visa to work in the skilled occupation proposed by the approved business sponsor.

The TSS visa applicant must have a minimum of two years of experience closely related to their nominated occupation in a full-time role and be appropriately skilled.

The primary applicant (i.e. the foreign national nominated under the relevant occupation code) must also provide evidence showing that they satisfy an appropriate level of English language proficiency as well as health and character requirements.

Any dependent family members included in the visa application will also be required to satisfy the character and health requirements.

10.4 Employer sponsored permanent residency

Skilled foreign nationals looking to obtain permanent residency in Australia are able to do so under the applicable employer sponsored permanent residency programs.

Two common pathways are available for the employer sponsored permanent residency program, namely TSS visa sponsorship as well as Direct Nomination. The regional employer sponsored permanent residency program is also available.

1. TSS visa sponsorship

Under the TSS visa sponsorship the sponsor may nominate the Medium-term TSS visa holder immediately after the visa holder has worked in their nomination occupation for their sponsor for a minimum period of three years.

2. Direct Nomination

The pathway of direct nomination involves the direction nomination of a foreign national by their current employer under an occupation code listed on the MLTSS. To be eligible for this pathway, the foreign national must undergo an assessment by the Department of Home Affairs to determine whether they are appropriately qualified and possess the relevant skills for the nominated occupation.

3. Regional employer sponsored permanent residency

The regional employer sponsored permanent residency program is available for businesses and nominated positions in regional, remote or low population growth areas classified by the Department of Home Affairs. Businesses may nominate the occupations listed on the ROL.

10.5 Business and Investment visas.

The subclass 188 Business Innovation and Investment (Provisional) provides foreign nationals and any dependent family members, temporary residence in Australia for up to a maximum of four years to start their own business, manage a new or existing business, or invest in Australia without the need for a sponsor, subject to meeting relevant criteria and the prerequisite business background and assets.

The subclass 188 visa has four streams:

1. Business Innovation (SC 188A)

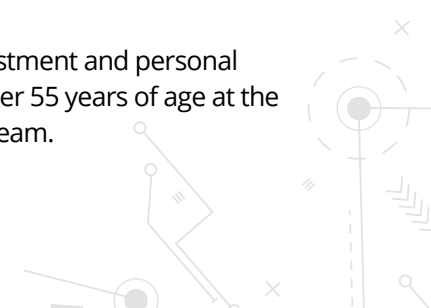
The Business Innovation stream is applicable to people who wish to own and manage a new or existing business in Australia. The stream is points tested with points awarded for personal attributes including business turnover, total assets in the business, total personal assets, employment experience, English language ability as well as age.

Applicants must be under 55 years of age to be eligible for the Business Innovation stream.

2. Investor Stream (SC 188B)

The investor stream is for people who intend to make a designated investment in an Australian state or territory while maintaining business and investment activity in Australia after the original investment has matured. This stream is also points tested with points awarded for personal attributes as outline above.

Applicants must also hold net business, investment and personal assets of at least AUD 2.5 million and be under 55 years of age at the time of application to access the Investor Stream.



3. Significant Investor Stream (SC 188C)

The Significant Investor Stream is available for people willing to invest at least AUD 5 million into complying investments in Australia with the intention to hold the investment for the life of the provisional visa. The investment must be maintained for a minimum four year period. No age limit applies to this stream.

There must also be a genuine intention for the applicant to reside in Australia.

4. Entrepreneur (SC 188E)

The Entrepreneur stream is for people who have undertaken or propose to undertake a Complying Entrepreneur Activity (CEA) in Australia that is of exceptional benefit to the State. A Complying Entrepreneur Activity is an activity that relates to an innovative idea that will lead to the commercialisation of a product or service in Australia, or the development of an enterprise or business in Australia.

This stream is not points tests, however a certain level of English proficiency must be satisfied and funding of AUD 200,000 for the business must be provided to the 'entrepreneurial entity.' The entrepreneurial entity is the applicant, partnership or body corporate. A business plan related to the entrepreneurial activity must also be provided.

Applicants must also be under 55 years of age to access the Entrepreneur stream.

