Doing Business in Australia 2008

January 2008

BDO International

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Introduction

The aim of this publication, which has been prepared for the exclusive use of BDO Member Firms and their clients and prospective clients, is to provide background information for setting up and running a business in Australia, in compliance with the legislation in force on 31 December 2007. It is of use to anyone who is thinking of establishing a business in Australia as a separate entity, as a branch of a foreign company or as a subsidiary of an existing foreign company, and to anyone who is considering coming to work or live permanently in Australia.

The publication describes the business environment in Australia and outlines the financial and legal implications of running, or working for, an Australian business. The most important issues are included, but it is not feasible to discuss every subject in detail within this format. Accordingly, *Doing Business in Australia* is written in general terms and is not intended to be comprehensive. If you would like to know more, please contact the BDO Member Firms with which you normally deal, who can provide you with information on any further issues and on the impact of any legislation subsequent to 31 December 2007.

BDO International is a worldwide network of accounting and consulting firms, called BDO Member Firms, serving international clients. Each BDO Member Firm is an independent legal entity in its own country. The network is coordinated by BDO Global Coordination BV, incorporated in the Netherlands, with an office in Brussels, Belgium, where the Global Coordination Office is located.

Founded in Europe in 1963, it has grown to be the fifth largest in the world – the BDO network now has 629 offices in 111 countries, with more than 31 500 partners and staff providing professional auditing, accounting, tax and consulting services on every continent.

BDO's special skills lie in applying its local knowledge, experience and understanding of the international context to provide an integrated global service. In BDO, common operating and quality control procedures are not a constraint on innovation and independence of thought, but the starting point. It is a vigorous organisation committed to total client service.

BDO's reputation derives from consistently offering imaginative and objective advice within the client's time constraints. BDO Member Firms take pride in their clients' success and their relationships with them. It is a personal relationship that combines the benefits of professional knowledge, integrity and an entrepreneurial approach, with an understanding of a client's business and an ability to communicate effectively. This ensures the highest-quality objective professional service, tailored to meet the individual needs of every client, whether they be governments, multinational companies, national or local businesses, or private individuals.

Doing Business in Australia has been written by BDO Kendalls, the Australian Member Firm of BDO. Its contact details may be found on page 47 of this publication.

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1. The business environment

General information

Geography

The Commonwealth of Australia lies between the Indian Ocean on the west and the southern Pacific Ocean on the east and is the only country in the world to occupy an entire continent (Australasia). It covers approximately 7.7 million km^2.

The climate varies from tropical in the north to cool temperate in the south. Large areas are vulnerable to drought and approximately one-third of the continent is desert.

Much of the east coast is fertile, as is the south-west corner of Western Australia. There are extensive farming and grazing lands.

The nation is split into six states, two internal territories and six external territories. The states and internal territories are:

- New South Wales
- Queensland
- Victoria
- Tasmania
- Western Australia
- South Australia
- The Northern Territory
- The Australian Capital Territory.

The external territories are:

- The Territory of Norfolk Island
- The Territory of Christmas Island
- The Territory of Cocos (Keeling) Islands
- The Territory of Ashmore and Cartier Islands
- The Coral Sea Islands Territory
- The Australian Antarctic Territory.

The external territories generally have their own laws or special modifications of Australian laws. Any person proposing to conduct business in one of the External Territories should obtain specific advice, as the materials contained herein may not be relevant.

Government

The Australian government is split into three levels of responsibility:

Commonwealth

The Federal Parliament operates from an administrative capital (Canberra, Australian Capital Territory) and consists of two elected houses (The House of Representatives and the Senate). The Federal Government has specific powers set out in a constitution that came into force in 1901. These powers include defence, external affairs, immigration, social services, taxation, corporations and trade. The Federal Government has assumed a considerable rôle in areas not covered by the Constitution, such as health and education, through the allocation of taxation funding of services.

The Head of State is Her Majesty Queen Elizabeth II, represented by the Governor-General, His Excellency Major-General Philip Jeffery. The head of government is the Prime Minister, the Hon Kevin Rudd MP, of the Australian Labor Party. Elections to the House of Representatives are held at least every three years, the last election taking place in

November 2007, which witnessed the defeat of the former right-wing Liberal-National Coalition Government.

State

Each state and internal territory has its own government that has the power to legislate on all matters not expressly reserved for the Commonwealth. These matters include regulation of industry, education and health.

Local Government

Local government makes up the third tier of government in Australia and handles municipal and shire responsibilities such as land zoning, refuse collection and construction of local roads.

Population

Australia is one of the most highly urbanised countries in the world with most of its population of 21.0 million living in the capital cities and major towns. The largest city in Australia in terms of population is Sydney, the capital of New South Wales. It has 4.225 million inhabitants. Other major cities are Melbourne (3.593 million); Brisbane (1.77 million); Perth (1.454 million) and Adelaide (1.23 million).

Australia encourages multiculturalism. The major cities have a significant number of thriving ethnic communities. Sydney, for example, has migrant groups from over 140 countries.

Language

The official language is English.

Currency

The unit of currency is the Australian dollar (AUD). There are 100 cents in one dollar. The price of the Australian dollar is determined by a floating exchange rate and is not fixed by the Australian Government. At the time of publication (late January 2008), the Australian dollar was quoted against the euro and the US dollar at AUD 1.6706 = EUR 1 and at AUD 1.1375 = USD 1respectively.

Weights and measures

Australia has adopted the metric system of weights and measures.

Business entities

Forms of business enterprise

Business may be conducted by an individual, trust, partnership, limited partnership, joint venture, or by a company incorporated in Australia or elsewhere.

Australian companies

The laws relating to companies are controlled by the Corporations Act and are uniform throughout Australia.

There are various types of companies that may be formed including:

- Limited-liability companies – limited by either shares or guarantee, where the members' personal liability is limited to the amount either unpaid on shares or nominated by the guarantee
- Unlimited companies – where there is no limit to the members' liability for the company's debts (uncommon)
- No-liability companies – this structure is confined to mining companies.

There are special classes of entities incorporated under State legislation, including building societies, credit unions, cooperatives and incorporated associations.

The normal and most commonly used business structure is that of the limited-liability company with share capital.

Public and proprietary companies

In Australia, the main types of company are public (with a name ending in Limited or Ltd) and proprietary companies (with a name ending in Proprietary Limited or Pty Ltd). A public company is generally a company other than a proprietary company and can be listed on the Australian Stock Exchange, or unlisted. The main distinguishing features of a proprietary company are:

- That the right to transfer shares is limited and the directors hold the right to decline to register a transfer
- That the public cannot be invited to subscribe for shares or debentures in the company
- The number of shareholders is limited to 50 non-employee shareholders.

Proprietary companies do not have to hold an annual general meeting and are able to pass resolutions without actually holding a meeting. Public companies must hold an annual general meeting and may not pass a resolution except at a meeting.

Proprietary companies are classified as either 'small' or 'large'. A 'large' proprietary company is one that satisfies at least two of the following conditions:

- Consolidated gross revenue is more than AUD 25 million (EUR 14.965 million; USD 21.978 million) per year
- Consolidated gross assets are more than AUD 12.5 million (EUR 7.483 million; USD 10.989 million) at the balance-sheet date
- Is a member of a group with more than 50 employees at the balance-sheet date.

Disclosing entities, unlisted public companies, large proprietary companies and certain foreign controlled small proprietary companies must:

- Prepare annual financial statements, directors' declarations and reports
- Comply with accounting standards in the preparation of financial statements
- Have the financial statements audited
- Lodge the financial statements with the Australian Securities and Investments Commission (ASIC).

Financial statements lodged with ASIC are open to the public for inspection.

Generally, small proprietary companies do not have to prepare financial statements. However, proper accounting records are required for income tax purposes. Small proprietary companies are only required to lodge audited financial statements with ASIC if required to do so by at least 5% of shareholders or by ASIC.

Foreign companies

A foreign company can trade in Australia if it is registered with ASIC and has appointed at least one local agent. A local agent is responsible for the company's Corporations Act obligations and is personally liable for any penalties imposed on the company.

A foreign company must also have a registered office in Australia to which all communications and notices may be addressed.

Subsidiaries of foreign companies

The incorporation of a company owned by overseas interests, either directly or through another overseas subsidiary, provides the shareholders with limited liability. A locally incorporated company would also be of advantage in dealings with government departments and where local purchasers would prefer to deal with a local company (in the event of claims, service, etc.)

All companies owned by overseas interests must lodge audited financial statements with each annual return to ASIC. Small proprietary companies that are owned by a foreign company do not have to lodge audited financial statements if consolidated accounts of the foreign company have already been lodged with ASIC or if relief from this requirement has been granted under a Class Order issued by ASIC.

Capital structure

Shares may be of different classes having different voting, dividend and other rights. Ordinary shares usually have voting rights and no restrictions on dividend rights. Preference shares may have any rights but usually have the right to a fixed preferential dividend and limited voting rights.

A company may issue redeemable preference shares.

Partly paid shares are unusual other than for petroleum and mineral exploration companies. In practice, shareholders of most limited companies, having once paid for their shares, have no further liability.

Both public and private companies must have at least one member. Subsidiaries may not hold shares in their Australian parent company nor may an Australian company own shares in itself.

It is possible for a company to buy back its own shares and changes have been made to greatly simplify the buy-back process. Any shares bought back by a company must then be cancelled. A company may also reduce its issued capital using a similar procedure. However, these simplified rules do not apply to redeemable preference shares, which have their own separate redemption value.

Premises

The company's name and Australian Company Number must be exhibited outside each office or place of business that is open to the public. Public companies must also indicate if the office or place of business is the Registered Office.

Auditors

An auditor must be appointed for all companies except small proprietary companies that are not required to be audited.

Foreign ownership of capital

Foreigners are permitted to hold all the share capital of a company. There is no requirement that part of the share capital be held by Australian nationals.

Company officers

A public company must have at least three directors and a proprietary company at least one. For a public company at least two directors must be resident in Australia and for a proprietary company at least one. Only natural persons over the age of 18 can be appointed directors.

