UHY

DOING BUSINESS

IN AUSTRALIA

The network for doing business

CONTENTS

1 – INTRODUCTION

UHY is an international network of independent firms providing accountancy, taxation, audit, business management and consultancy services from over 330 major business centres across more than 100 countries throughout the world.

Independent firms work cooperatively through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

UHY Haines Norton is an association of independent Chartered Accounting firms operating from 8 offices across Australia. Offices are a member of Urbach Hacker Young International Limited ("UHY"), a UK company, and forms part of the international UHY network of legally independent accounting and consulting firms. UHY is the brand name of the UHY international network.

This detailed report providing key issues and information for investors considering business operations in Australia has been provided by the Sydney office of the UHY International representative:

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Partners and staff in all UHY Haines Norton member firms have been advising Australian and overseas investors for many decades on all aspects of setting up and running Australian businesses. Further information can be found on our website at www.uhyhn.com. If you need further advice about any issues included in this publication please contact one of the contacts listed in section 9.

Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. Before making any decisions, or for more specific and detailed information, investors should obtain professional advice from a UHY Haines Norton member firm. No UHY Haines Norton member firm accepts any responsibility for decisions made by reference to the information contained herein.

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This publication is current as at 30 June 2021. We look forward to helping you do business in Australia.

2 – BUSINESS ENVIRONMENT

Australia is an independent Western style democracy and is recognised as an attractive place in which to undertake appropriate businesses.

Australia has a relatively young population with a prosperous and stable economic and political climate. This, together with favourable market conditions, a highly skilled, diverse and well-educated workforce and significant natural resources, combine to make Australia an exciting investment prospect for foreign investors and business migrants who see it as a land of opportunity.

ABOUT AUSTRALIA

Australia is, located in the South East Asian/Pacific region.

Australia covers 7.7 million square kilometres in area and consists of six States and two Territories:

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

The national capital city, Canberra, is located in the ACT.

Australia is divided into three time zones (five during the daylight savings months) with the East coast being two or three hours ahead of the West coast depending on whether daylight savings applies.

The eastern States, namely Queensland, New South Wales, Victoria and Tasmania are normally 10 hours ahead of Greenwich Mean Time (GMT). South Australia and the Northern Territory are ahead by 9 and a half hours and Western Australia ahead by 8 hours. This time gap increases by one hour in daylight savings periods except for Queensland, the Northern Territory and Western Australia.

POPULATION

Australia has a population of over 25 million people. Approximately 90% of Australians live near the coast, centred on the main cities and large towns. The inland is sparsely populated.

Greater Sydney is the largest city with a population of about 5.2 million, Melbourne has approximately 5.0 million people, Brisbane 2.5 million, Perth 2.1 million, Adelaide 1.3 million, Canberra 458,000, Hobart 232,000 and Darwin 149,000.

Australia is a multi-cultural society with over 30% of the population born overseas. Australia relies on selective immigration to help fund sustained economic growth. Currently person born in the United Kingdom comprise the largest group of overseas born residents followed by New Zealand, China, India, the Philippines and Vietnam. Migrants now come from more than 160 different countries. Indigenous people make up approximately 3.3% of the population.

LANGUAGE

The official language is English. However, as a result of its increasingly multi-cultural population Over 27% of the population speak another Asian or European language. All UHY Haines Norton offices have partners or employees who speak a range of foreign languages.

QUALITY OF LIFE

In the 2020 United Nations Human Development Index which measures quality of life and the wellbeing of society independent of wealth Australia was rated eight in the world. This is due to its temperate climatic environment combined with attractive working conditions, excellent health, education and social security facilities, high quality housing and a generally affordable cost of living.

EMPLOYMENT

In May 2021 the labour force was over 13.8m million, with a participation rate of 66% and an unemployment rate of 5.1%

GDP / ECONOMIC GROWTH

The Gross Domestic Product (GDP) was AUD1,931 billion at March 2021. The rate of economic growth was reported as 1.1% for the 12 months ended 31 March 2021.

CPI

The Consumer Price Index (CPI) Inflation rate was 1.1% for the 12 months to 31 March 2021. The Reserve Bank of Australia aims to keep inflation between 2 and 3% by keeping official interest rates low.

OFFICIAL INTEREST RATES

The cash rate in June 2021 was 0.10% and has remained unchanged since November 2020.

CURRENCY

The unit of currency is the Australian Dollar, quoted as the AUD. There are 100 cents to the Australian dollar.

SYSTEM OF GOVERNMENT

Australia was originally settled by the Aboriginal and Torres Strait Islander peoples. It was occupied as a British colony in the late 1700s and was established as a Commonwealth on Federation in 1901. Australia is a constitutional monarchy with Queen Elizabeth II as nominal head of state and represented in Australia by the Governor-General and State Governors.

The head of Federal Government, the Prime Minister, is the leader of the political party, or coalition of parties, holding the majority of seats in the lower House of Federal Parliament (The House of Representatives). The form of government is modelled on the Westminster system, with some influences from the American congressional system.

There are three levels of government.

FEDERAL

The Federal Government, based in Canberra, governs Australia at the national level, controlling matters such as treasury including most taxes, corporate regulation, social welfare, defence, foreign policy and trade, customs and excise, communication and banking and insurance.

STATES AND TERRITORIES

The States and Territories are all self-governing with regards to regional interests. They have their own democratic governments and each passes their own legislation dealing with the concerns that affect most Australians on a day-to-day level, such as health, education, law enforcement, agriculture, mineral resources and industry.

Investors looking to do business in Australia need to be aware of both State and Federal laws for the locations where they will be conducting business operations.

LOCAL

Local Councils have limited powers and govern planning, local environment, waste collection and other 'local' (municipal) issues.

THE LEGAL SYSTEM

Australia has a common law legal system based on the English system.

There are two sources of law:

- Legislation and regulations enacted by the Federal and State Governments.
- Common law based on precedential judicial decisions.

In practice this means:

- Parliaments pass statutes within their scope of authority and make regulations under statutes to deal with specific issues.
- The elected State and Federal governments administer these laws.
- Courts operate at both Federal and State levels, including a comprehensive appeals system.
- The legal profession is split between barristers, who traditionally appear in more serious court cases, and solicitors who maintain offices to which the public may go for advice.

MARKET CONDITIONS

THE ECONOMY

Australia has a prosperous, western style economy. According to the World Bank's *Doing Business Report 2020*, Australia is the seventh easiest country in which to start a business and the fourteenth easiest country to do business in. According to the IMF Australia has the 12th largest economy and 9th highest per capital income.

Australia is the only major developed economy not to have recorded a recession since 1992. Due to COVID-19, Australia's economy has plunged into recession in March 2020. However, in recent months, Australia has emerged from recession and the outlook for growth is encouraging and Australia has been managing well with COVID-19 comparing to most of the developed countries.

The strength of the Australian economy is in part due to policy reform such as financial deregulation, previous strong demand for mineral and natural gas resources, growth in non-mining investment, rising company profits, selective immigration and improved labour and industrial relations. It has also been helped by low interest rates and relatively low unemployment, a low rate of inflation, and continuing significant demand for natural resources (especially from China and India).

INDUSTRIAL BASE

In addition to traditional primary production activities and extracting significant natural resources, Australia also has an increasingly services-based economy and its services sector now comprises 63% of gross domestic product and 74.3% of employment. The services sector includes banking, insurance and finance; the media and entertainment industries; consulting, tourism and retail; services provided by government, such as education, health and welfare; and other personal and business services. The country's sophisticated financial services industry is the largest contributor to the services sector, generating 8.80% of the country's total real gross value added (GVA). The largest employment category is health care and social assistance comprising 13.60% of the workforce.

While the services sector remains the backbone of Australia's economy, Australia's mining industry was the catalyst for economic growth in the past decade. Australia has the world's largest resources of recoverable brown coal, lead, nickel, uranium and zinc, and ranks second in the world for copper. Iron ore is another extremely valuable asset, with high demand from China. Australia also ranks as the second-largest liquefied natural gas exporter in the world.

Industry Contribution to Australian Gross Domestic Product, 2016-17 (%)

INDUSTRY	CONTRIBUTION TO GDP, 2016-17 (%)
Services	62.7
Mining	5.8
Construction	7.4
Manufacturing	5.8
Agriculture	2.8
All Industries	84.5

Source: Australian Government, Department of Industry, Innovation and Science

TRADE

Australia supports reductions in trade barriers and the concept of open and multilateral trading systems. The Australian Government actively supports the General Agreement on Tariffs and Trade (GATT).