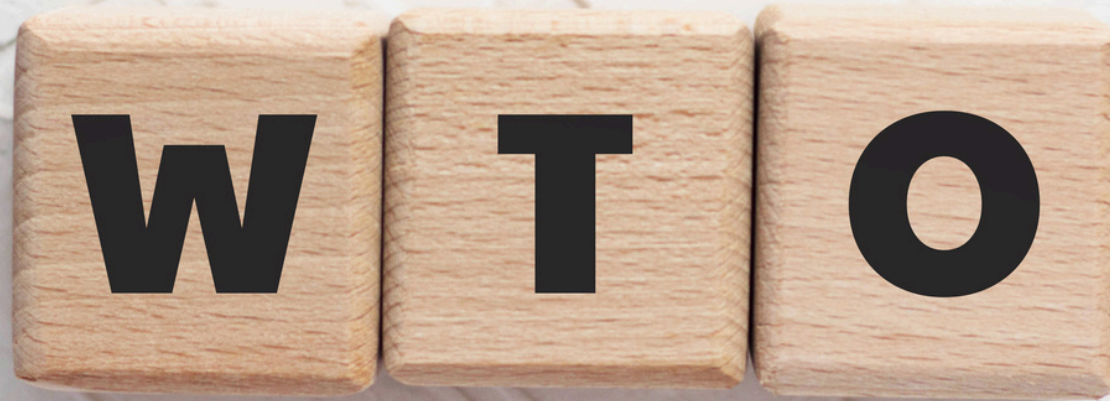
Subclass 888

After meeting the relevant requirements including minimum prescribed qualifying periods, subclass 188 visa holders may progress to the subclass 888 permanent residence visa.





| Importing & Exporting



11.1 Tariff protection

Australia is a member of the **World Trade Organisation**, which shapes many aspects of Australia's international trade laws. Within the general framework of the WTO, the Australia government seeks to exposes Australian industry to added competition from imports.

Simultaneously the WTO is used as a platform for voicing Australia's concerns regarding restrictive trade policies of other countries.

Discrimination between states in relation to rates of duty is prohibited by the WTO.

However, preferences which existed at the time the WTO was formed are allowed to continue. Australia maintains certain preferential policies, particularly in relation to products that are manufactured in nominated developing countries.

11.2 Classification of goods and rates of duties

The schedules provided in the *Customs Tariff Act 1995* (Cth) specify the applicable rates of duty for imported goods into Australia. It is important to determine the correct classification of goods as different tariff items may have different rates of duty.

Australia classifies goods according to the Harmonized Commodity Description and Coding System, commonly referred to as the Harmonized System under the World Customs Organization (WCO).

11.3 Tariff concession system

The purpose of tariffs or custom duties in Australia is to foster the development and expansion of domestic industries as opposed to raising revenue. In the case that no domestic industry exists for a particular good, the need to impose trade barriers in the form of customs duties disappears. Thus, goods imported into Australia, where there is no competitive domestic industry, are duty-free. Importers of such goods are eligible to apply for a Tariff Concession Order (TCO) for concessional rates of duty to be applied. It is important to note that once a TCO has been granted for goods, it will apply to all importers of the goods.

In order to obtain a TCO, it is necessary to establish that no substitutable good were produced in Australia for a commercial purpose on the day the application for a TCO is lodged. Substitutable goods are defined as Australian-produced goods that are put to use in a nature corresponding to the way the imported goods are put to use. Should this criterion be satisfied, it will be possible to obtain a TCO and import goods into Australia duty-free.

11.4 Customs valuation

When importing goods into Australia, it is the responsibility of the importer to correctly determine the value of imports. Mistakes in valuation may result in penalties.

The most common method used for valuing imports is the 'transaction value' method, which recognises the actual price the importer paid or is payable for the goods. The buyer and seller must also be conducting the trade of goods as independent parties to use the transaction value method.