A proprietary company is not required to have a secretary. However, if one is appointed, that person must be over the age of 18 and be a resident of Australia. A public company must have at least one secretary resident in Australia. A public officer must be appointed to meet the company's taxation obligations.

Partnerships and joint ventures

These are usually entered into by groups of individuals or companies acting together. Partnerships generally provide for unlimited liability for partners – the partners in a partnership are jointly and severally liable for the debts of the partnership. Limited partnerships are possible, but are uncommon because they are taxed as if they were companies.

Joint venturers are normally liable only for their own liabilities and not those of the other venturers.

A formal agreement is not legally required but is recommended to establish the rights and duties of partners and joint venturers.

Labour relations and working conditions

Employment

Australia has a complicated structure of laws regulating employment. The basic principles of Common Law are modified by both Federal and State legislation. The Federal Government has power to legislate in relation to industrial disputes extending beyond the limits of any one State or over companies classified as foreign, trading or financial corporations ('constitutional corporations'). Australia's largest industrial relations reform (called 'Workchoices') was introduced in 2006 by the former Coalition Government. Since the commencement of 'Workchoices' on 27 March 2006, employers who are classified as constitutional corporations (e.g Pty or Ltd companies) will have their employees covered under federal industrial-relations jurisdiction. The various State Governments continue to provide legislation covering the resolution of other disputes.

Previously, the employment relationship was governed by a system of industrial awards that dictated the minimum terms and conditions of employment for most workers. These awards were regularly reviewed, particularly in relation to wage levels. Awards were generally negotiated between trade unions and employer organisations. Legislative machinery provided for the mediation of disputes and, in the absence of agreement, the resolution of disputes by arbitration. However, with the introduction of 'Workchoices', while the awards technically still exist, the focus has shifted to individual negotiation of Australian Workplace Agreements, based on a 'fairness test'.

It remains to be seen whether the newly elected Labor Government will repeal 'Workchoices'.

Trade unions

Employee organisations range from small independent associations to large national organisations. Federal and State laws require registration of employer and employee organisations and provide procedures for enforcing industrial awards.

Employee participation

There is no legal requirement for employees to be represented on the boards of directors of companies, or participate in profit sharing or be represented on works councils.

Equal employer and employee representation may be required for superannuation funds.

Basic employee benefits and conditions

The standard working week is 35 to 40 hours, generally Monday to Friday. Employees usually receive four weeks' annual leave.

There is usually an entitlement to paid sick leave for at least ten working days a year with a provision for accumulation of unused leave.

Employees are also entitled to workers' compensation payments (the insurance for which is compulsory for employers) for any injuries suffered during employment.

Employees are entitled to long service leave. The most common requirement is three months' leave after 15 years' continuous service with one employer.

Equal pay

Australian legislation now requires equal pay for men and women, not only for equal work, but also for work that can be deemed to be of equal value.

Superannuation

Employers are required to provide a minimum level of contributions to an eligible superannuation fund, which provides a lump-sum payment or a pension on retirement. Employers who fail to make contributions are liable to pay a Superannuation Guarantee Charge (see below for further details).

Work permits

Work permits are required for all non-residents working in Australia.

Termination payments

The Corporations Act has been amended to make it more difficult for companies to grant excessive termination payments to senior staff. Such payments generally require shareholder approval.

Regulation of business

General

Businesses in Australia are subject to regulation under both Federal and State legislation. In general, the Federal Government has authority over matters of national or international interest while the States have authority over all other matters. Some aspects of business are regulated by local government under powers delegated by the State Governments.

The Australian Competition and Consumer Commission monitors prices in the community. However, the authority has a relatively minor influence upon prices charged for goods and services in Australia, which are generally determined by market conditions.

Anti-trust and anti-competitive practices

The Australian Competition and Consumer Commission also administers the operation of the Trade Practices Act 1974. That Act makes the following unlawful, if they have an anti-competitive effect:

- Contracts, arrangements or undertakings in restraint of trade
- Monopolisation
- Exclusive dealings
- Resale price maintenance
- Price discrimination
- Mergers.

Resale price maintenance and certain kinds of exclusive dealings are unlawful regardless of their competitive effect.

Detailed provisions cover consumer protection and certain unfair practices such as:

- Misleading or deceptive practice
- False representation
- 'Bait' advertising
- Referral selling
- Coercion at place of residence
- 'Pyramid' selling.

Provisions relating to the conditions and warranties in consumer transactions are also included in the Trade Practices Act.

Consumer protection legislation also exists at state level. This covers such fields as trade description, false and misleading advertising, the safe design and construction of goods and compulsory marking of goods.

Stock Exchange requirements

A company that seeks to offer its shares to the public must comply with the listing requirements of the Australian Stock Exchange Limited. It must also comply with the provisions of the Corporations Act. The aim is to keep the public and the Exchange adequately informed on all aspects of those affairs of the company that may be expected to affect the market value of shares.

Import and export controls

Australia is a member of the World Trade Organisation (WTO) and is actively promoting the reduction of international trade barriers.

Some categories of goods are subject to import quotas and tariffs. These are generally being phased out.

Customs duty, excise duty and goods and services tax (GST) are imposed on some goods at the time of importation into Australia.

Australia has strict quarantine rules that affect the importation of animal and vegetable products.

Patents, trademarks, copyrights and registered designs

Patents granted under the Patents Act 1990 apply throughout the Commonwealth of Australia and Norfolk Island. The term of a patent is 20 years.

Copyrights granted under the Copyright Act 1968 generally apply for the life of the author plus 70 years.

Copyright in industrial designs must be registered under the Designs Act 2003. Registration is initially for 5 years, but this may be extended.

Trademarks may be registered under the Trademarks Act 1995. This registration is initially for 10 years but may be renewed for successive 10-year periods. Other protection may also be available for trademarks.

2. Finance and investment

Banking and local finance

The banking system

The banking system comprises the Reserve Bank of Australia (the central bank) together with trading banks, savings banks and special-purpose banks. The system has been subject to change in the 1980s as a result of significant deregulation by the Federal Government. This deregulation has resulted in the granting of bank licences to non-resident companies from Europe, Japan and other countries.

Further change has taken place with the conversion of subsidiaries of foreign banks into branches. A significant number of banks are establishing Offshore Banking Units which have significant withholding-tax exemptions for monies lent to non-residents.

Previously, control of the Australian financial institutions was retained by the Reserve Bank.

Since 1998, the Australian Prudential Regulation Authority (APRA) has acted as the prudential regulator of the Australian financial services industry, supervising banks, credit unions, building societies and most members of the superannuation industry. The Reserve Bank's main responsibility now is monetary policy. Other important rôles include maintaining financial system stability and ensuring the safety and efficiency of the payment system. It also actively participates in the financial markets, manages Australia's foreign reserves, issues Australian currency notes and serves as a banker to the Australian Government.

The trading banks in Australia provide the normal range of banking services such as overdraft accommodation, term loans, leasing, commercial bills, export finance, cheque and savings accounts, term deposits, marketable deposits, investment services, overseas trade contacts and advice, travel services and economic information bulletins.

Equity markets

The official stock exchange is the Australian Stock Exchange Limited, located in Sydney.

Accounting and audit requirements

Statutory requirements

Partnerships and sole traders are under no statutory obligation to prepare annual financial statements or have them audited, although some form of accounts is usually required for income tax purposes. The companies incorporated under the Corporations Act are however, subject to extensive statutory requirements, which are summarised below.

Financial statements and directors' reports

The directors must prepare financial statements, which generally must be distributed to members and also lodged with the Australian Securities and Investments Commission (ASIC). Members can elect to receive their annual financial statements electronically.

Small proprietary companies are not required to lodge financial statements unless they are owned by a foreign company and consolidated financial statements have not been lodged with ASIC. The ASIC lodgement deadlines for the various types of companies are:

- Large proprietary companies – within four months of the financial-year end
- Unlisted public companies – within four months of the financial-year end and
- Disclosing entities (listed companies) – within three months of the financial-year end.

For large proprietary companies, the accounts must be distributed to members within four months of the end of the financial year and for unlisted public companies and disclosing entities, by the earlier of 21 days before the annual general meeting and four months after the end of the financial year.

A company's financial year is generally the period from the 1 July in one year to 30 June in the following calendar year. An Australian subsidiary of a foreign corporation is permitted to change its financial year to correspond with the financial year of its parent.

Financial statements comprise of:

- An income statement covering the financial year
- A balance sheet as at the end of the financial year
- A cashflow statement
- Notes giving certain supplementary information and disclosures
- A declaration by directors
- A directors' report
- An audit report

The financial statements must give a true and fair view of the company's affairs and are to be prepared in accordance with Australian accounting standards (which have been given legislative backing through the Corporations Act).

In addition to financial statements showing the company's position as a separate entity, a company with subsidiaries must normally submit group financial statements dealing with the company and its subsidiaries. For this purpose, the subsidiaries must, as far as possible, draw up accounts for the same period as those of the holding company. The group accounts are presented in the form of a consolidated set of financial statements.

Books and records

Incorporated bodies are required under the Corporations Act to keep proper accounting records. These must contain the information necessary correctly torecord and to explain the transactions and financial position and performance of the company to enable true and fair financial statements to be prepared and audited. The accounting records must be preserved for a period of seven years for accounting records and five years for all other records. The accounting records must record:

- All sums of money received and expended, and the matters in respect of which the receipts and expenditure take place
- The assets and liabilities of the company's business involves dealing in goods, also
- Statements of stock held at the date to which the accounts have been drawn up, and all stock-taking records from which statements have been prepared
- Statements of all goods sold and purchased, showing the goods and identifying the buyers and sellers (except in the case of goods sold in the retail trade).

The accounting records must be kept at the company's registered office or at such other place as the directors think fit. If the accounting records are not kept in Australia, the company must maintain Australian accounts and returns that disclose the financial position of the business and which must be sufficiently detailed to allow a proper set of financial statements to be drawn up. These records must be kept up to date and must be kept in a place that gives access to the directors at all reasonable times.