Australia is well placed to take advantage of trading opportunities in the Asia Pacific region. It has close cultural, commercial and political ties within the region and this enhances trading and business partnerships. Australia has significant tax incentives for regional headquarters companies.

Traditionally Australia exported primary industry commodities, namely beef, wool, live sheep, wheat and minerals such as iron ore, coal, gold, nickel, bauxite and zinc. Australia is now a major producer and exporter of natural gas.

Major imports include consumer and other manufactured goods such as cars, computers, fuels, machinery and equipment, transport equipment, machinery parts, and telecommunications equipment.

MAIN TRADING PARTNERS AND EXPORT DESTINATIONS

Historically Australia's trading partners were the United Kingdom, United States and Western Europe. However, with the formation of the European Union, the volume of trade with those regions has declined. Australia's current main trading partners are member countries of the Asia–Pacific Economic Cooperation Forum (APEC), which Australia helped launch in 1989. Other member countries are Brunei, Canada, Chile, the People's Republic of China, Hong Kong, Indonesia, Japan, South Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, The Philippines, Russia, Singapore, Taiwan, Thailand, the United States and Vietnam.

BANKING AND FINANCE SECTORS

The Reserve Bank of Australia (RBA) is Australia's central bank and derives its functions and powers from the Reserve Bank Act 1959. Its duty is to contribute to the stability of the currency, full employment, and the economic prosperity and welfare of the Australian people. It does this by setting the cash rate to meet an agreed medium-term inflation target, working to maintain a strong financial system and efficient payments system, and issuing the nation's banknotes.

Deregulation of the financial markets removed barriers between classes of institutions and enabled integration into world capital markets.

The four major Australian trading banks (the four pillars) are:

- Australia & New Zealand Banking Corporation (ANZ Bank)
- Commonwealth Bank of Australia (CBA)
- National Australia Bank (NAB)
- Westpac Banking Corporation (Westpac).

Collectively these banks have a significant majority share of banking business in Australia.
In addition to the major trading banks, there is a comprehensive range of other sources of finance. These include smaller regional banks, merchant or investment banks, finance companies, building societies, credit operatives or unions, development banks and venture capital companies.

STOCK EXCHANGES

ASX Limited (previously the Australian Stock Exchange Limited) (ASX) is Australia's primary national stock exchange for equities, derivatives and fixed interest securities. All trading of shares between ASX members is conducted by electronic trading using comprehensive, high quality, information technology systems.

The National Stock Exchange of Australia (NSX) is a secondary exchange specialising in smaller and/or technology companies.

EXCHANGE CONTROLS

Almost all restrictions on foreign currency were removed following the floating of the Australian dollar in 1983. The Australian Transaction Reports and Analysis Centre (AUSTRAC) is an Australian government financial intelligence agency set up to monitor financial transactions to identify money laundering, organised crime, tax evasion, welfare fraud and terrorism. Physical cash transfers of more than AUD 10,000 must be reported to AUSTRAC.

CORPORATE REGULATION - ASIC

The Australian Securities & Investments Commission (ASIC) is an independent Commonwealth Government body responsible for enforcing company and financial laws to ensure market integrity and consumer protection. It administers the *Corporations Act 2001* and its function is to ensure fair play in the corporate and financial services industry, protecting investors and consumers and preventing corporate crime. It fulfils these roles by:

- Promoting investor and consumer trust and confidence
- Ensuring fair and efficient markets
- Providing efficient registration services

PRUDENTIAL REGULATION

Banking and superannuation fund regulation is split between ASIC and the Australian Prudential Regulation Authority (APRA). All financial institutions are regulated by APRA and have to report to it on a periodic basis. Financial intermediaries on the other hand have to obtain licences under the *Corporations Act 2001* or other Commonwealth or State legislation. Most investment or merchant banks are supervised by APRA.
APRA complements the Reserve Bank of Australia in promoting financial stability. APRA is responsible for the prudential supervision of banks, building societies, credit unions and friendly societies, as well as life and general insurance companies and superannuation funds.

COMPETITION AND CONSUMER ACT 2010

This Act prohibits or restricts business practices which may lessen competition in trade and commerce and applies to virtually all businesses in Australia. The Act covers anti-competitive and unfair market practices, mergers or acquisitions of companies, product safety/liability.

AUSTRALIAN COMPETITION & CONSUMER COMMISSION

The Australian Competition & Consumer Commission (ACCC) promotes competition and fair trade in markets to benefit consumers, businesses, and the community. It also regulates national infrastructure services. Its primary responsibility is to ensure that individuals and businesses comply with Australian competition, fair trading, and consumer protection laws - in particular the Competition and Consumer Act 2010.

3 – FOREIGN INVESTMENT

INTRODUCTION

The Australian Government officially welcomes and encourages foreign investment in most industry sectors and has a strong commitment to Australian business development. Certain sectors, such as developed residential real estate and agricultural land are subject to close scrutiny as are larger transactions. In general proposals to acquire a 20% or greater interest in Australian businesses valued at more than AUD 281 million require the Treasurer's approval. Lower thresholds apply to foreign government investments and in certain sectors.

It is widely recognised that foreign investment and skilled immigration fosters higher levels of economic activity and employment, brings access to new technology and skills and introduces new markets for trade and commerce.

To encourage foreign investment Australia has introduced a number of facilitating schemes including trade incentives, Government grants and tax concessions.

Foreign investors are generally held to be:
- natural persons not ordinarily resident in Australia
- foreign governments and their associated investors
- any corporation, trust or general partnership that is at least 20% foreign owned or where two or more foreign persons have aggregate substantial interests of at least 40%

INVESTING IN AUSTRALIA

REASONS FOR INVESTING IN AUSTRALIA

There are many sound reasons for commercial investments in Australia including:

- long term political and economic stability creates a fertile climate for investments
- sustained long term growth
- low rates of inflation
- favourable location within the Asia Pacific region
- highly skilled, diverse, multicultural workforce
- technologically advanced with a rapid uptake of communications technology
- innovative culture with significant tax incentives for qualifying research and development expenditure
- Open and efficient regulatory systems.

AUSTRADE

The Australian Trade and Investment Commission (Austrade) encourages foreign investment by helping to provide practical advice, market intelligence and ongoing support in the development of export markets. This includes putting overseas investors in contact with Australian businesses as well as providing advice and guidance for joint venture opportunities.

FOREIGN INVESTMENT AUSTRALIAN BUSINESS STRUCTURES

In order to conduct business in Australia a foreign investor can:

- register as a branch of a foreign company
- enter into a joint venture with another entity
- acquire or incorporate an Australian company
- enter into a partnership with another entity
- operate as a sole trader (individuals only)

These structures are discussed further in chapter 4.

REGULATION OF FOREIGN INVESTMENT IN AUSTRALIA

The Australian Government welcomes foreign investment that helps build Australia's economy and enhances the well beings of Australians. Certain foreign investment proposals are screened to ensure they are not contrary to Australia's national interest.

Australia's foreign investment policies are administered by the Foreign Investment Review Board (FIRB) and are contained in:

- The Foreign Acquisitions and Takeovers Act 1975 and supporting laws and regulations
- Ministerial Policy Statements
- Guidance notes

FIRB generally examines all foreign investment proposals involving:

- Acquisitions of 20% or greater interests in existing Australian entities valued at over AUD 281 million (or AUD 1,216 million for investors from Free Trade Agreement (FTA) countries)
- Sensitive industries such as media (5% or more), transport, telecommunications, defence, military interests, uranium mining and nuclear facilities
- Direct interests of 10% or more in agribusinesses worth more than AUD 61 million
- Cumulative acquisitions of AUD 61 million or more in agricultural land (AUD 1,216 million for certain FTA investors) – all foreign holders of Australian agricultural land must report their interest to the Australian Taxation Office for inclusion in a register
- all acquisitions of vacant commercial land or mining tenements (threshold of AUD 1,216 million for certain FTA investors)
- Acquisitions of agricultural land over AUD 15 million
- For foreign government investors, takeovers of offshore companies whose Australian subsidiaries or assets are valued at AUD 55 million or more, or account for more than 5% of the company's global assets
- acquisitions of interests in residential real estate regardless of value – see below
- Direct investments in Australian entities or businesses by foreign governments or their agencies.

FIRB, for example, has to be approached for approval if a foreign investor wishes to invest in oil and gas or resource processing, manufacturing, non-banking financial institutions, insurance, share broking, the aviation industry, as well as agriculture, forestry or fishing, or developing rural land or businesses, or commercial real estate.