In the case where the price paid (or payable) for the goods cannot be used as a basis for determining the Customs value, alternative methods can be applied. These include the following:

- The identical good value method – the selling price of identical goods exported to Australia.
- The similar goods value method – the selling price of similar goods sold for export to Australia.
- The deductive value method – the price in of the imported goods, imported goods or similar goods in a sale in Australia. Under this method the price must be adjusted according to any expenses incurred between the "place of export" and the sale in Australia.
- The computed value method – the value based on the price of the production of the imported goods as well as any other associated general expenses, costs and profits relating to the goods.
- The fall-back value method – Where the above four methods are not applicable, Customs and Border protection will determine the value of the imported goods by taking into account the above valuation methods as well as any other relevant information.

11.5 Dumping

Dumping occurs when an exporter sells goods into Australia at a price considered to be below the “normal value” of the goods. The normal value will usually be the domestic price of the goods in the country of export. The margin of dumping is usually calculated as the total amount by which the normal value of the goods exceeds the “export price” of the goods. Where dumping occurs, dumping duties may be imposed on those exports, provided it can be demonstrated that the dumped goods cause or threaten material injury to an Australian industry.

Should any dumping duties be imposed, they are payable on importation by the importer. The maximum amount of duty which can be imposed is the amount of the dumping margin. However, a lower rate of duty may be imposed should it be considered sufficient to remove the injury being caused to the Australian industry.

11.6 Controls and requirements for particular types of imports

Australian legislation requires importers to hold permits to import certain commodities into Australia such as particular plant and animal and food products, weapons and other sensitive items.

Importers must apply trade descriptions to imported goods in accordance with the prescribed requirements. A trade description involves any description, statement, indication or suggestion, direct or indirect, as to how or by whom the goods were made, produced, selected, packed or otherwise prepared. The trade description must also be prepared in English. Certain goods will also require the importer to specify the country of origin of particular goods in accordance with The Australian Consumer Law (ACL).

Specific labelling is also required for particular items, such as prepacked articles, food as well as particular radio communications equipment. The label displays that the equipment complies with relevant standards.

11.7 Export Controls

Goods with a value of more than AUD 2000 required an export declaration with the Australian Border Force (ABF) in order to be exported.

A permit is required where an exporter is intending to export any goods, or services or technology listed in the Defence and Strategic Goods List (DSGL). Australia also has a permit system for intangible transfers from within Australia to outside Australia of sensitive subject matter (e.g. by email or allowing remote access).

Export permits and licensing requirements also extend to other sensitive subject matter such as hazardous waste.

Exporters must also comply with quarantine and inspection measures for certain exports such as food and animal products. In certain cases, exporters may need to obtain approval and health certification from the Department of Agriculture, Water and Environment.

11.8 Free Trade Agreements

Australia is a party to several free trade agreements including but not limited to the following:

Australia-United States Free Trade Agreement

The Australia-United States Free Trade agreement (AUSFTA) is a preferential trade agreement between Australian and the United States. AUSFTA entered into force on 1 January 2005.

Since AUSFTA's entry into force, over 97 per cent of Australia's non-agricultural exports to the United States (excluding textiles and clothing) became duty free and two-thirds of tariff rates went to zero. 96.1 per cent of all Australian exports to the U.S. are tariff-free.

For the 2019-2020 year, the United States was Australia's second largest two-way trading partner in goods and services, with a trading volume of AUD 80.8 billion. Total exports of Australian goods and services to the U.S. were at AUD 27.4 billion, while total imports from the U.S. were at AUD 53.4 billion dollars. Since AUSFTA came into force, two-way investment between Australian and the U.S. has nearly tripled.

Singapore-Australia Free Trade Agreement

The Singapore-Australia Free Trade Agreement (SAFTA) is a bilateral free trade agreement between Australia and Singapore which has been entered into force since 28 July 2003.

Under SAFTA all tariffs have been eliminated between Australia and Singapore, allowing all products between Australia and Singapore to be imported and exported duty-free. In addition to this, SAFTA provides particular improvements in market access for Australian businesses involved in services related to education, the environment, telecommunications and professional services.

ANZCERTA

The Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) is a bilateral free trade agreement that covers substantially all trans-Tasman trade in goods, including agricultural products, and was the first FTA to include free trade in services.