If accounting records are kept in electronic form, they must be convertible into hard copy. They may be kept in any language but an English translation of financial records must be made available within a reasonable time.

Annual company statement

All companies must confirm with ASIC within 28 days of the anniversary of the date of incorporation that the information maintained by ASIC about the company (such as officeholders and addresses) is correct. This process replaces the annual lodgement of a return containing this information.

Auditor and audit requirements

Whilst there is no general statutory requirement that the accounts of an unincorporated business must be audited, companies incorporated under the Corporations Act must appoint an independent auditor. In certain other cases there may be relevant legislation imposing audit requirements. Generally, small proprietary companies do not need to appoint an auditor. However, the accounts of a small proprietary company must be audited if 5% or more of shareholders require the company to do so, or if ASIC requests it.

An auditor is to be appointed within one month of incorporation.

Most companies appoint practising accountants or firms of accountants as auditors and, in addition, frequently look to them for other services, including advice on taxation, company secretarial and other financial matters.

The auditor is required to make a report to the shareholders on:

- The accounts, and group accounts where applicable, required to be laid before the company at the annual general meeting
- The entity's accounting records
- Other records relating to those accounts.

The auditor's report must state whether, in his opinion, the accounts are properly drawn up in accordance with the Corporations Act and Regulations and Australian Accounting Standards so as to give a true and fair view of the affairs of the company.

The lead and review auditor of listed companies must rotate every five years and there is a two-year cooling-off period before they can resume those rôles.

Accounting profession

The two major professional bodies of accountants whose members are engaged in public practice in Australia are:

- The Institute of Chartered Accountants in Australia
- CPA Australia

Auditing standards

The Auditing and Assurance Standards Board (AuASB) is responsible for issuing auditing standards, which prescribe basic principles and practices that members of the professional bodies are expected to follow in the conduct of an audit. These standards are legally enforceable for financial periods commencing after 30 June 2006.

Australian Auditing Standards are essentially similar to those issued by the International Federation of Accountants. Auditing guidance statements are also issued by the AuASB to provide practical application guidance to supplement the contents of the auditing standards.

Accounting principles

For reporting periods commencing after 31 December 2004, Australian equivalents of International Accounting Standards (issued by the International Accounting Standards Board (IASB)) must be applied to financial statements. These standards, which are reissued by the Australian Accounting Standards Board, will continue to be referred to as AASB Standards. The AASB will however, be adopting the content and wording of IASB Standards, modified when required to accommodate the Australian legislative environment. The Australian Accounting Standards Board also issues Urgent Issues Group Consensus Views from time to time to address divergent accounting practices that have evolved in the market place. The provisions of the AASBs and Urgent Issues Group Consensus Views are mandatory on members of the professional bodies and any significant departure with which the auditor does not agree should be referred to in the auditor's report.

Form and content of financial statements

In general, the disclosure requirements for financial statements are set out in specific AASBs and, in the case of listed companies, by the rules of the Stock Exchange.

There are minimum disclosure and formatting requirements for the income statement, balance sheet, statement of cashflow and statement of changes in equity that are outlined in the AASBs.

The balance sheet must show relevant categories of assets and liabilities as current or non-current. If a liquidity presentation is more appropriate, assets and liabilities can be presented in the order of their liquidity without reference to current and non-current classification.

The income statement must include certain line items on the face including profit or loss from ordinary activities, profit or loss on extraordinary items and outside equity interests in such profits or losses. The income statement must also contain additional information by way of footnote.

The cashflow statement is prepared using the direct method, whereby gross cash inflows and outflows are reported on the face of the statement. There are various requirements for additional note disclosures, including for additions and disposals of entities, non-cash financing and investing activities and credit standby arrangements.

The statement of changes in equity presents the changes in equity from one financial year to another calculated based on the income and expenses generated during the year. The statement must show on its face, the profit and loss for the period, each item of income and expense that is recognised directly in equity and the total of these items, and the total income and expenses for the period.

The AASBs also include various requirements for detailed note disclosures such as segment reporting, related party transactions and financial instruments.

Companies are required to disclose the accounting policies followed in dealing with items that are judged to be material or critical in determining their profit or loss for the year and in stating their financial position. These items often include, amongst others, depreciation of fixed assets, stocks and work-in-progress, treatment of goodwill and other intangible assets, long-term contracts, deferred taxation and the translation of foreign currencies.

Comparative figures for the preceding financial year must be shown for all items in the income statement, balance sheet, statement of cashflow and statement of changes in equity and the notes thereto.

Recent changes to the Corporations Act require expanded disclosures in the directors' report, particularly to demonstrate that the auditor has been independent. Listed companies will have to provide details of all non-audit services provided by the auditor. The chief executive officer and chief financial officer will also be required to make declarations about the financial statements.

Exchange controls

All forms of exchange control in Australia have been abolished.

Significant cash transactions and transfers are reported to the Australian Transaction Reports and Analysis Centre. Cash dealers must report suspect transactions.

Restrictions on foreign investment

Government attitude towards foreign investment

The Federal Government's basic objective is to encourage foreign investment in Australia. At the same time, there must be fair sharing of net profits between the foreign investor and the Australian community.

The foreign investment policy is administered by the Treasurer (Minister of Finance), who is assisted by the Foreign Investment Review Board (FIRB).

The Foreign Acquisitions and Takeovers Act 1975 regulates the acquisition of certain land interests and control of certain business enterprises and mineral rights.

Prior approval of proposals

All proposals above certain thresholds need prior approval and therefore should be notified to the Government. Notification thresholds are:

- For acquisitions of substantial interests in existing Australian businesses, where the gross assets value exceeds AUD 100 million (EUR 59.859 million; USD 87.912 million) or where the business is valued by the proposal at over AUD 100 million. In the case of US investors, an exception is made, and the reporting threshold is raised to AUD 871 million (EUR 521.386 million; USD 765.696 million). Where the investment is made in a prescribed sensitive sector, however, or by entities controlled by a US government, the threshold is AUD 100 million;
- For the establishment of new businesses, where the investment is AUD 10 million (EUR 5.986 million; USD 8.791 million) or more, proposals by US investors do not require notification but remain subject to other relevant policy requirements. However, the notification requirement still applies in instances where the entity is controlled by a US government
- For takeovers of offshore companies, where the Australian subsidiaries of the company or gross assets exceed AUD 200 million (EUR 119.717 million; USD 175.824 million), except where the AUD 871million US-investor threshold applies
- Portfolio investments in the media of 5% or more and all non-portfolio investments irrespective of size
- Direct investments by foreign governments and agencies irrespective of size
- Certain acquisitions of interests in urban land
- Proposals where any doubt exists as to whether they are notifiable
- All tourism proposals, which incorporate an accommodation facility, irrespective of value.

Examination of proposals

The Government registers but normally raises no objections to proposals by foreign interests (other than foreign governments) where the gross/total investment falls below AUD 100 million, except if the proposals relate to sensitive areas.

Notifiable proposals to acquire an existing business (with gross assets of AUD 100 million or more) or to establish a new business (with a total investment of AUD 100 million or more) will be fully examined by the Government. Objections will not normally be raised unless they are contrary to the national interest.

Specific notification and approval arrangements apply to certain sectors including urban land, banking, civil aviation, airports, shipping, media and telecommunication.

Residential real estate

Significant restrictions apply to investment in residential real estate. Residential real estate means all Australian urban land other than commercial properties (that is offices, factories, warehouses, restaurants, shops). Acquisitions of 'hobby farms' and 'rural residential' blocks by foreign interests are included in the residential real estate category.

Foreign purchasers intending to acquire real estate in Australia must seek prior approval from the Government through the Foreign Investment Review Board unless specifically exempted by the Foreign Acquisitions and Takeovers Regulations.

The acquisitions of residential real estate that are exempt from the need for prior examination include the following:

- Foreign nationals who hold permanent resident visas or hold, or who are eligible to hold, a 'special category visa' (e.g., a New Zealand citizen);
- Acquisitions by Australian citizens resident abroad; and
- Foreign persons purchasing, as joint tenants, with their Australian citizen spouse property that is zoned residential.

Further information on the acquisition of residential real estate by foreign nationals is available from: http://www.firb.gov.au/content/real_estate/residential.asp

Commercial real estate

Commercial real estate includes vacant land for commercial development and developed commercial property.

Proposals to acquire the following require notification and approval:

- Vacant land, regardless of value;
- An accommodation facility, regardless of value;
- Property being acquired by a foreign government or its agent, regardless of value;
- Developed commercial real estate subject to heritage listing valued at AUD 5 million (EUR 2.993 million; USD 4.396 million) or more; and
- Developed commercial real estate where the total value of the property being acquired is AUD 50 million (EUR 29.929 million; USD 43.956 million) or more.

Further information on the acquisition of commercial real estate is available from: http://www.firb.gov.au/content/real_estate/commercial.asp?NavID=18

3. The tax system

The tax structure

Taxing authorities

Taxes are levied by the Federal, State and local governments. The most significant taxes are federal income tax, goods and services tax and fringe benefits tax.

Principal taxes

Taxes on income and gains

- Income tax (including capital gains)

Taxes on transactions

- Goods and services tax
- Customs duty, wine equalisation tax (WET) and excise duty
- Stamp duty

Taxes on property

- Land tax
- Local government rates

Other taxes

- Medicare levy (compulsory health insurance)
- Payroll tax
- Fringe benefits tax
- Superannuation guarantee charge

Income tax

A global system of income tax is imposed by the Federal Government. Legislation is contained in the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997. The 1997 Act was intended to be built up progressively to replace the 1936 Act as it was rewritten, but the rewrite process has been halted and the two Acts operate in tandem.

Taxable income

Income tax is imposed on the 'taxable income' of a taxpayer, which is calculated by deducting from 'assessable income' all 'allowable deductions'.

Assessable income

The assessable income of a resident other than a 'temporary resident' includes gross income and capital gains derived from all sources in and out of Australia, other than exempt income. The assessable income of a non-resident or of a 'temporary resident' includes gross income derived from all sources in Australia (other than exempt income), and capital gains on assets that are 'taxable Australian property'. For information on the residence of companies, see Chapter 4 and on the residence of individuals including the concept of temporary resident see Chapter 5.