In most other industry sectors smaller proposals are exempt from investigation by the FIRB and larger proposals are approved unless they are held to be contrary to the national interest.

ECONOMIC RESTRICTIONS ON FOREIGN OWNED AUSTRALIAN RESIDENTIAL REAL ESTATE

Several Australian cities have relatively high residential real estate prices. In order to help make the family home more affordable for Australian citizens various restrictions apply to foreign investment in Australian residential real estate:

- Non-resident foreign persons are generally prohibited from purchasing established dwellings – exemptions apply for Australian and New Zealand citizens and certain temporary or permanent residents or where the number of dwellings on the site will be increased
- Several states impose transfer duty (i.e. stamp duty) purchaser surcharges on the acquisition of residential real estate by foreign persons. In NSW, for example, the foreign purchaser surcharge is 8% of the purchase price and is in addition to the normal transfer duty
- Land tax surcharges may also apply, potentially even for the family home. In NSW the Land Tax Surcharge, if applicable, is 2% of the unimproved capital value of the land, payable annually
- The capital gains tax (CGT) main residence exemption is no longer available to foreign residents
- Non-resident individuals do not qualify for the 50% CGT discount on long term capital gains available to resident individuals
- A foreign vacancy fee applies to homes that are not occupied or genuinely available for rental for at least six months in any 12 month period

4 – SETTING UP A BUSINESS

Several legal structures are available for setting up a business in Australia. The most common Australian business structures for overseas investors that require a business presence in Australia are:

- Registered branch
- Locally incorporated company – private (generally smaller), public (generally larger and with several shareholders) or no liability (mining)
- Partnership – general or limited liability
- Discretionary trusts for family businesses and investments
- Unit trusts for syndicated real estate investments
- Sole trader (individuals only)
- Joint ventures comprising two or more entities

COMPANIES

All companies operating in Australia are regulated by Australian Securities & Investments Commission (ASIC) under the Federal *Corporations Act 2001.*

BRANCH OF A FOREIGN COMPANY

Foreign companies that are considered to be carrying on business in Australia are required to register as a branch with ASIC. Registering generally involves:

- Acquiring an Australian registered business name (ARBN)
- appointing and authorising at least one local agent or resident director to act on its behalf
- maintaining a registered office in Australia
- lodging specific company documents and financial statements with ASIC
- Identifying the business as a foreign company in written contracts and correspondence.

However, it is generally accepted that it is easier and cheaper to conduct business in Australia through a locally incorporated subsidiary rather than through a branch of a foreign company. The proof of identity requirements for foreign companies make registration a slow process. Annual filing fees are higher.

AUSTRALIAN INCORPORATED COMPANY

Many foreign investors may find a locally incorporated Australian company the easiest structure to do business. The most common forms of company in Australia are either a private (proprietary) company or a public company limited by shares. Shareholder liability is limited to their invested capital and any unpaid calls. Mining companies frequently use a No Liability (NL) share structure to further reduce shareholder risk.

A private company uses Proprietary Limited (Pty Ltd) in its name, and its shares cannot be offered to the general public as a means of raising revenue for the company. A limited company includes Limited (Ltd) in its name and can either be limited by guarantee, mostly used by charities and trade associations, or more commonly limited by shares where the shareholders' liability is limited to paying the issued share price.

PRIVATE COMPANIES

Closely held businesses will generally use a private company structure as it is easier and less expensive to arrange and administer compared to a public company.

Private companies generally:

- must have at least one director
- at least one director must live in Australia
- do not need to have a company secretary
- if the company has one or more secretaries, at least one must reside in Australia
- must have at least one but not more than 50 non-employee shareholders
- may offer shares to existing shareholders or employees
- are prohibited from offering shares, debentures or other forms of security to the public
- Usually restrict the right of shareholders to transfer shares.

PUBLIC COMPANIES

These are listed or unlisted public companies. A listed public company trades through the Australian Stock Exchange (ASX) or the National Stock Exchange (NSX).

Public companies:

- must have at least three directors
- at least two directors must live in Australia
- must have at least one secretary who must live in Australia
- must have at least one shareholder
- may also have a potentially unlimited number of shareholders
- may offer shares to the public
- must comply with the *Corporations Act* before offering shares
- have no restrictions on the transfer of shares other than those contained in a shareholders' agreement

When setting up a company an investor can either purchase a 'shelf' company, or incorporate a new company to suit more specific requirements. Shelf companies have already been established and registered, but not traded, and can be bought through a shelf company office or through lawyers or accountants. There is a wide range of providers that can incorporate new companies.

Incorporating a company requires registering with ASIC, the Australian Securities & Investments Commission, and lodging the company name. A private company name has to include Pty and Ltd, if relevant, to show the company's legal status. Once registered companies are provided with an Australian Company Number (ACN) which must be shown on letterheads and most other business documents. Alternatively, the Australian Business Number (ABN) described on page 17 may be shown.

The Corporations Act generally requires public companies for large scale offers to the public to raise share capital.

LISTING WITH THE AUSTRALIAN STOCK EXCHANGE (ASX)

Companies wishing to list on the ASX have to conform to the listing requirements of the ASX and the legal requirements in the *Corporations Act*.

The ASX listing rules require listed companies to provide various details including:

- the company's capital structure
- number of members
- paid up value of shares it plans to issue
- Ongoing financial reporting on a 6 monthly basis.

AUDIT REQUIREMENTS - COMPANIES
Refer chapter 7.

PARTNERSHIPS

In Australia partnerships can be established by two or more, and up to a maximum of 20 partners. Larger numbers apply to professional partnerships. Partnerships are traditionally used to provide professional services in a range of industries. A written partnership agreement is strongly recommended.

In Australia partnerships are covered by the State and Territory *Partnership Acts* and contract law. In most jurisdictions the partners share profits in accordance with agreed shares and are held jointly and severally liable for partnership debts and other obligations. Some States and Territories have state based legislation allowing limited partnerships which regulate the liability of the limited partners who do not participate in management. Domestic limited partnerships are treated as companies for Australian income tax purposes.

Normal partnerships are required to lodge a partnership income tax return but are not taxed as a separate entity. Each partner lodges their own income tax return, paying tax on their share of profit, and currently can claim their share of losses as a deduction against other income.

JOINT VENTURES

Foreign investors may also enter into an unincorporated joint venture with an Australian company, individual or trust.

These are popular in mining industries where it is practicable for each joint venture party to deal separately with its share of the joint venture's output. Foreign investors can structure their investment as the registered branch of a foreign company or by way of an Australian subsidiary.

Foreign investors should ensure there is a written joint venture agreement prepared by a suitably qualified lawyer. The onerous legal rules applying to partners in a partnership generally do not apply to joint ventures in a joint venture.

TRUSTS GENERALLY

Trusts are a well-recognised business and investment structure in Australia.

A trustee owns the trust property and carries on business on behalf of the trust beneficiaries. The trustee is required to observe the rules in the trust deed.

There are two main types of trust:

- Discretionary trusts typically used as family investment vehicles and, in some cases, to operate a family business. Discretionary trusts can normally distribute income and capital gains to family members and associated entities in a tax efficient manner.

- Unit Trusts – these are more formal structures allowing a number of investors to pool their funds for a common purposes. Unit Trusts are frequently used for large scale property acquisitions. Some unit trusts are listed on the ASX. Managed Investment Trusts are a specialised form of trust that is registered as a Managed Investment Scheme under the Corporations Act. They predominantly hold passive investments and may qualify for tax incentives that can make them attractive to non-residents.

Trusts are very widely accepted and used in Australia. They have become popular because of their flexibility and ability to reduce income and capital gains tax, for example by income splitting and flow through capital gains tax concessions. Complex tax issues can arise when discretionary trusts distribute income to private companies.

Trusts are frequently set up with a corporate trustee. This may provide additional limited liability protection.

Some trusts, commonly known as family trusts, are of a discretionary nature. This allows them to distribute income within a defined family group including certain connected entities, in a tax efficient manner. We normally recommend that a trust deed drafted to comply with Australian trust laws is used for families that will be based in Australia.

Trust generally have a maximum life of 80 years. Only in South Australia do trusts have a potentially unlimited existence.

Superannuation funds are a specialised form of trust used by most Australians as retirement savings vehicles. The funds are highly regulated and it is generally not possible to conduct business through a regulated superannuation fund.

SOLE TRADERS

This is the simplest and most cost efficient method for an individual to legally conduct a business. The owner is the sole proprietor and so retains complete control. The business is subject to less regulation and all profits go to the owner.