As part of the FTA, Australia and New Zealand have also agreed to the Government Procurement Agreement (GPA). The GPA enables suppliers from both Australia and New Zealand to compete for government work on an equal basis. The GPA allows both Australian and New Zealand suppliers to be treated as a single market of "local" suppliers.

ASEAN-Australia-New Zealand Free Trade Agreement

ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) is an agreement between the ASEAN Member States (Brunei, Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam), Australia and New Zealand which entered into force on 1 January 2005.

Under the AANZFTA parties intend to reduce or eliminate tariffs over specified periods as well as provide greater market-access to service suppliers in the region. The agreement also covers an investor-state dispute settlement mechanism which provides a level of protection for members in the event of a dispute.

Australia-Chile Free Trade Agreement

The Australia-Chile Free Trade Agreement is a Free Trade Agreement between Australia and Chile, which entered into force on 6 March 2009, marking Australia's fifth signed Free Trade Agreement and first with a Latin American country.

From 1 January 2015, all tariffs were eliminated except sugar, which has a tariff of six per cent for Australian exports.

Malaysia-Australia Free Trade Agreement

The Malaysia-Australia Free Trade Agreement (MAFTA) was signed on 22 May 2012 and entered into force on 1 January 2013. Commencing on the first day of MAFTA in force, 97.6% of tariffs were eliminated for goods imported into Malaysia from Australia. This rate of elimination of tariffs would rise to 99% in 2017. Tariffs of all goods coming into Australia from Malaysia were effectively eliminated from day one.

Korea-Australia Free Trade Agreement

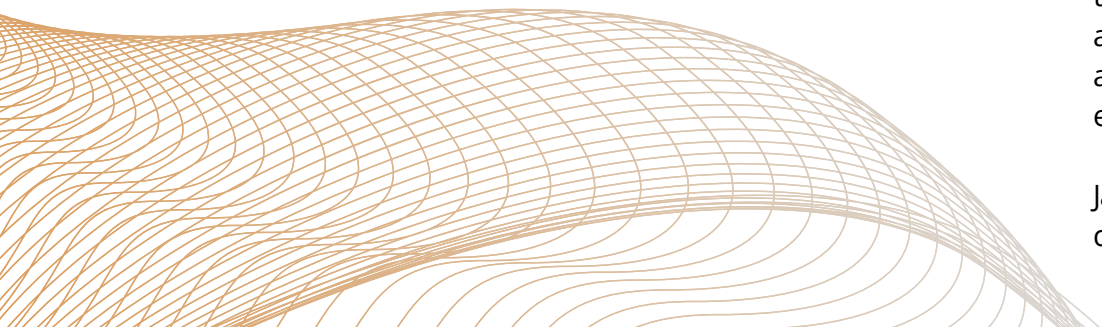
The Korea-Australia Free Trade Agreement (KAFTA) entered into force on 12 December 2014. KAFTA has allowed 88 per cent of Australia's manufactures, resources and energy exports to enter Korea duty free with all remaining tariffs planned to be eliminated by 1 January 2023. This includes the full elimination of tariffs on Australian pharmaceutical products (including vitamins).

Japanese-Australia Economic Partnership Agreement

The Japan-Australia Economic Partnership Agreement (JAEPA) entered into force on 15 January 2015.

JAEPA provides significant benefits to Australian exporters with the reduction and removal of tariffs and duty free quotas across a wide range of agricultural and dairy products. In addition to this, 99.7% of Australia's exports of resource, energy and manufacturing products will enter Japan duty-free.

Japanese goods, including cars, white goods and electronics can also be imported into Australia at cheaper price ranges.



China-Australia Free Trade Agreement

The China-Australia Free Trade Agreement (ChAFTA) entered into force on 20 December 2015.

China is currently Australia's largest trading partner with Australian exports to China at a total of AUD 116 billion in 2017, making up roughly a quarter of all Australian exports to the world. On the other hand, Chinese investment into Australia reached AUD 64 billion for the 2017 year.