Allowable deductions

All losses and outgoings are allowable deductions to the extent to which they are incurred in gaining or producing assessable income, or necessarily incurred in carrying on a business for the purpose of gaining or producing such income, provided that they are not losses or outgoings of a capital, private or domestic nature, or incurred in relation to the gaining or production of exempt income.

Generally, losses incurred in deriving foreign-source income are deductible only against income of the same class and from the same source.

Exempt income

Certain types of income are exempt from income tax. Examples include: income of individuals from certain government pensions, income of individuals with diplomatic privileges, income from periods of foreign service by resident individuals, and income of non-profit educational, charitable and scientific associations and institutions.

Some foreign dividends received by Australian-resident companies are also exempt from tax. Recently, this exemption has been widened such that non-portfolio dividends received by resident companies from both listed and unlisted companies are exempt from tax.

No general exemption applies to businesses carried on for profit-making purposes.

Exempt income may arise from the operation of a double tax treaty.

Tax Offsets

Tax offsets (formerly called tax rebates) are amounts that directly reduce the tax otherwise payable on taxable income. Tax offsets may be contrasted with allowable deductions, which reduce taxable income. Examples of tax offsets are the dependant-spouse rebate, and the dividend-franking rebate.

Taxation year

The taxation year for income tax ends on 30 June. A company with a foreign holding company with a different year-end may apply for a substituted accounting period in lieu of 30 June.

Relief from double taxation

Australia has an extensive network of tax treaties under which double taxation of Australian income and gains is generally avoided. This is done by way of a credit against Australian tax for foreign tax paid on the same income or gain. Where treaty relief is not available, Australia usually grants a foreign tax credit by way of unilateral relief. The most significant exception is that Australia will not allow foreign tax credits for tax imposed overseas on a 'unitary tax' or 'credit absorption' basis. For a full list of Australia's double tax treaties, see the Appendix.

Tax exemptions apply to dividends and trust distributions paid out of income/profits previously attributed under the controlled foreign companies (CFC) rules or the foreign investment funds (FIF) rules.

Australian companies receiving income from a company may pay this income on to foreign shareholders without incurring withholding tax to the extent that they are either franked (that is, have been subject to 30% corporate tax in Australia) or to the extent that unfranked income is declared to be 'conduit foreign income'.

Excess foreign tax credits

Excess foreign tax credits can be carried forward for up to five years but cannot be carried back. From 1 July 2003, the former provisions governing the grouping of companies, which allowed the transfer of these tax credits between companies belonging to the same group, were removed and replaced by the consolidation provisions (see Chapter 4). Previously, excess foreign tax credits could only be offset against tax on foreign income of the same class (passive income, offshore banking income and other income). Since September 2007, the government has removed the requirement to quarantine foreign tax credits. This change means that certain taxpayers will potentially have greater utilisation of foreign tax credits.

Self-Assessment of tax

Australia has implemented a system of self-assessment of income and other taxes. All taxpayers are required to self-assess their tax liability, and are required to maintain proper records supporting their tax returns and produce them to the Australian Tax Office upon request. Substantial penalties can be imposed for non-compliance.

Income tax payable on employment income is normally collected by deduction at source under the Pay-As-You-Go (PAYG) system (previously known as the PAYE system) (see below).

Tax rulings

As part of the self-assessment régime, a system of public and private rulings has been introduced. These rulings are legally binding on the Australian Taxation Office. They are intended to assist taxpayers in interpreting the tax law. Public rulings can be relied on by all taxpayers. Private rulings can only be relied upon by taxpayers named in them and only for the stated transactions and tax years. Private rulings can be obtained in advance of the transactions taking place or up to four years after the due date for lodging the tax return for the year in question.

Tax audits

The Australian Taxation Office carries out tax audits on a selective basis, with an emphasis on large taxpayers and selected industries. It also conducts random audits designed to cover all taxpayers over a number of years. Audits are conducted to monitor compliance with tax laws under self-assessment, as well as to detect tax avoidance.

The Australian Taxation Office has wide investigative powers and, subject to the operation of the doctrine of legal professional privilege, may examine books and accounts, including inter-company pricing, international agreements, international non-arm's length transactions and businesses carried on partly in and partly out of Australia. It has wide powers to make additional assessments for any of the previous four years and, where fraud or wilful neglect is involved, for any years beyond that.

Appeal procedures

Where an assessment is disputed, a formal notice of objection must be lodged within 60 days from the date of service of the notice of assessment (or from the date of lodgement of company tax returns). The time limit for lodging an objection is two or four years. A two or four-year time limit also applies to objections against private rulings.

An assessment may be amended by the Commissioner for any reason at any time within two years of the due date for payment. A four-year time limit applies in limited cases. In cases of fraud or evasion there is no time limit.

If a taxpayer is dissatisfied with the decision on an objection, the taxpayer may appeal to the Administrative Appeals Tribunal or the Federal Court.

Capital gains tax

A tax on capital gains is technically part of the income tax, applies to gains on the disposal of assets acquired after 19 September 1985 and is levied at ordinary rates of income tax. Ordinarily, a capital gain will be made where a taxpayer disposes of an asset and the proceeds received in respect of that disposal exceed the asset’s cost base.

Up until 21 September 1999, the method of calculating a capital gain allowed for an adjustment for inflation purposes (indexation) of the cost base of an asset. However, with effect from 21 September 1999 indexation was abolished and modifications to the method as to how capital gains are calculated were introduced.

The changes apply from 21 September 1999 to individuals, complying superannuation funds and trusts that acquire a taxable asset and make a capital gain from a taxable event. They allow a discount on the capital gain received provided that the asset was held for at least 12 months.

Under the changes, individuals include one-half of nominal net capital gains in assessable income. Complying superannuation funds include two-thirds of nominal net capital gains in assessable income. For assets acquired before 21 September 1999 and disposed of after that time, individuals and superannuation funds are able to choose whether to claim the capital gains (CGT) discount or to be taxed on the difference between the sale price and the indexed cost base as at 30 September 1999.

Companies continue to be taxed at the corporate tax rate on the nominal net capital gain made. For assets acquired prior to 21 September 1999, most companies choose to be taxed on the difference between the disposal proceeds and the indexed cost base of the asset as at 30 September 1999.

A trust making a capital gain from the disposal of an asset that has been held for more than 12 months are required to include one-half of the nominal capital gain in their net income. The trustees may elect, in relation to assets acquired before 21 September 1999, to be taxed on the difference between the sale price and the indexed cost base at 30 September 1999.

A beneficiary of the trust must double any discounted capital gain distributed to him or her, thereby allowing the beneficiary to apply any capital losses against the trust capital gain to calculate his or her capital gain. The beneficiary's net capital gain will be eligible for CGT discount if the beneficiary is an individual or a complying superannuation fund.

Incorporeal property created by a taxpayer is deemed to be an asset acquired for no cost other than incidental expenses. Examples are:

- Agreements not to compete
- Exclusive trade tie agreements
- An actor agreeing with a film company not to appear in a film made by another company
- Agreement to withdraw an objection to a town-planning application
- Grant of management rights over a property
- Endorsement of particular goods or services
- Grant of a right to use a trademark
- An agreement to supply information
- Agreement to vary a contract (not amounting to a disposal of the whole or a part of the rights under the contract)
- Assignment of an expectation or of a right that is yet to come into existence
- Certain payments where no asset is created or disposed of, for example, payments for restrictive covenants.

Residents' capital gains

Capital gains tax applies to all assets, other than excluded assets, whether the assets are located in Australia or not.

The profit on sale of assets acquired prior to 20 September 1985 is taxable as ordinary income only if they were acquired for resale at a profit or as part of a profit-making undertaking or scheme. The cost of such assets is not indexed for inflation.

A rollover (deferral of capital gains tax liability) will be allowed in cases of:

- a transfer of assets to a wholly owned company;

- asset-ownership changes associated with certain types of business reorganisations; compensation for compulsory acquisition of assets and stolen or destroyed property;
- the sale of certain business assets by small businesses, where replacement assets are acquired within a stipulated period; and
- the sale of business assets by small business owners upon retirement.

A rollover will not apply to the voluntary replacement of an asset.

Capital gains tax exemptions:

- One of the many capital gains tax exemptions is the 'main residence exemption' which relates to disposals of the taxpayer's main residence.
- Other exemptions include pre-CGT assets, concessions that apply to small businesses, motor vehicles and so on.

Non-Residents' capital gains

A tax on capital gains applies only to assets having the necessary connection with Australia. With effect from 12 December 2006, the scope of the tax was changed to extend (or, in some cases, contract) the capital gains tax net to only those assets that are 'taxable Australian property'. Taxable Australian property is defined as:

- Land or buildings situated in Australia including mining, quarrying and prospecting rights
- An asset used in a trade or business carried on through a permanent establishment in Australia (however, the new rules decrease the gain taxable in Australia by the proportion of time for which the asset was not used in an Australian permanent establishment)
- An 'indirect real property interest', being an interest in an entity whether Australian or foreign, where the majority of the value of that entity (after tracing through interposed entities) is represented by Australian or foreign land
- Certain assets that were held by an ex-resident of Australia, except where the ex-resident had been subject to capital gains tax on the deemed gain when exiting Australia
- Interests in certain fixed trusts that have a taxable Australian property
- An option or right to acquire any of the above

An 'indirect real property interest' does not include interests in such entity where the taxpayer and/or associates did not own at least 10% of the issued share capital of the company. It is also not necessary to trace through interposed entities where the shareholding is less than 10%.