Sole traders can trade under their own name or choose to register a business name. A sole trader is treated as an individual for income tax purposes.

This structure does not have the limited liability protection provided by a company or a company/trust structure. Alternative asset protection strategies may be required.

REGULATION OF AUSTRALIAN BUSINESSES

CORPORATIONS LAW

Company law in Australia is governed by the Federal *Corporations Act 2001*, which is administered by ASIC. This regulates the rules, procedures, and accounting, audit and other reporting requirement for companies. These are discussed further in Chapter 7.

REGISTRATION OF BUSINESS NAMES

Since 2012 the national business names registration has been maintained by ASIC. It means that businesses operating in Australia need only register their names with a single national register.

A business name is simply a name or title under which a person or entity conducts a business.

The purpose of the register is to identify the entity that is carrying on business under a business name.

Generally you will need to register a business name if you carry on a business or trade within Australia and you are not trading under your own entity name.

AUSTRALIAN BUSINESS NUMBER

Companies, trusts, partnerships or sole traders carrying on business in Australia are required to apply to the Australian Taxation Office (ATO) for an Australian Business Number (ABN). The Government, and particularly the ATO, uses this number to identify the different business taxpayers and to track their tax compliance. Strict proof of identity requirements apply to non-residents.

REGISTERING FOR INCOME TAX

All active trading businesses are required to have a Tax File Number (TFN) in addition to their ABN and to lodge annual income tax returns with the ATO.

GOODS AND SERVICES TAX

The Good and Services Tax (GST) is a broad-based tax of 10% on most supplies of goods and services consumed in Australia. A business must register for GST if it is an enterprise with an annual Australian turnover of AUD 75,000 or more. Foreign businesses dealing with Australian consumers in excess of this threshold are now generally required to register for and charge GST on those dealings. GST obligations for offshore businesses dealing exclusively with GST registered Australian businesses have been relaxed.

BUSINESS LICENCES AND PERMITS

Most businesses require some form of licence or permit in order to operate legally. These depend on the nature of the business and are obtained from Commonwealth, State, Territory, or Local Government authorities.

PERSONAL PROPERTY SECURITY REGISTER

The *Personal Property Securities Act* (PPSA) is a Federal law provides a comprehensive regulatory framework to govern arrangements where one party (normally a creditor or financier) takes security over an asset that is in a debtor’s possession. In most cases this is to secure payment. The nature of the security is defined as a security interest.

In order to be fully enforceable, this security interest must (among other things) be registered on the Personal Property Securities Register (PPSR). Failure to register could cause the creditor or financier to lose rights over the secured asset(s), in the event of the insolvency of the debtor.

5 – LABOUR

There have been major changes to the working conditions in Australia in recent years. This is due to the increasingly open and competitive economy that has developed since the early 1980s.

At the same time there has been considerable deregulation of the labour market bringing with it more flexible work conditions and wage determinations.

Employment is regulated through the Federal *Fair Work Act 2009* and various State and Territory laws.

EMPLOYMENT STATISTICS

In May 2021 approximately 13.8 million people were in the Australian labour force.

The average full time employee works a 38-hour week and/or an eight-hour day, and is entitled to 20 days paid annual leave in addition to public holidays.

The average weekly earnings for adults working full-time in November 2020 was AUD 1,771.

The Australian workforce is highly educated with about 69% of the population between ages 20 to 64 years holding university or trade qualifications.

Service industries employ the largest proportion of people. This is followed by the manufacturing and construction industries and then primary type industries such as agriculture, mining, forestry, fishing etc.

The unemployment rate was 5.1% at May 2021.

From aged 66 years and six months Australian citizens become entitled to a means tested Government pension. The eligibility age is rising in stages to 67 in July 2023. In some States legislation prevents compulsory age-related retirement.

INDUSTRIAL RELATIONS

TRADE UNIONS

Australia has had a tradition of strong trade unions with the Labour party a powerful supporter of these unions. In recent decades, however, Government policies to improve international competitiveness have encouraged employers to seek greater labour market flexibility. This has led to changes in legislation concerning workplace health and safety, industrial relations and training, working conditions and rates of pay.

Approximately 15% of full time workers and 12% of part time workers are trade union members in their main job. These unions are usually based on industry or occupation. The largest union organisation, the Australian Council of Trade Unions (ACTU), represents almost 1.8 million Australian workers.

NATIONAL EMPLOYMENT STANDARDS

The National Employment Standards (NES) are 10 minimum employee entitlements that have to be provided to all employees in Australia. Generally the NES are designed to ensure equitable and fair treatment of all employees whilst still encouraging a competitive and flexible business environment. Employers are required to comply with the NES and other awards and legislative provisions that relate to their employees.

The minimum NES entitlements are:

- Maximum weekly hours
- Requests for flexible working arrangements
- Parental leave and related entitlements
- Annual leave
- Personal care leave
- Community service leave
- Long service leave
- Public holidays
- Termination notice
- Unfair dismissal
- Fair work information statement

Employers and employees cannot contract out of the NES minimum standards.

ENTERPRISE AGREEMENTS

Enterprise agreements are collective agreements made at an enterprise level between employers and employees about terms and conditions of employment. Enterprise Agreements have to be approved by the Fair Work Commission. They have to pass a 'better off overall test' (BOOT) meaning an employee will be better off than under the National Employment Standards and other awards.

EMPLOYER OBLIGATIONS

EMPLOYEE INCOME TAX WITHHOLDING

Employers are required to withhold a specified amount of Pay As You Go Withholding tax (PAYG W) from each employees' salary and wages and forward this to the Australian Taxation Office. The tax withheld is available as a credit to the employees when they lodge their personal income tax returns.

WORKERS COMPENSATION INSURANCE

All employers have to take out Workers Compensation insurance to cover their employees and certain contractors. This pays wages of employees injured in the course of their employment whilst they are unable to work.

OCCUPATIONAL HEALTH AND SAFETY

Workplace Health and Safety (WHS), often referred to as Occupational Health and Safety (OH&S) involves the assessment and mitigation of risks that may impact the health, safety or welfare of those in the workplace. This may include the health and safety of a businesses' customers, employees, visitors, contractors, volunteers and suppliers. All businesses have to comply with legislation in the States and Territories where they operate requiring business owners to provide safe work places and safe work practices, such as safe handling of hazardous substances or dangerous goods.

SUPERANNUATION GUARANTEE CHARGE (PENSION) CONTRIBUTIONS

Superannuation is the main form of retirement savings for Australian resident individuals. Employers are required to contribute a minimum superannuation amount for each employee into a recognised superannuation fund. From 1 July 2021 onwards, the SGC is increased to 10% of ordinary time earnings subject to a cap for higher income earners. Employer and some employee contributions are subject to 15% contributions tax in the fund. Employees have the right to choose their preferred fund and can top up their employer's superannuation contributions within specified contribution limits.

Expatriate employees can have SGC contributions made to their foreign pension fund where there is a relevant social security treaty. Departing Australia superannuation payments are subject to a final withholding tax at rates of between 35% and 65% depending on the class of worker.

UNFAIR DISMISSAL, REDUNDANCY AND SOCIAL SECURITY

Unfair dismissal is when an employee is dismissed from their job in an unjust, harsh or unreasonable manner. The Fair Work Commission decides on cases of unfair dismissal for employees who have been employed for at least six months (or 12 months for small businesses).

Employees who are made redundant when their jobs cease to exist are usually entitled to additional severance pay. This is usually a tax free lump sum based on the length of employment.

SOCIAL SECURITY

The Federal Government provides means tested social security benefits including pensions and other welfare to unemployed, underprivileged or elderly Australians and for dependent children and students under certain circumstances.

FRINGE BENEFITS TAX

Refer chapter 6.

PAYROLL TAX

Refer chapter 6

EMPLOYEE ENTITLEMENTS WHEN BUYING OR SELLING A BUSINESS

There is no Australian legislation stipulating that on the sale of a business employees automatically transfer to the buyer.

Business purchasers may be bound by the terms and conditions of employment established in accordance with the purchase agreement. Unfair dismissal notice employment periods start from the original employment date.

WORK PERMITS (VISAS)

Australia imposes various restrictions on foreign individuals entering and remaining in Australia. All foreign visitors are required to hold a valid visa.

Skilled foreign workers can be employed in Australia once a number of conditions have been met leading to the grant of a work visa. These visas are designed to target genuine skill shortages, diversify business expertise and increase entrepreneurial talent, without displacing Australian workers. Special visas and income tax rates apply to working holiday makers.