Since full implementation of ChAFTA(1 January 2019), virtually all of Australia's resources, energy and manufacturing exports have enjoyed duty-free entry into china.

Comprehensive and Progressive Agreement for Trans-Pacific Partnership

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a free trade agreement between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam and has been signed by 11 countries to date.

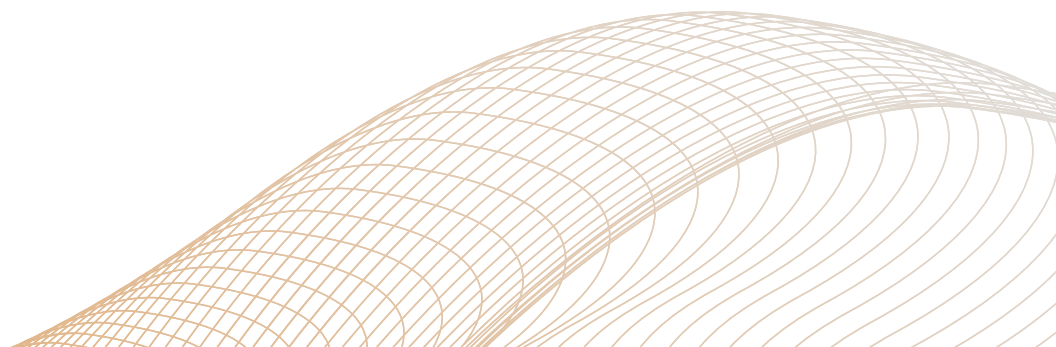
The agreement provides significant benefits for Australian exporters including:

- reductions in Japan's tariffs on beef, (Australian exports worth AUD 2 billion in 2017);
- access for dairy products into Japan, Canada and Mexico, including the elimination of a range of cheese tariffs into Japan covering over \$100 million of trade;
- Access for the Australia sugar industry into the Japanese, Canadian and Mexican markets;
- tariff reductions, and new access for Australian cereals and grains exporters into Japan, including, for the first time in 20 years, new access for rice products into Japan;
- elimination of all tariffs on Australian sheepmeat, cotton and wool;
- elimination of tariffs on Australian seafood, horticulture and wine; and
- elimination of all tariffs on Australian industrial products (manufactured goods).

Australia-Hong Kong Free Trade Agreement

The Australia-Hong Kong Free Trade Agreement (A-HKFTA) and associated Investment Agreement (IA) entered into force on 17 January 2020.

For the 2018-19 income year, Hong Kong was Australia's tenth largest market for merchandise exports at roughly AUD 8 billion and was Australia's seventh largest export market for services at AUD 3 billion. In addition to this, Hong Kong was Australia's fifth largest source of total foreign investment, with total assets of AUD 118.8 billion at the end of 2018. Conversely, Hong Kong was Australia's eleventh largest destination for total Australian investment, with a stock of AUD 52 billion at the end of 2018.





Peru-Australia Free Trade Agreement

The Peru-Australia Free Trade Agreement (PAFTA) entered into force on 11 February 2020.

PAFTA is Australia's second Free Trade Agreement entered into force with a Latin American nation and offers Australian businesses increased exposure to the Peruvian market with the removal of significant trade barriers. Highlights of the agreement duty free access of 7,000 tonnes of dairy products into Peru, as well as duty free access of 30,000 tonnes of Sugar into Peru, growing to 60,000 tonnes in five years and 90,000 tonnes in 18 years into Peru duty free.

The agreement also has allowed for the removal of duty on a variety of other Australian exports such as sugar, wine, meat products, rice, seafood, base metals, mineral fuels and oils as well as pharmaceuticals and medical devices.

The agreement also provides significant opportunities for Australian mining equipment to be exported into Peru, with Peru eliminating tariffs and delivering mining service providers with better or guaranteed access.



For more information

www.bdwelsh.com

info@bdwelsh.com

BD Welsh is a professional services organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients. Any services we commit to deliver to you will comply fully with applicable restrictions.

This communication contains general information only, and none of BDWelsh & Co is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. BDWelsh & Co shall not be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2025 BDWelsh. All rights reserved.