Under the amended rules, disposals of the following assets by non-residents are no longer subject to capital gains tax:

- A share in a resident private company (except where the company is an indirect real property interest)
- A share in a resident public company (generally a company whose shares are listed on a stock exchange or are otherwise widely held) where the taxpayer and/or associates owned, at any time within the last five years as occurred after 19 September 1985, at least 10% of the issued share capital of the company (except where the company is an indirect real property interest)
- An interest in a resident trust estate (except for certain trusts owning taxable Australian property)
- A unit in a resident unit trust where the taxpayer and/or associates owned, at any time within the last five years as occurred after 19 September 1985, at least 10% of

the issued units of the unit trust (except for certain trusts owning taxable Australian property)

Capital losses

Capital losses may be offset against capital gains of the current year or be carried forward to future years. In addition, income losses (with limited exceptions) may be offset against capital gains.

Capital losses are not transferable from one company to another within wholly owned company groups, as they are covered by the consolidation regime.

Capital gains tax exemptions and reliefs

All gains accruing on the disposal of all forms of property and rights are, in principle, subject to capital gains tax. There are a number of exceptions, including a taxpayer's principal residence, most personal-use assets, motor cars and trading stock.

Administration

The Australian Taxation Office administers the federal laws through regional tax offices.

From the 2000/2001 income year, a system for the collection of income tax called the PAYG (Pay-As-You-Go) tax instalments system was introduced to replace the old provisional tax system and to include companies.

PAYG *instalments*

The PAYG instalment system ensures that taxpayers pay either income tax instalments that reflect their current trading and investment conditions or instalments based on last year's income tax and a GDP adjustment.

Under these arrangements, all taxpayers pay quarterly instalments after the end of a quarter (within 28 days of the end of the quarter) or in some cases annually (on the 21st day of the fourth month after the end of an income year).

Liability for instalments

An entity will only be liable to pay instalments if the Commissioner has given it an instalment rate by written notice. If the Commissioner withdraws an entity's instalment rate, it is no longer liable to pay instalments until another instalment rate has been given to it. An entity may vary an instalment rate where it considers the current instalment rate is not appropriate to the current income year.

Timing and payment of instalments

Generally, an entity will be liable to pay a PAYG instalment for each quarter of an income year. However, entities will be entitled to choose to pay an annual instalment in specified circumstances. Entities may pay instalments annually if:

- They pay less than AUD 8000 (EUR 4800; USD 7025) tax annually on business and investment income;
- They are not a partner in a partnership that is registered nor required to be registered for goods and services tax (GST); and
- They are not part of a consolidated group or a GST joint venture.

An entity's first instalment will be payable for the instalment quarter in which the Commissioner first gives it an instalment rate. However, if the entity is entitled to choose to pay an annual instalment, and it makes that choice, its first instalment will be that annual instalment for the income year in which the Commissioner first gives it an instalment rate. The PAYG provisions have special rules for entities that stop being annual payers and become quarterly payers.

Due date for instalments

Quarterly instalments are due 28 days after the end of each instalment quarter of the income year. For example, a company with a balance date of 30 June will have instalments due on 28 October, 28 February, 28 April and 28 July (note the special extension granted for the second quarter's instalment). Such a company will therefore pay its first quarterly instalment in respect of the year ending 30 June 2007 on 28 October 2006. For consolidated groups, however, instalments paid by the head company are due 28 days after the end of the instalment quarter.

Companies and other entities that report their GST obligations monthly are obliged to do so by the 21st day of the next month. The timing of these entities' quarterly PAYG instalments is matched with the GST reporting and payment dates at 21 days after the end of each quarter.

Annual instalments are due on 21 October after the end of an income year for an entity with a balance-sheet date of 30 June and on the 21st day of the fourth month after the end of the income year for an entity that has a substituted accounting period.

Entities liable to pay an instalment based on instalment income for a period must notify the Commissioner of the amount of the instalment income on an approved form and on or before the day the instalment is due, irrespective of whether or not the instalment is paid.

4. Taxes on business

Income tax on business income

Accounting period

The Australian tax year-end is 30 June, although a substituted accounting period may be adopted where it has been approved by the Australian Taxation Office.

Accounting methods and business profits

Tax returns are usually based on the profit as shown by accounts prepared on the historical cost basis and in accordance with generally accepted accounting principles. Accruals accounting is generally required, although there are exceptions. Specific adjustments must be made to the accounting profit to arrive at the taxable income. The principal adjustments usually made are:

- The exclusion of exempt income
- The use of depreciation rates that differ from those used in the accounts
- Items that are not deductible for tax purposes, such as accrued employee-leave entitlements.

Inventory valuation

It is acceptable for tax purposes to value trading stock at the end of the year of income at cost, market selling value or replacement value, at the choice of the taxpayer.

Interest

Interest income is assessable in the accounting period in which it is received. If received net of withholding tax, the withholding tax can be claimed as a foreign tax credit against the taxpayer's income tax liability.

Management fees

Management fees are assessable/deductible on a receivable/payable basis and, particularly when rendered to/by a non-resident associated entity (when arm's length value can be imputed), should be commensurate with services rendered.

Entertainment expenses

Entertainment expenditure is generally non-deductible, irrespective of whether it has been directly incurred in earning assessable income or in the course of carrying on a business for the purpose of earning such income. Entertainment of employees and their associates is deductible but subject to fringe benefits tax (see below).

Timing of deductions for prepaid expenditure

Deductions for expenditure paid in advance must generally be apportioned over the period during which the goods or services are provided.

Depreciation

Generally, expenditure on fixed assets must be capitalised for tax purposes and depreciation deductions are only allowed in respect of plant.

Taxpayers must generally claim depreciation over the effective life of the asset. Taxpayers are allowed to reassess the effective lives of assets acquired after 21 September 1999.

Amortisation of buildings and structural improvements

Capital expenditure on the construction of buildings used for short-term traveller accommodation and industrial buildings can be written-off at 4% pa on a straight-line basis. Other income-producing buildings qualify for deductions at 2.5% pa.

Income-producing structural improvements (other than buildings) also qualify for deductions at 2.5% pa if construction commenced after 26 February 1992.

Purchased buildings may qualify for amortisation at 2.5% pa, or 4% pa if constructed after 21 August 1984, based on the original cost of construction.

Where these deductions are claimed in respect of the asset and the asset was acquired after 13 May 1997, the capital gains tax cost base of the asset is reduced by the total amount of deductions claimed.

Thin capitalisation rules

Australia's thin capitalisation rules extend to the operations of both inbound and outbound investors. Furthermore, they limit deductions relating to the total debt, rather than just foreign debt (as was the case prior to 1 July 2001).

A safe-harbour gearing limit of 75% of the gross value of the entity's assets adjusted to take account of certain related-party debt (effectively a 3:1 debt/equity ratio) is used as the maximum amount of debt allowed where the company is not a financial institution.

Australia's debt/equity rules apply an 'economic reality' test to determine whether particular financing arrangements are to be treated as debt or equity for all taxation purposes, including thin capitalisation. Accordingly, it is possible for a share (such as a redeemable preference share) to be treated for tax purposes as debt.

Within a consolidated group of companies the thin capitalisation rules apply to the head company of the group.

Employee remuneration

There are no tax limits on employee remuneration payments, but the payments must meet the general test for deductibility of expenses under the income tax law. Contributions by employers to superannuation schemes for the purpose of providing retirement, death and disability benefits to employees are eligible for deduction subject to certain limits based on the employee's age. These contribution limits for the 2005-06 and 2006-07 years are as follows:

Table 1

Age	2005-06	2006-07
Under 35	14 603	15 260
35 to 49	40 560	42 385
50 and over	100 587	105 113

The age-based deduction limit was abolished from 1 July 2007. The maximum concessionary employer contributions are now AUD 100 000 for persons aged 50 or over on 1 July 2007, or AUD 50 000 for anyone else below that age.

Insurance premiums

Insurance premiums paid to foreign insurers may be disallowed as a deduction.

Payments to related parties

Payments to foreign affiliates in respect of management fees, research and development, or general and administrative expenses are not subject to withholding tax at source and can be deducted in computing trading profits, except to the extent to which they are in excess of an arm's length charge having regard to the services rendered. However, care needs to be taken to ensure that payments are not deemed to be royalties.

Anti-avoidance provisions apply to ensure that any international transactions between related entities are conducted on an arm's length basis. The Australian Commissioner of Taxation has the power to adjust the assessable income and allowable deductions of any taxpayer (including any company) where parties to an international transaction (one of which has an Australian connection) are not acting as independent parties dealing at arm's length with each other. Substantial penalties are automatically imposed for breaches of the anti-avoidance provisions.

The Australian Tax Office has recently stepped up its investigation of multinational subsidiaries in Australia. In particular, the Tax Office is examining the arm's length nature of charges made to a subsidiary by its foreign parent company and affiliates for the transfer of goods and services. Multinational subsidiaries in Australia should carefully review the processes by which they establish and monitor the charges paid by them to foreign affiliates for goods and services. They should also ensure that full and contemporaneous documentation is in place to prove that the dealings are at arm's length.

Losses

Trading losses may be offset against all profits, including capital gains, of the period in which they occur. Any losses not so utilised may be carried forward and offset against subsequent profits. Losses can be carried forward indefinitely.

Anti-avoidance provisions apply to prevent trafficking in companies with prior-year losses. In broad terms, there must be more than 50% continuing ownership of the same shares bearing dividend, equity and voting rights in the company. If that test cannot be satisfied, the company must carry on the same business as it carried on prior to the change in ownership, and must not enter into any transaction of a kind not previously undertaken. Failure to satisfy either of these tests will prevent losses from being deductible.

Charitable gifts

A gift to a charity will be deductible, to the extent that such deduction does not add to or create a loss. The charity must be approved as such by the Commissioner of Taxation.

Royalties paid

Royalty payments are tax deductible up to a commercially justifiable rate. Withholding tax must be deducted from royalties having an Australian source unless the entity to which the royalties are paid is resident in a country with which Australia has concluded a double tax agreement and it has a permanent establishment in Australia. Australia adopts a wide definition of 'royalties', which is similar to that in the OECD Model Double Tax Treaty.

Service fees

Payments for management services, technical assistance, use of know-how, and so on to a non-resident by Australian entities, may be made without deduction of tax and are tax-deductible business expenses of the paying company up to commercially justifiable limits (i.e. arm's length amounts).