6 – TAXATION

TAX AUTHORITIES AND RESPONSIBILITY

Australia's taxing powers are spread across the three levels of Government comprising the Commonwealth, or Federal Government, the individual States or Territories and Local Government level (i.e. councils) according to Constitutional limits.

Australia's tax laws are complex and subject to frequent change. Always seek the most up to date information from your UHY advisor.

FEDERAL GOVERNMENT TAXES

The Australian Taxation Office (ATO) is Australia's federal taxation authority responsible for collecting Federal taxes. The main direct tax levied by the Federal Government is income tax. Income tax includes capital gains tax and is applied to companies, trusts and individuals.

There is a wide range of indirect taxes, principally the Goods and Services Tax (GST a form of VAT), customs and excise duties and Fringe Benefits Tax. Excise is imposed on commodities such as alcohol, tobacco and petroleum. Fringe Benefits Tax is levied on employers providing non-cash benefits to employees.

STATE TAXES

Each State or Territory imposes a range of taxes and charges with a territorial nexus and is responsible for determining their own tax legislation, regulations and rates. There can be distinct differences between similar named taxes in different jurisdictions. The primary taxes they impose are payroll tax on employee remuneration, stamp duty on asset transfers and land taxes. The States and Territories do not impose income tax.

LOCAL GOVERNMENT TAXES

Local Governments impose taxes, principally rates, upon landowners. These make up less than 5% of the taxes levied on the private sector.

INCOME TAX - GENERAL

The income tax laws are contained in the Income Tax *Assessment Act 1936* and the Income *Tax Assessment Act 1997* and are administered by the ATO under the *Taxation Administration Act 1953*. The income tax system operates by self-assessment, with selective ATO audits to verify assessments and targeted audits where fraud or evasion is suspected.

Income tax is levied on taxable income, which is assessable income less allowable deductions. Assessable income is gross income less exempt income and includes net capital gains.

Permanent Australian tax residents must pay income tax on their worldwide income and capital gains unless exempted. Australia has an offshore holding company or participation regime which exempts Australian holding companies from income tax on dividends and capital gains in relation to "participation" interests in qualifying foreign companies – generally voting interests of 10% or more in offshore companies.

Australia also has a controlled foreign company (CFC) regime and a transferor trust regime. These anti-avoidance measures target passive investment income generated in offshore entities, particularly those located in low tax jurisdictions.

Tax resident individuals on temporary visas are not taxed on most foreign sourced income (except employment related income) and capital gains (except those related to specified Australian assets). This provides a window of opportunity for immigrants to reorganise their financial affairs before they become permanent Australian tax residents.

Non-residents are taxed on income and some capital gains from Australian sources. Interest, unfranked dividends and royalties are taxed on a withholding basis as the final Australian tax liability Other income is taxed on an assessment basis subject to Australia's double tax treaties (DTAs).Various DTA exemptions apply to the income of workers temporarily transferred to Australia.

Most businesses trading in Australia are required to lodge an income tax return for the fiscal year ending 30 June. Foreign owned companies can apply for a different year end to match their overseas parent.

CAPITAL GAINS TAX

Capital gains tax (CGT) applies to gains on the disposal of capital assets acquired after 19 September 1985. The taxable amount is determined by subtracting the cost of the asset, and any incidental costs associated with its purchase, holding and disposal, from the net proceeds of the disposal. Various concessions may be available to reduce the capital gain that is included in the taxable income. There is a qualified exemption for the sale of a resident individual's principal home. Generally tax resident individuals are entitled to a 50% reduction for capital gains on assets held for more than 12 months. Further CGT concessions are available to qualifying small businesses.

CGT also applies to various other CGT events, in particular, a deemed sale of all assets, other than taxable Australian property, for their market value, when their owner ceases to be an Australian tax resident. There is a deemed acquisition of these assets when their owner becomes an Australian tax resident.

Capital losses can only be deducted from taxable capital gains. Net capital losses can be carried forward indefinitely. Loss integrity tests apply to revenue and capital losses carried forward by companies and trusts.

PERSONAL INCOME TAX RATES

The income tax rates for resident individuals for the 2020/21 financial year are set out below in Australian dollars (the rates do not include the 2% Medicare Levy applying to most resident individuals):

TABLE 1

Tax rates for resident individuals

TAXABLE INCOME 2021	TAX ON THIS INCOME
AUD 0 – 18,200	Nil
AUD 18,201 – 45,000	19% on excess over $18,200
AUD 45,001 – 120,000	$5,092 plus 32.5% on excess over $45,000
AUD 120,001 – 180,000	$29,467 plus 37% on excess over $120,000
AUD 180,001 and over	$51,667 plus 45% on excess over $180,000

Non-resident individuals pay tax at the following rates for the 2020/21 financial year on Australian sourced income other than dividends, interest and royalties which are subject to withholding tax. Non-residents do not pay the Medicare Levy:

TABLE 2

General tax rates for non-resident individuals

TAXABLE INCOME	TAX ON THIS INCOME
AUD 0 – 120,000	32.5%
AUD 120,001 – 180,000	$39,000 plus 37% on excess over $120,000
AUD 180,001 and over	$61,200 plus 45% on excess over $180,000

TABLE 3

Tax rates for individuals on Working Holiday Maker visas

TAXABLE INCOME	TAX ON THIS INCOME
AUD 0 – 45,000	15%
AUD 45,001 – 120,000	$6,750 plus 32.5% on excess over $45,000
AUD 120,001 – 180,000	$31,125 plus 37% on excess over $120,000
AUD 180,001 and over	$53,325 plus 45% on excess over $180,000

INDIVIDUAL INCOME TAX RESIDENCY TESTS

Individuals will be Australian "tax residents" if they live in Australia according to ordinary concepts or are domiciled in Australia unless they have a permanent place of abode outside Australia; or where they have been in Australia more than 183 days in any Australian tax year unless there is no intention of residing in Australia; or where they are entitled to Commonwealth superannuation benefits.

A tax resident can also fit within a special category of "temporary resident" in certain circumstances.

Tax residency can be different to visa residency.

MEDICARE LEVY

Medicare is the scheme which gives most Australian resident individuals access to universal government subsidised healthcare. Australian resident individual taxpayers pay an annual Medicare levy at the rate of 2% of their taxable income once it exceeds specified thresholds.

CORPORATE INCOME TAX

Income tax is levied on taxable income, which is assessable income less allowable deductions. Assessable income is gross income and includes certain capital gains. Various exemptions can apply to foreign source income of Australian companies.

Income tax laws include provisions which may attribute income from personal services to the individual even though the income was nominally derived by an interposed company or trust.

Tax deductions are available for losses or outgoings incurred in gaining or producing the assessable income, or while carrying on a taxable business. Allowable deductions normally include salary and wages, stock purchases, manufacturing, trading or administration expenses, interest, rentals and royalties. Depreciation is allowed on items such as income producing plant and equipment, as well as certain forms of intellectual property.

COMPANIES

For income tax purposes all incorporated or unincorporated bodies or associations except partnerships are held to be companies. The corporate tax rate differs for smaller companies carrying on an active trading business and other companies. The current tax rates are as follows:

Small Companies Carrying on an Active Trading Business

Financial Year	Aggregated Turnover less than	Corporate Tax Rate
2018-19 to 2019-20	$50 m	27.5%
2020-21	$50 m	26%
2021-22 +	$50 m	25%

All other Companies 30%

To qualify for the lower corporate tax rate, "small" companies must have no more than 80% passive income.

RESIDENT COMPANIES

A company is tax resident in Australia if it is incorporated in Australia; or carries on business in Australia and either has:

- maintains its central management and control in Australia; or
- The company's voting power is controlled by shareholders who are Australian residents.

Resident companies are required to disclose both Australian and non-Australian income. Foreign branch income and dividends from non-portfolio interests in foreign companies (voting interests of 10% or more) are generally exempt subject to controlled foreign company (CFC) rules.

Resident companies are taxed on a full imputation system which allows them to attach franking credits to dividend payments so shareholders.

EXAMPLE

Resident Company Pty Ltd, a "large" company earns profits of $100, pays income tax of $30 and distributes an after tax dividend of $70 to its shareholders. Resident shareholders can claim a tax credit of $30 for every $70 of cash dividend. This reduces their tax liability or results in a tax refund. Capital management is becoming increasingly important for companies expecting their tax rate to fall from 30% to 26%.

Australia does not impose withholding tax on fully franked dividends paid to non-residents. The general withholding tax rate on unfranked dividends paid to non-residents is 30%. This can be reduced to as little as 0% under the terms of any relevant double tax treaty.