Non-deductible Items

The principal items that are not tax-deductible from business income are:

- Capital expenditure such as improvements to business premises, legal costs connected with the acquisition of capital assets (however, capital allowances may be available instead)
- Depreciation of fixed assets (however, capital allowances may be available instead)

- Foreign taxes relieved by way of tax credit
- Expenditure on business entertainment (other than that part paid in respect of employees which is deductible, but subject to fringe benefits tax).

The corporate tax system

Entities taxable as companies

Tax is payable at the corporate rate by companies resident in Australia and by foreign companies with Australian taxable income. The term 'company' includes any body corporate or unincorporated association but does not include a partnership. A corporate member of a partnership is, however, subject to corporate tax on its share of the partnership profits.

Principal forms of business entities subject to company income tax are:

- A limited-liability company (the most common form of business entity subject to company income tax)
- A corporate unit trust (a publicly listed unit trust established as a result of a company reorganisation)
- A public unit trust that actively operates a trade or business
- A limited partnership

Special rules apply to life-assurance companies, trade unions, friendly societies, cooperative and mutual companies and insurance companies that reinsure outside Australia.

Rate of company tax

The rate of tax payable by companies for the 2007-2008 income year is 30%. Companies are generally required to pay tax on an instalment basis (see above).

Company residence

An Australian-resident company is subject to income tax on all profits (including realised capital gains) wherever derived.

A company is considered to be a resident in Australia if it is incorporated in Australia, or meets either of the following criteria:

- It is centrally managed and controlled in Australia and it carries on business in Australia; or
- Its voting power is controlled by Australian-resident shareholders and it carries on business in Australia.

In some instances Australia's double tax treaties treat a company as being solely a resident of a particular foreign country for the purposes of the treaty (i.e. where it is a dual-resident and its effective management and control is in the other country).

Consolidation

A wholly owned group of companies (together with eligible trusts and partnerships) can elect to form a consolidated group. The consolidation provisions work to treat the group as a single entity that will lodge a single tax return, pay consolidated income tax instalments, maintain a single franking account, pool losses, franking credits and foreign tax credits. Furthermore, intra-group transactions, including dividends and transfers of assets, are ignored for tax purposes.

Under the consolidation provisions, complicated rules govern issues relating to the eligibility to form a consolidated group, the joining/exiting of a company into/from an existing consolidated group, the transferring of existing losses (pre-consolidation) into the group and deemed CGT consequences.

Research and development

Most expenditure incurred by Australian-incorporated companies on research and development qualifies for a 125% tax deduction. Some items, such as expenditure on the acquisition of core technology, may attract a deduction of 100% and the purchase of plant and equipment may attract accelerated depreciation deductions (total depreciation deductions may be increased by 25% so that 125% of the expenditure on plant and equipment is deductible over time). A premium rate of deduction of 175% applies in respect of increase average R & D expenditure over and above a three-year moving average.

Companies incorporated outside Australia, and partnerships, trusts and individuals do not qualify for these deductions but may still obtain tax concessions under alternative, less generous provisions.

Dividend imputation system

Resident shareholders

The imputation system operates to impute or allocate tax paid at the company level to resident shareholders, who will be assessed on the total amount of the dividend plus the imputation credit. The shareholder is then entitled to a tax offset equal to the imputation credit. Dividends with an imputation credit attached are known as 'franked' dividends, and the extent to which they are franked as the 'franked amount' of the dividends.

Any excess tax offset will be offset against income tax on other income, including capital gains, and is refundable for individuals where the offset exceeds such tax.

Where franked dividends pass from one resident company to another, the attached imputation credit is effectively transferred to the recipient company, thus enabling that company to frank a similar amount of dividends paid to its shareholders.

In some cases, a company paying dividends to its shareholders may not be in a position to frank those dividends. In such a case, the dividends paid will be 'unfranked', and will not have an imputation credit attached. Unfranked dividends are subject to tax in the hands of resident individual shareholders.

Some companies are able to do no more than partially frank their dividends, and thus pass on imputation credits only to the extent of the franked amount of the dividend.

Non-resident shareholders

Non-resident shareholders (companies and individuals) are generally subject to withholding tax at the rate of 30% of gross unfranked dividends paid to them by resident companies (reduced to 15% or lower under most double tax treaties). Franked dividends are not subject to withholding tax.

Anti-Avoidance provisions

Anti-avoidance provisions will apply to schemes that provide a tax advantage in relation to franking credits if the following conditions exist:

- There is a scheme for the disposition of shares (or an interest in shares);
- A frankable dividend has been paid or is payable
- A person receives or could reasonably be expected to receive what are referred to as franking credits; and
- It could be concluded that the person entered into or carried out the scheme for the purpose of enabling a taxpayer to obtain a franking credit benefit.

A debit may then be posted to the company's franking account or the recipient shareholder may be denied franking benefits attached to the dividend or distribution.

Dividend streaming

The following distributions will be treated as an unfrankable and unrebatable dividend assessable in the hands of the recipient shareholder:

- Bonus shares that are streamed to shareholders in lieu of unfranked dividends
- Capital benefits that are streamed to the shareholders who thereby gain a tax benefit (advantaged shareholders) while dividends are paid to other shareholders who would not gain such benefits (disadvantaged shareholders)
- Capital that is returned (or bonus shares that are issued) under an arrangement designed to confer a tax advantage as compared to the payment of a dividend.

Private-company distributions

A private company will be taken to have paid an unfranked dividend to a shareholder where the company:

- Pays or credits an amount or transfers property to a shareholder or its associate
- Makes a loan during a year to a shareholder or its associate
- Forgives a debt owed to it by a shareholder or its associate.

This rule does not apply to loans made on commercial terms.

Taxation of liquidation gains

Distributions to shareholders of a company by a liquidator in the course of winding up the company, to the extent to which they represent assessable income (including taxable capital gains) derived by the company (whether before or during liquidation), other than income that has been properly applied to replace a loss of paid-up capital, are deemed to be assessable dividends.

Any capital profits on the sale of assets acquired prior to 20 September 1985 will usually not be deemed to be dividends when distributed by a liquidator as they do not represent 'assessable income' derived by the company.

In liquidation, there is a disposal of shares for capital gains tax purposes by each shareholder. The final distribution (but not interim distributions) by the liquidator is the consideration in respect of the disposal of shares. Specific provisions apply to prevent double taxation where the amount of the final distribution has already been treated as an assessable dividend to the shareholder.

Distributions in the course of informal liquidations are treated in the same manner as for formal liquidations. However, if a company is not dissolved within three years after such a distribution, the distribution will not be treated as a liquidation distribution but as a dividend paid by the company as a going concern out of its profits (and therefore taxable in full in the hands of the shareholders).

Taxation of foreign companies

Under Australian domestic law, a non-resident company is generally liable to Australian tax if it derives income from sources in Australia. The Australian tax liability of a non-resident company is in most cases determined by a double taxation treaty. In general, treaties limit the taxation of industrial and commercial activities in Australia to the profits attributable to a permanent establishment in Australia. In such a case the calculation of tax chargeable on the profits of the permanent establishment is similar to that for an Australian-resident company.

Australian branch of a foreign company

The taxable trading profits of an Australian branch are calculated on the same basis as for an Australian-resident company, with the tax liability being limited to the trading profits that are attributable to the branch. There is no additional branch profits tax imposed on the profits.

Taxation of foreign operations of Australian entities

This is a very complex area of tax law. Specific advice should be sought where an Australian entity invests overseas.

Controlled foreign companies and trusts

Australia has controlled foreign companies (CFC) rules. Where these rules apply, income can be attributed back to the Australian shareholders and taxed on an accruals basis.

The government, as part of its current review of international tax arrangements, is addressing the complexity of these rules.

The CFC rules apply only to companies with Australian-resident shareholders who have satisfied one of three control tests.

- The strict control test: If five or fewer resident shareholders (and/or associates) own or are able to acquire or control an interest of 50% or more in the company, the strict control test is satisfied.
- The assumed controller test: if a resident taxpayer owns at least 40% of the shares and the company is not controlled by another group of entities, the assumed controller test is satisfied.
- The *de facto* control test: If five or fewer resident shareholders (and/or associates), while not holding an aggregate interest of 50% or more, nonetheless effectively control the company by other means, the *de facto* control test is satisfied.

There are two broad categories of countries to which the CFC rules may be applicable:

Listed countries – i.e. Canada, France, Germany, Japan, New Zealand, the United Kingdom and the United States.

Generally, there is no attribution of income for these countries, except where a company has taken advantage of specific tax concessions and it does not satisfy the active income test.

Unlisted countries – all other countries are 'unlisted countries'

This categorisation refers to all other countries, which either have a tax system comparable to Australia's or are low-tax jurisdictions.

Previously, a large number of countries were classified as 'limited-exception listed counties'. While these countries are now classified as 'unlisted countries', they are still treated as listed countries for the limited purposes of ITAA 1936 s 404 (additional notional exempt income).

An exemption for active business income ensures that income will not be taxed on an accruals basis if a CFC predominantly derives its income from genuine business activities.

Where the active income test is not satisfied, there is generally attribution of all 'tainted income' e.g. interest income.

Transferor Trusts

The transferor trust rules seek to prevent Australian residents from diverting assets or services to non-resident trusts, particularly those trusts that are resident in low-tax jurisdictions. Where applicable, the attributable income of a non-resident trust estate is included in the Australian assessable income of a resident transferor.

A transferor is any entity (this includes an individual) that, at any time, transfers or had transferred property or services to a non-resident trust.

The categorisation of countries is similar to the CFC rules for the purposes of determining which types of income may be attributed.

Listed countries – there is no attribution of income derived by a trust resident in such a country, other than where the trust has taken advantage of a specific tax concession.

Unlisted countries – the attributable income of a trust resident in such countries is the net income of the trust, less any amounts that are assessed in the hands of resident beneficiaries.

Non-Resident trusts – additional tax

If a resident beneficiary's assessable income includes a distribution from a non-resident trust of income of a previous year that has not been attributed to an Australian-resident transferor and was not previously taxed on either the trustee or a resident beneficiary, the beneficiary will be liable to pay additional tax in the nature of an interest charge.

Foreign Investment Funds and foreign life policies

Australian residents may be taxable on income attributable to investments in foreign companies and trusts where the investments do not meet the 'controlling interest' requirement of the CFC and transferor trust measures, except where one of a number of exemptions applies.

Treatment of foreign income and gains

Foreign dividends

The following rules apply to the remittance of dividends to an Australian-resident corporate shareholder.

- Non-portfolio dividends (10% or greater amount of voting shares): all non-portfolio dividends received by Australian companies are exempt from tax.
- Portfolio dividends (less than 10% shareholding): Such dividends from all countries are subject to the FTCS (see below).

If the Australian-resident shareholder is an individual, the FTCS (see below) applies to all dividends received from the overseas companies.

Foreign tax credit system (FTCS)

The FTCS operates to subject certain foreign dividends to Australian tax. A credit is allowed against the Australian tax payable on those dividends for the direct foreign tax paid thereon. In the case of related companies, the credit will also include (in addition to any dividend withholding tax) the tax paid on the profits out of which the dividends are paid.

An Australian company will be taken to be related to any number of linked foreign companies provided that:

- Each company in the chain has at least a 10% controlling interest in the company in the tier below and
- The Australian parent company has a direct or indirect, controlling interest of at least 5% in each foreign company that is a member of the chain.

The credit allowed to an Australian-resident company for underlying foreign company taxes on dividends from a foreign subsidiary requires the determination of the amount of profits derived by the foreign subsidiary that are available for distribution. The profits of the foreign subsidiary as disclosed in its accounts will be used for this purpose. However, these figures are subject to examination and adjustment to ensure that, having regard to the requirement of any law of the foreign country concerned relating to the maintenance of statutory reserves and other relevant matters, these amounts reflect the profits derived and properly available for distribution.

The amount to be included in assessable income is the gross dividend (net dividend plus withholding tax and any underlying tax). Tax payable on the dividend is calculated at the prevailing corporate tax rate. Foreign withholding tax, and in the case of dividends from a foreign subsidiary, underlying foreign company tax, will be credited against tax payable on the dividends.

Credit for foreign taxes is limited to the Australian tax payable on that income, and is only creditable when the tax is paid. Excess foreign tax credits may be carried forward for a maximum of five years for application against tax payable on foreign income.

Foreign investment in Australia

Capital gains tax

To combat an avoidance opportunity illustrated by the outcome in the *Lamesa Holdings* Case, Australia has extended its taxing right under certain double tax agreements to situations in which Australian real property is owned by non-residents, either directly or indirectly or through a chain of interposed entities, and it is one of these entities that is alienated rather than the real property itself. This measure applies to income, profits or gains arising from the indirect alienation of real property by non-residents from 27 April 1998.

Conduit foreign income

The concept of conduit foreign income has been introduced to replace the foreign dividend account. This extends relief from Australian dividend withholding tax to all types of foreign-source income passing to non-resident investors via an Australian company.

There is also a refund mechanism for company tax paid on inter-entity distributions by holding companies that are wholly owned by non-residents. This measure is part of the Government's review of international tax arrangements.

Other foreign income

Prior to 1 July 2007, certain foreign interest income was quarantined with separate foreign tax credit limits. Interest derived from normal business activities (including banking) conducted in a foreign country was excluded from these provisions provided that the subsidiary had not received interest, other than from normal business activities, which amounts to more than 10% of its profits.

To ensure these quarantining provisions had the effect intended, dividends received from foreign subsidiaries were subject to tracing rules to overcome arrangements under which interest was derived by a subsidiary instead of an Australian parent company, and then effectively recharacterised as dividends remitted to Australia.

However, changes were announced by the Government in the May 2005 Federal Budget to remove foreign tax credit quarantining. This came into effect from 1 July 2007.

Royalty income is assessed at normal tax rates and a foreign tax credit allowed. Both interest and royalty income is grossed up and foreign tax credits are allowed against local tax paid on that income.

Partnerships and joint ventures

Taxation of partnerships

Partnerships are not separately taxed under the Australian taxation system, although they are required to lodge income tax returns. An appropriate proportion of the net income of a partnership must be included in the assessable income of each of the partners. Losses can be distributed to partners, who may claim them against other income of the current and future years.

Joint ventures

A joint venture is never a separate entity and as such is not subject to tax. The joint venturers are taxed on their respective profits as part of their income.

Non-Resident withholding tax

Non-resident withholding tax is imposed on gross royalties, most unfranked dividends, and interest paid or credited to non-residents. Withholding tax is also imposed on interest paid to ex-Australian branches of residents. The tax is deducted at source and paid over to the Australian Taxation Office within 21 days of the end of the month of deduction.

Royalties and interest are not deductible for the payer unless tax is withheld.

The standard rate of withholding tax is 30% on (unfranked) dividends and royalties and 10% on interest. However, the rates for royalties and dividends are usually reduced under a tax treaty.

Withholding tax will not be deducted from dividends paid to non-resident shareholders to the extent that the dividends are franked, or to the extent that the dividends are conduit foreign income.

Double taxation treaties and withholding tax rates

Table 2

Treaty-country withholding tax rates

Treaty Country	Withholding Tax Rates		
	Dividends (%)	Interest (%)	Royalties (%)
Argentina	10-15	12	10-15
[3]Austria	15	10	10
[3]Belgium	15	10	10
[3]Canada	15	10	10
China	15	10	10
Czech Republic	15	10	10
Denmark	15	10	10
Fiji	20	10	15
[3]Finland	15	10	10
[3]France	15[2]	10[2]	10[2]
[3]Germany	15	10	10
Greece	-	-	-
Hungary	15	10	10
India	15	15	10-15
Indonesia	15	10	10-15
[3]Ireland	15	10	10
[3]Italy	15	10	10
[3]Japan	15	10	10
Kiribati	20	10	15
[3]Korea	15	15	15
[3]Malaysia	15	15	15
[3]Malta	15	15	10
[3]Netherlands	15	10	10
[3]New Zealand	15	10	10
[3]Norway	15[2]	10[2]	10[2]
Papua New Guinea	15-20	10	10
[3]Philippines	15-25	15	15-25
Poland	15	10	10
Romania	5-15	10	10
Russia	15	10	10
[3]Singapore	15	10	10
Slovakia	15	10	10
South Africa	15	10	10
South Korea	15	10	10
Spain	15	10	10
Sri Lanka	15	10	10
[3]Sweden	15	10	10

Treaty Country	Withholding Tax Rates		
	Dividends (%)	Interest (%)	Royalties (%)
[3]Switzerland	15	10	10
Taiwan	15	10	12.5
Thailand	15-20	10-25	15
[3]United Kingdom	0/5/15[1]	0/10[1]	5
[3]United States	0/5/15[1]	0/10[1]	5
Vietnam	10-15	10	10

An agreement with Chile has been proposed.

[1] There is zero withholding tax on dividends where the recipient is a company directly holding 80% of the voting power of the payer, a 5% withholding tax rate applies where the dividend recipient holds directly 10% of the voting power of the payer, and a 15% rate applies to other dividends. There is no withholding tax on interest derived by a financial institution or government body.

[2] There are new double tax agreements with Norway and France. These treaties will give the same withholding tax rates for dividends, interest and royalties (subject to similar conditions) as the UK and the USA agreements – see Note 1 above. Such treaties have both been agreed and enacted in Australia but have not yet entered into force. They are expected to enter into force in the near future.

[3] These are 'pre-CGT treaties' which do not contain a specific article dealing with capital gains. However, CGT is covered in new protocols the United States DTA and proposed in the Canada DTA.

Goods and services tax

From 1 July 2000, Australia imposes a goods and services tax (GST), which is an indirect broad-based consumption tax, similar to VAT.

Broadly, the GST:

- Imposes a 10% tax liability (referred to as an output tax liability) upon registered entities making supplies of goods, services and other intangibles, unless the supplies are input taxed or GST-free (GST is also payable on the importation of goods by all entities and on the importation of some services and other intangibles)
- Requires entities that engage in an enterprise to register for GST purposes unless their annual turnover or projected annual turnover is less than AUD 75 000 (EUR 44 900; USD 65 925) (below this, registration is optional)
- Allows registered entities to claim back the GST incurred on creditable acquisitions and creditable importations made for carrying on or furthering their enterprise (referred to as input tax credits (ITCs))
- Requires entities to remit their net tax liability (output tax minus ITCs) to the Australian Taxation Office (ATO) either on a monthly (annual or projected annual turnover exceeding AUD 20 million (EUR 11.972 million; USD 17.582 million) or quarterly basis
- Requires the lodgement of GST returns and any payments due by the 21st day of the following month for monthly remitters or the 28th day of the following quarter for quarterly remitters (note this is extended to 28 February for the October to December quarter)

Superannuation guarantee charge

All employers are required to make contributions to an eligible superannuation fund on behalf of each employee. The contribution is based on a percentage of the employee's salary or wage.

The minimum prescribed rate of employer support is 9% of the employee's earnings base (subject to a maximum earnings base of AUD 36 470 per quarter in the 2007-08 financial year.

Fringe benefits tax

Non-monetary fringe benefits such as employer-provided cars, subsidised or free housing, low-interest loans, discounted or free goods or services and so on provided to employees are subject to tax at an effective rate of 46.5% of the grossed-up amount. The tax is imposed on the employer, rather than on the employees receiving the benefits.

The fringe benefits tax (FBT) is income-tax deductible.

Note that there are specific concessions and exemptions that affect international businesses; for example, accommodation and other benefits provided to employees living away from home.

A 31 March year-end applies to fringe benefits tax. Annual returns must be lodged by 21 May unless the FBT return is lodged by a tax agent. Where FBT was not previously paid or was less than AUD 3000 (EUR 1800; USD 2675) in the previous year, only one annual payment is required when the FBT return is lodged. Otherwise, the tax is payable in four quarterly instalments with the balance payable on lodgement of the annual return. The quarterly instalments will be based on the previous year's fringe benefits tax liability.