Foreign dividends received by an Australian corporate shareholder are taxable unless it has a 10% or greater interest in the foreign company. No withholding tax applies when these dividends are redistributed to foreign shareholders in the Australian company. No dividend withholding tax applies to the redistribution of conduit foreign dividends received from non-portfolio investments of 10% or more in foreign companies.

Australia has complex anti-avoidance rules designed to prevent dividend "streaming" and substituting capital payments for taxable dividends.

NON-RESIDENT COMPANIES

A non-resident company has to file an income tax return disclosing its Australian sourced trading and property income. Other Australian sourced income is generally subject to withholding tax. Australian subsidiaries of a foreign parent company can apply to the ATO to change their income tax year to coincide with the financial year-end reporting requirements of the parent company.

Australia does not impose a separate branch profits tax.

PARTNERSHIPS

For income tax purposes a partnership is an association of persons carrying on business as partners or in receipt of income jointly. Limited Partnerships are a separate class of partnerships that are taxed as companies. In other partnerships the partnership files an income tax return calculating the amount of taxable income distributed to each partner. The partner's then file returns on an individual basis including their share of the partnership's taxable income. Except in the case of limited partnerships the individual partners can claim a tax deduction for their share of any partnership tax losses.

TRUSTS

Most trusts are treated as "flow through" vehicles for income tax purposes. The trustee calculates the trust's taxable income and distributes it to the beneficiaries. Australian tax residents are usually taxed on their share of the trust's income. The trustees are required to meet the Australian tax liability of foreign residents and beneficiaries under a legal disability, for example, children. A trust will be a resident trust estate during the year of income if either a trustee is resident in Australia, or if the central management and control of the trust is in Australia.

SOLE TRADERS

Sole traders are taxed as individuals at the progressive or marginal rates of tax noted above.

DOUBLE TAX TREATIES

Australia has established comprehensive Double Taxation Agreements with over 40 countries in order to avoid double taxation of income and prevent fiscal evasion. These agreements vary slightly with the different countries. Generally, however, taxing rights over different classes of income are allocated on either the source of the income or the country of residence of the entity deriving the income. Where income is taxed in a foreign country of source and is also assessable in Australia, Australia is required to give a foreign income tax offset (i.e. foreign tax credit) for the foreign income tax paid.

Countries with which Australia currently has comprehensive Double Taxation agreements are listed in Appendix I.

Australia has entered into Tax Information Exchange Agreements with most of the significant offshore financial centres with the exception of Hong Kong. These agreements aim to establish effective information exchange and improve transparency of taxpayers' financial transactions for tax purposes.

ANTI-AVOIDANCE PROVISIONS FOR DOMESTIC AND FOREIGN ENTITIES

Australia has complex laws directed against tax avoidance both domestically and internationally.

THIN CAPITALISATION

Thin capitalisation rules operate to limit tax deductions for interest expense incurred by foreign controlled or multi-national corporations allocating a disproportionate amount of debt to their Australian operations thereby reducing their taxation liabilities. The thin capitalisation rules also apply to Australian entities investing offshore. The thin capitalisation rules do not apply where total annual interest expense is less than AUD 2 million. In other circumstances a safe harbour debt to equity ratio, generally debts are no more than 60% of the average value of the Australian entity's assets, applies.

TRANSFER PRICING

In order to control arrangements by which profits are shifted out of Australia the ATO may impose 'arm's length prices' for related party international dealings in accordance with a number of methodologies. Any management charges or supplies of services by foreign investors to related Australian companies must be commercially justifiable and at approximately arm's length prices.

PART IVA – GENERAL ANTI-AVOIDANCE PROVISION

Australia has a general anti-avoidance provision directed against schemes that are predominantly intended to achieve a tax benefit as defined. Other, more specific, anti-avoidance provisions may also apply.

BASE EROSION AND PROFIT SHIFTING

In response to the OECD's report on base erosion and profit shifting (BEPS) the Australian Government introduced three measures to address certain arrangements entered into by large multinational enterprises with annual global income of AUD 1 billion or more. These measures comprise:

- A requirement to provide country by country reporting
- Lodgement of annual financial statements
- Doubling the tax avoidance penalties applying to significant global entities
- Extending the Part IVA general anti avoidance rules to schemes designed to artificially avoid the attribution of business profits to an Australian permanent establishment

OTHER FEDERAL TAXES

GOODS AND SERVICES TAX

The Goods and Services Tax (GST) is a broad-based consumption tax applied at the rate of 10%, and applies to the majority of goods and services consumed in Australia. There is a range of exemptions (that is, "GST free") including basic foods, education, health, charitable activities, exports and businesses sold as a going concern. Some transactions including most financial supplies, residential rents and sale of established homes are "input taxed". This means the supplier does not charge GST but cannot recover any GST charged to it.

GST is a form of value added tax and is generally applied cumulatively at each stage of the production/distribution chain. Businesses can account for GST on a cash or accruals basis depending on their turnover.

All businesses must register for GST if they have an annual turnover of taxable supplies exceeding AUD 75,000. Other businesses may choose to register for GST. The GST return is called a Business Activity Statement (BAS). It includes the entity's net GST liability (that is, GST charged to customers less GST charged by suppliers) and incorporates other regular tax payments including employee Pay As You Go withholding and FBT instalments. The BAS is due on a monthly, quarterly or annual basis depending on the entity's turnover.

GST has recently been extended to catch most small value overseas business to Australian consumer transactions – frequently called a Netflix tax. GST rules were simplified for transactions between overseas businesses and GST registered Australian businesses.

Exports are generally GST free. A tourist refund scheme applies to goods acquired in Australia and taken overseas as personal luggage.

FRINGE BENEFITS TAX

Businesses which provide non-cash benefits to their employees are generally subject to Fringe

Benefits Tax (FBT). This is charged at 47% of the grossed up taxable value of the fringe benefit, and is tax deductible by the employer. FBT generally removes salary packaging arbitrage opportunities except where a recognised concession applies.

FBT applies to a range of benefits including private use of a motor vehicle, debt waiver, interest free or low interest loans, free or cheap housing and some discounted goods and services.

There is a range of FBT exemptions and concessions, in particular for costs associated with relocating employees.

12.5% WITHHOLDING TAX ON SALES OF CERTAIN AUSTRALIAN REAL ESTATE INTERESTS

Non-residents of Australia are exposed to Australian capital gains tax (CGT) on the sale of certain assets connected with Australian (taxable Australian property). As an advance tax collection mechanism purchasers are required to withhold 12.5% of the purchase price when buying the following types of taxable Australian property:

- Direct Australian real estate interests and mining rights costing AUD 750,000 or more
- Shares in a “land rich” company or trust where both more than 50% of the entity’s value is attributable to Australian real estate and the vendor, together with its associates, owns 10% or more of the entity sold (which may not be an Australian tax resident).
- Options to acquire the above types of asset

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The main exceptions are:

- For direct real estate the vendor receives a tax clearance certificate from the ATO that they are an Australian tax resident – this is now a standard part of conveyancing practice
- For indirect interests the vendor, if requested by the purchaser, provides a declaration stating that they are an Australian resident or that the membership interest is not an indirect Australian real property interest
- Indirect interests transferred on an approved stock exchange or crossing system

In other circumstances a variation is available on application to the ATO where the expected CGT liability is less than 12.5% of the gross sales proceeds. This might occur where the vendor makes a capital loss or has offsetting tax losses available.

Any tax withheld is available as a credit against the vendor’s ultimate CGT liability assessed after subsequently lodging an Australian income tax return.

CUSTOMS AND EXCISE

Goods imported into Australia are classified under the Customs Tariff, and may be subject to customs duty. Customs import entry procedures are based on self-assessment by importers, including self-assessment of the correct classification of goods. Importers frequently engage the services of a customs agent. The amount of duty payable is generally levied on the customs value of the goods which may differ from their sale price.

Excise is imposed on the local production of a number of goods including tobacco products, alcoholic beverages and fuel and petroleum products. Where these products are imported they are subject to customs duty at a rate equivalent to excise duty to ensure they’re treated consistently with goods manufactured in Australia.

STATE TAXES

Whilst New South Wales are quoted below for indicative purposes, different rates applicable for each State or Territory and should be checked with the relevant jurisdiction(s).