5. Taxes on individuals

Income tax

Residence status of individuals

An individual is resident in Australia where that person:

- 'Resides' in Australia within the ordinary meaning of that expression
- Is domiciled in Australia, unless the Commissioner is satisfied that the individual's permanent place of abode is outside Australia
- Has actually been physically present in Australia for more than one-half of the year of income, unless the Commissioner is satisfied that the individual's usual place of abode is outside Australia and that he or she does not intend to take up residence in Australia
- Is a Commonwealth Government employee and is a member of one of a number of government superannuation schemes.

Temporary residence

In early 2006, the Government introduced rules providing a concession for 'temporary residents', who would be taxed in a similar way to non-residents for certain purposes. For instance, such persons are only taxed on Australian-source income and on capital gains on 'taxable Australian property'. However, the tax rates applicable to temporary residents are the same rates as apply to residents.

A 'temporary resident' is defined as a resident:

- who holds a temporary visa granted under Australia's immigration law; and
- who is not an Australian resident under Australia's social security law; and
- whose spouse is not an Australian resident under Australia's social security law; and
- has not, at any time since the commencement of the temporary-residence rules, been a resident of Australia and failed any of the above three conditions.

Income tax rates for individuals

Residents

Resident individuals are assessed for income tax at progressive rates on their total income attributable to each tax year. The rates for the 2007-2008 tax year (ending 30 June 2008) are:

Table 3

Taxable income (AUD)	Rate of tax
First 6000	0
Next 24 000	15%
Next 45 000	30%
Next 75 000	40%
Remainder over 150 000	45%

The rates in the 2006-07 tax year (ended 30 June 2007) are given in Table 4:

Table 4:

Taxable income (AUD)	Rate of tax
First 6000	0%
Next 19 000	15%
Next 50 000	30%
Next 75 000	40%
Remainder over 150 000	45%

Non-residents

Rates for non-residents in the 2007-2008 tax year (ending 30 June 2008) are as follows:

Table 5

Taxable income (AUD)	Rate of tax
First 30 000	29%
Next 45 000	30%
Next 75 000	40%
Remainder over 150 000	45%

Rates for non-residents in the 2006-2007 tax year (ended 30 June 2007) were as in Table 6):

Table 6

Taxable income (AUD)	Rate of tax
First 25 000	29%
Next 50 000	30%
Next 75 000	40%
Remainder over 150 000	45%

Income from employment

Salaries and wages

All remuneration, including all benefits and facilities derived from an employment, is taxable, but expenditure necessarily incurred in carrying out the employment can be claimed as a deduction.

The income tax payable on employment income is normally collected by deduction at source under the PAYG system.

Foreign personnel

A foreign individual's liability to Australian tax on employment earnings is dependent upon a combination of the following factors:

- The employee's residence status
- The place where the duties are performed
- In certain cases, the period of time the employee spends outside Australia in performing the duties of the employment.

All earnings from an employment performed wholly in Australia are taxable irrespective of the residence status of the employee (subject to the provisions of any relevant double taxation treaty).

Employment-related deductions

An employee can deduct from his or her assessable income any necessary travelling expenses (excluding travelling between home and work) and other expenses incurred in the performance of the employee's duties.

Subscriptions to professional associations related to the particular employment are normally allowable deductions. Subscriptions to sporting and social clubs and associations are not deductible.

Entertainment expenses are not allowable as income tax deductions to an employee, even if they directly relate to employment activities.

Foreign pensions

Foreign-source pensions received by persons resident in Australia are taxable. Certain pensions paid by Germany and the Netherlands to former prisoners of war, resistance fighters and victims of wartime persecution (World War II) are exempt.

Business profits

Individuals doing business in Australia (that is carrying on a trade, profession or vocation here) have their business profits taxed in a similar way to that of companies. Broadly the same deductions are available.

Deductible non-employment expenses

Most interest payments, including interest on bank overdrafts and housing loans, are not deductible. Medical expenses and local council rates are not deductible. Charitable donations are deductible if they are made to an approved organisation.

Personal superannuation contributions

Superannuation contributions paid by an employee are not deductible. However, contributions by an employer on behalf of an employee, and certain contributions to superannuation schemes by self-employed persons, are deductible. These deductions are subject to certain limits. Superannuation contributions should be made to a complying, resident superannuation fund in order to maximise their tax-effectiveness.

Note that foreign superannuation funds will not qualify for Australian tax concessions and will not satisfy the requirements of the superannuation guarantee charge.

Trusts

Trusts are frequently used to hold investment or business assets. The most common types are discretionary trusts and unit trusts. While they are more expensive to establish than companies and are more complicated to operate, they can offer significant tax advantages over companies. Trusts are generally not taxed as separate entities, therefore avoiding company tax. Discretionary trusts also provide the opportunity to distribute income on a discretionary basis to one or more of the beneficiaries, a characteristic that can greatly assist tax planning.

The trustee of a trust will be taxed on the following kinds of income:

- Income to which no beneficiary is presently entitled (accumulated income) usually at penal rates
- Income of beneficiaries under a legal liability (children under 18 years, mainly) but with a credit allowed to the beneficiary
- Income of non-resident beneficiaries (taxed at company or non-resident individual rates as appropriate) but with a credit allowed to the beneficiary.

Generally speaking, beneficiaries must include trust distributions in their assessable income and will receive a credit for any tax paid by the trustee. Any excessive tax paid by the trustee may be refunded to the beneficiaries.

Trust losses

There is a limit on the circumstances in which trusts can recoup current-year and prior-year losses and deductions for bad debts. The particular measures that apply to a trust will depend on the type of trust.

Broadly, each type of trust will have to satisfy certain tests relating to ownership or control of the trust in order to be able to deduct current and prior-year losses and deductions for bad debts.

The trust-loss measures apply to all types of trusts other than excepted trusts. Excepted trusts include some family trusts, complying superannuation funds, approved deposit funds and deceased estates with a reasonable administration period.

6. Other taxes

Stamp Duty

Each of the States and Territories imposes stamp duty on transfers of property or assets (wholly or in part) and on certain specified written instruments.

Typical rates of stamp duty are:

- Transfer of shares – AUD 0.60 for each AUD 100 in value of shares. Duty on shares that are listed on the stock exchange was abolished from 1 July 2001. Stamp duty on all Victorian, Tasmanian, Western Australian, Queensland and Northern Territory share transfers (whether listed or not) has also been abolished. Stamp duty on transfer of unlisted shares in New South Wales is scheduled to be abolished from 1 January 2009 and in South Australia and the Australian Capital Territory from 1 July 2010.
- Transfer of real estate – variable rates up to 7.0% of the value of the land.

If documents are not stamped they may not be used as evidence in civil court proceedings until the duty is paid. Monetary penalties will be imposed on persons who neglect to have documents duly stamped (for example, an automatic late payment penalty of 100%).

In some States, purely nominal stamp duty may be payable on certain company group reorganisations.

Payroll tax

Payroll tax is imposed on employers by each of the States and Territories at rates from 4% to 6.85% for the 2007 annual payroll year. Small payrolls are exempt.

Land tax

Tax is imposed annually by each of the States on the owner of land in that State. The rate of land tax is 1.6% in the 2008 land tax year of the unimproved value of the land above a set threshold, with the main exemptions being for principal residences and for land used for primary production.

Local government rates

Local councils impose rates on landowners based on the unimproved value of the land. There is no exemption for residential properties.

Capital duty

There is no capital duty in Australia on contributions to the capital of a company.

Inheritance tax

There are no inheritance taxes, death duties or gift duties in Australia.

7. Social Security Contributions

Medicare levy

A levy of 1.5% of taxable income is imposed on resident individual taxpayers and certain trustees. Non-residents are not subject to the Medicare levy. Thresholds apply to low-income earners. The levy is intended to finance the government health care system. In effect it is an additional income tax.

A 1% Medicare levy surcharge applies for individuals with taxable income greater than AUD 50 000 (EUR 30 460; USD 39 526) or families with combined taxable incomes greater than AUD 100 000 (EUR 60 920; USD 79 051) (increased by AUD 1500 per dependent child after the first) who do not have private-patient hospital cover for themselves and their family members.

The surcharge is in addition to the 1.5% payable under the current Medicare levy arrangements.

Other than the Medicare levy, there is no compulsory social security tax in Australia.

8. BDO Kendalls

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BDO Kendalls also has offices in Adelaide, Brisbane, Cairns, Canberra, Darwin, Hobart, Melbourne and Perth.

Double Taxation Agreements

Australia has income or income and capital tax treaties with the following jurisdictions:

Argentina	Mexico
Austria	The Netherlands
Belgium	New Zealand
Canada	Norway
China	Papua New Guinea
Czech Republic	The Philippines
Denmark	Poland
Fiji	Romania
Finland	Russia
France	Singapore
Germany	Slovakia
Hungary	South Africa
India	Spain
Indonesia	Sri Lanka
Ireland	Sweden
Italy	Switzerland
Japan	Taiwan
Kiribati	Thailand
Korea	United Kingdom
Malaysia	United States
Malta	Vietnam

Estate tax treaties

Australia has concluded treaties to avoid double taxation on gifts and inheritances with:

United States

Social security treaties

Australia has bilateral social security agreements with:

Austria	Italy
Belgium	Japan
Canada	Malta
Chile	The Netherlands
Croatia	New Zealand
Cyprus	Portugal
Denmark	Slovenia
Germany	Spain
Greece	United States
Ireland	

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Cape Verde	Kuwait	Slovakia
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Denmark	Malta	Thailand
Dominican Republic	Mauritius	Trinidad & Tobago
Ecuador	Mexico	Tunisia
Egypt	Morocco	Turkey
El Salvador	Mozambique	Turkmenistan
Estonia	Namibia	Ukraine
Fiji	Netherlands	United Arab Emirates
Finland	Netherlands Antilles	United Kingdom
France	New Zealand	United States of America
Germany	Nigeria	Uruguay
Gibraltar	Norway	Vanuatu
Greece	Oman	Venezuela
Guatemala	Pakistan	Vietnam
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