PAYROLL TAX

All States and Territories levy payroll tax on wages, salaries some allowances and certain non-cash benefits including superannuation contributions paid by employers to or on behalf of their employees in the relevant jurisdiction. As an example, the current payroll tax rates for New South Wales are set out below:

Payroll tax rates, New South Wales from 1 July 2021

ANNUAL WAGES (AUD)	TAX RATE %
0 – 1.2 million	Nil
Over 1.2 million	4.85

Where an employer operates in multiple jurisdictions the payroll tax threshold is pro-rated based on the % of wages paid in each State or Territory. Related employers or businesses are grouped together.

TRANSFER DUTY (PREVIOUSLY CALLED STAMP DUTY)

Transfer Duties are imposed on contracts and legal documents such as transfers of land, goodwill and the taking of security for financial accommodation such as mortgages and charges. Again, the rates vary according to the type of transaction, and between the different States and Territories.

As an indication of the rates of transfer duty on conveyances of land in NSW, the following are the New South Wales Transfer of land and declaration of trust over dutiable property from 1 July 2021:

Transfer of land duty rates, New South Wales

Property Value	General Rate of Duty
0 – $14,000	$1.25 per $100 or part thereof
$14,001 – $32,000	$175 + $1.50 per $100 or part thereof above $14,000
$32,001 – $85,000	$445 + $1.75 per $100 or part thereof above $32,000
$85,001 – $319,000	$1,372 + $3.50 per $100 or part thereof above $85,000
$319,001 - $1,064,000	$9,562 + $4.50 per $100 or part thereof above $319,000
Over $1,064,000	$43,087 + $5.50 per $100 or part thereof above $1,064,000

Additional duty rates apply to premium residential property over $3,194,000 - $160,237 plus $7.00 per $100 or part thereof above $3,194,000

In addition to the above, foreign persons (a widely defined term) are subject to a further 8% surcharge when buying residential land in NSW. A similar surcharge applies in some other states including Queensland, Victoria, South Australia and Western Australia.

LAND TAX

Land Tax is imposed by each State and the Australian Capital Territory, is paid annually and is based upon on the unimproved value of land owned by the taxpayer as assessed. Land tax will be tax deductible if the land is used for income producing purposes. There are various exemptions available to land holders depending upon the use of the land, mainly for farming properties and an individual's principal residence.

As an indication of the rates of Land Tax on land in NSW for the 2021 year the tax free threshold is $755,000. The Land Tax rate is then $100 plus 1.6% of the value between the threshold and the premium rate threshold of $4,616,000. Thereafter the rate is 2% of the value above the premium threshold.

In addition to the above, foreign persons (a widely defined term), who own residential land in NSW are subject to a 2% surcharge. This surcharge applies in some other states including Queensland and Victoria.

FEDERAL HOUSING TAX INTEGRITY MEASURES

As part of a package of housing affordability measures the Federal Government has introduced an annual vacancy fee on foreign owned residential real estate that is not occupied or genuinely available for rent for at least six months in a 12 month period. In addition, individuals can no longer claim tax deductions for travelling expenses associated with inspecting their residential rental properties. Associated measures restrict depreciation deductions in relation to residential rental properties.

INHERITANCE TAX AND GIFT TAXES

Australia does not currently impose inheritance taxes or gift taxes. This is subject to a minor exemption for certain assets other than real estate bequeathed to non-residents.

OTHER IMPOSITIONS

Annual fees are payable on all vehicle registrations, as are council rates and taxes which again vary according to State or Territory regulations. All jurisdictions impose a range of fines and penalties for various offences.

7 – ACCOUNTING & REPORTING

The accounting regulations and disclosure requirements applicable to Australian companies are extensive, detailed and complex. Except where otherwise stated, this guidance relates to businesses incorporated in Australia. The following is only a brief summary, and reflects the law at June 2021.

The Federal Corporations Act 2001 regulates accounting and reporting for companies, registered schemes and disclosing entities in Australia.

Unincorporated bodies, as well as partnerships and certain trusts are not governed by the Corporations Act but are still required to maintain accurate records for tax and other purposes. They may need to be audited under other legislation.

ASIC'S ROLE IN CORPORATE GOVERNANCE

ASIC, the Australian Securities & Investments Commission, is Australia's integrated corporate, markets, financial services and consumer credit regulator.

ASIC's charter requires it to:

- maintain, facilitate and improve the performance of the financial system and entities in it
- promote confident and informed participation by investors and consumers in the financial system
- administer and enforce the law
- receive, process and store, efficiently and quickly, information that is given to it
- make information about companies and other bodies available to the public as soon as practicable

SUMMARY OF ASIC REGULATED FINANCIAL DISCLOSURE AND AUDIT REQUIREMENTS

Under the Corporations Act annual audited financial reports including directors' reports must be prepared for:

- All disclosing entities
- Large proprietary companies
- Foreign controlled small proprietary companies
- Other small proprietary companies where requested by 5% or more of the shareholders
- All public companies except some limited by guarantee
- Australian Financial Services Licence holders

These concepts are discussed below together with possible exceptions.

DISCLOSING ENTITIES

These are corporations that issue enhanced disclosure securities which comprise those listed on a prescribed financial market or held by more than 100 persons or issued under an off market takeover bid.

CLASSIFICATION AS LARGE PROPRIETARY COMPANIES

A proprietary company is one which:

- Is limited by shares (or an unlimited company with share capital)
- Has no more than 50 non-employee shareholders
- Is not a disclosing entity

All other companies are "public companies".

A large proprietary company is one which together with its controlled entities satisfies at least two of the following three tests:

- Consolidated revenue of at least $50 million
- Consolidated gross assets of $25 million or more at the end of the financial year
- 100 or more full time equivalent employees at the end of the financial year

FINANCIAL AND AUDIT REQUIREMENTS FOR MOST SMALL PROPRIETARY COMPANIES

Proprietary companies that are not "large" are "small". In general small proprietary companies are not required to lodge a financial report with ASIC. Shareholders with at least 5% of the votes can requisition the preparation of an audited financial report. Special rules apply to companies limited by guarantee.

CLASSIFICATION AS FOREIGN CONTROLLED SMALL PROPRIETARY COMPANY

A foreign company is one which is incorporated outside Australia and that does not have its head office or principal place of business in Australia. A small proprietary company that is controlled by a foreign company at any time during the year is subject to the financial reporting and audit requirements discussed below.

PUBLIC COMPANIES

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

LODGING FINANCIAL REPORTS WITH ASIC

The following entities are required to lodge financial reports with ASIC:

- all disclosing entities
- all public companies
- companies limited by guarantee (except small companies limited by guarantee)
- all large proprietary companies
- all registered schemes
- small proprietary companies that are foreign-controlled
- small proprietary companies or small companies limited by guarantee if directed to prepare financial reports by its shareholders
- small proprietary companies subject to shareholder direction
- small companies limited by guarantee subject to member direction under s294A of the Corporations Act

- Registered foreign companies may also need to lodge balance sheets, profit and loss statements, cash flow statements and other documents with ASIC.

Australian Financial Service licensees must also lodge audited financial statements.

CONTENTS OF FINANCIAL REPORT TO BE LODGED WITH ASIC

The annual financial report comprises:

- Year-end statement of financial position (i.e. balance sheet)
- Statement of profit and loss and other comprehensive income
- Cash flow statement
- Statement of changes in equity
- Consolidated financial statements if required by accounting standards
- Notes to financial statements
- Directors' declaration that the financial statements comply with accounting standards, give a true and fair view, there are reasonable grounds to believe the company/scheme/entity will be able to pay its debts, the financial statements have been made in accordance with the Corporations Act
- Directors' report, including the auditor's independence declaration
- Auditor's report

Disclosing entities and registered managed investment companies must lodge complete financial report within three months after the end of their financial. All other companies have four months to report.

CLASS ORDER RELIEF FROM AUDIT REQUIREMENTS

Small proprietary companies that controlled by foreign companies that are not part of a large group can rely on ASIC class order relief from the requirement to appoint auditors or prepare and lodge financial reports.

CORPORATE REPORTING REQUIREMENTS – BRANCHES OF FOREIGN COMPANIES

Once a foreign company is registered, it is required to lodge the following with ASIC, at least once every calendar year and at intervals of not more than 15 months:

- A copy of its balance sheet, profit and loss statement, and cash flow statement; and
- Any other documents it is required by law to lodge in its home country of origin

Changes to directors of the foreign company need to be notified as they occur.

MINIMUM COMPANY OFFICEHOLDERS

A proprietary company must have at least one director. At least one director must live in Australia. A proprietary company is not required to have a secretary. If it does, they must live in Australia.

A public company must have at least three directors and at least two of whom must live in Australia. A public company must also have at least one secretary living in Australia.

Being a director of an Australian company exposes an individual to a variety of risks some of which could result in a criminal conviction. For this reason many individuals are reluctant to act as company directors. We have a number of contacts who specialise in providing this service.

All companies lodging Australian income tax returns are required to have a resident public officer who is responsible for all dealings with the Australian Taxation Office.

MINIMUM COMPANY MEETING REQUIREMENTS

Public companies must hold an annual general meeting of shareholders within 18 months of incorporation and within five months of the end of each financial year. Other shareholders meetings may be held as required.

Proprietary companies are not required to hold an annual general meeting but actions requiring shareholder approval require a resolution to be passed by the shareholders holding the requisite majority of voting shares at a shareholders' meeting or approved by all shareholders by way of a circular resolution. The requisite majority is most commonly a simple majority but it is 75% for certain matters.

Technically there are no formal requirements as to how many directors’ meetings must be held in any one year. In practice there is usually at least one meeting each year (for example, to approve accounts or confirm solvency).

GENERAL ACCOUNTING AND TAXATION RECORD KEEPING REQUIREMENTS – ALL BUSINESS ENTITIES

Australian corporate laws require all businesses to keep records on:

- how much money the business makes and how much it spends
- who it hires or employs
- where it operates from
- how things get done in the business

Under Australian taxation laws all businesses must keep records that explain all transactions and be:

- in writing, either on paper or electronically
- in English, or in a form that we can readily access and convert into English
- Kept for five years (although some records need to be kept longer).

8 – BUSINESS MIGRATION TO AUSTRALIA

Australia has a strongly controlled migration regime regulated by the *Migration Act 1958* and associated regulations. All foreign visitors to Australia, except New Zealand citizens, must hold a valid visa.

At present approximately 190,000 permanent migrants are permitted into Australia each year. This total includes skilled and business migrants, refugees and family reunions. Each category of migrant has a relevant visa.

BUSINESS INNOVATION AND INVESTMENT PROGRAM

The Business Innovation and Investment Programme is designed to increase entrepreneurial talent and diversify business expertise in Australia. It targets migrants that have a demonstrated history of success in innovation, investment and business and are able to make a significant contribution to the national innovation system and to the Australian economy.

The programme aims to contribute to the growth of the Australian economy by:

- generating employment
- increasing the export of Australian goods and services
- increasing the production of goods and services in Australia
- introducing new or improved technology
- increasing competition and commercial activity
- developing links with international markets
- Spreading business migrants across Australia through state and territory government sponsorship.

Related State and Federal programs encourage business migrants to establish businesses in regional, rural or low growth areas of Australia.

BUSINESS TALENT VISAS

Australia actively encourages successful business migrants. Skilled migrant visas are normally based on a points system with most points being awarded for occupation, education, age, health and English language ability.

Business migrant visas are granted to applicants with skills gained from working in their own business or to those who have been executives of large and nongovernment institutions or who have substantial sums available for investment in Australia.

A permanent residence visa, known as the Business Talent Visa, can be granted to migrants who meet particular business skills and qualifications. This visa has two streams:
- Significant Business History stream
- Venture Capital Entrepreneur stream

Business applicants must:
- be nominated by a State or Territory government agency
- Be invited to apply for the visa; and either

- Have assets of at least AUD 1.5 million and business turnover of AUD 3 million or more; or
- Have funding of at least AUD 1 million form an Australian venture capital firm

SKILLED MIGRATION VISAS

From March 2018 the Temporary Skill Shortage visa (TSS) replaced the previous subclass 457 visa. The two main streams comprise:

- **Short-term stream** – this is for employers to source genuine temporary overseas skilled workers in occupations included on the *Short-term Skilled Occupation List* for a maximum of two years (or up to four years if an international trade obligation applies)
- **Medium-term stream** – this is for employers to source highly skilled overseas workers to fill medium-term critical skills in occupations included on the *Medium and Long-term Strategic Skills List* for up to four years, with eligibility to apply for permanent residence after three years

STATE AND TERRITORY SPONSORSHIP

The criteria and requirements vary from state to state. The areas that will impact most on the business migrants are the business proposal requirements, the amount of Australian dollars to be transferred to Australia, and employment requirements of the migrant's new Australian business.

UHY Haines Norton, being a national association, is able to advice on the requirements for each state or territory where a proposed business will operate.

UHY HAINES NORTON

UHY Haines Norton has partners and staff in each office who specialise in this area and who understand the requirements applying to each type of business visa.

UHY Haines Norton assists business migration clients in finding / acquiring businesses, conducting due diligences, as well as arranging introductions with migration agents, banks, solicitors, real estate agents, business brokers, and other relevant institutions.

SUBMITTING THE APPLICATION

Prospective migrants can choose to use a migration agent or opt to submit their own visa application. Because of the complexities of the different visas, it is recommended that business and skilled migrant applicants go through a reputable registered migration agent based either overseas or in Australia. Visa approvals are often delayed or even refused due to minor errors made when completing the application form.

Applicants should ensure the migration agent is registered with the Migration Agents Registration Authority.

9 – UHY REPRESENTATION IN AUSTRALIA

UHY HAINES NORTON AUSTRALIA

CONTACT DETAILS

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CONTACTS

Liaison contact:	Michael Coughtrey
Position:	Managing Partner
Email:	mcoughtrey@uhyhnsyd.com.au

Year established:	1979
Number of partners:	33
Total staff:	223

ABOUT US

UHY Haines Norton has offices throughout Australia and New Zealand and offers intelligent advice and solutions to help you manage and improve your business.

OTHER IN-COUNTRY OFFICE LOCATIONS AND CONTACTS

Adelaide (x2), Auckland, Brisbane, Busselton, Dunsborough, Melbourne, Perth, Sunshine Coast, Sydney (x 2) and Gladstone

BRIEF DESCRIPTION OF FIRM

UHY Haines Norton is a network of independent accounting and consultancy firms operating from nine locations around Australia and New Zealand. The group provides a wide range of accounting and business advisory services to clients including large listed and private companies, government and semi-government entities, partnerships, trusts, high net worth individuals and small and medium sized family businesses.

SERVICE AREAS

Audit and assurance
Accountancy
Business development and improvement services
Business and strategic planning
Tax planning and compliance
Financial reporting and financial planning
Migration services
Local government services
Forensic audits
Acquisitions and mergers
Due diligence, investigations and evaluations
Corporate finance, including listings
Estate planning
Business systems
Liquidations

The network for doing business

UHY HAINES NORTON AUSTRALIA

SPECIALIST SERVICE AREAS

Audit and Assurance
Business Migration
Tax and Business Services
Litigation Support
Local Government
UK Pension Transfers
Foreign Pension Transfers

PRINCIPAL OPERATING SECTORS

Agriculture
Government
Health care
Hospitality
Import/Export/Distribution
Manufacturing
Mining
Property
Retail
Shipping

LANGUAGES

Afrikaans, Greek, Polish, Mandarin, Cantonese, Hindi, Italian.

OTHER COUNTRIES IN UHY CURRENTLY WORKING WITH, OR HAVE WORKED WITH IN THE PAST

Canada, China, Colombia, Denmark, Germany, Holland, Hong Kong, India, Malaysia, Philippines, New Zealand, Singapore, Spain, South Africa, UK, US.

BRIEF HISTORY OF FIRM

Several of today's member firms came together in 1979 when a loose co-operative arrangement was struck between Haines Toner & Co. (Melbourne) and Norton and Faviell (Sydney). The history of both of these firms can be traced back over 100 years.

In 1984, they joined with an Adelaide based firm to form the beginning of the national association now referred to as UHY Haines Norton.

Baker Partners (Brisbane and now also the Gold Coast) joined in 1987 and were followed in 1995 by Hewitt & Co. (Perth).

In 2003, the association ventured across the Tasman Sea and were joined by Butts, Bainbridge and Weir, an Auckland based firm.

PRT Chartered Accountants (Busselton, Dunsborough) joined the Association in 2008.

The network for doing business

LET US HELP YOU ACHIEVE FURTHER BUSINESS SUCCESS

To find out how UHY can assist your business, contact any of our member firms. You can visit us online at www.uhy.com to find contact details for all of our offices, or email us at info@uhy.com for further information.

UHY is an international network of legally independent accounting and consultancy firms whose administrative entity is Urbach Hacker Young International Limited, a UK company. UHY is the brand name for the UHY international network. Services to clients are provided by member firms and not by Urbach Hacker Young International Limited. Neither Urbach Hacker Young International Limited, the UHY network, nor any member of UHY has any liability for services provided by other members.

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