



MGI GUIDE

DOING BUSINESS IN AUSTRALIA

2006

DOING BUSINESS IN AUSTRALIA

MGI AUSTRALIAN FIRMS

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PREFACE

This booklet has been prepared by the Australian member firms of MGI, for the information of clients and fellow members of MGI.

Whilst every care has been taken in the preparation of this booklet, no responsibility can be accepted for inaccuracies. Clients are also advised that the law and practice may change from time to time.

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INTRODUCTION

The positive reaction of Australia to the changes in world economies that occurred since the 1970's has now borne fruit and we have been able to quarantine ourselves from the economic difficulties of many of our trading partners. The old regime of protection of our industries with tariffs and subsidies has now long gone and we offer a stable investment environment, with low inflation (2% to 3% for past 5 years). Our economy is very competitive by world standards.

Foreign investment is always welcomed in Australia because the success of our economy is much dependent upon substantial international trade. There are a number of Government incentives available to developing industries and to exporters. Details of these are provided later in this booklet

Australia is well placed in relation to the rapidly developing markets of Asia, we have a relatively stable currency and our system of Government ensures continued stability and certainty.

We have a highly skilled workforce and we are able to offer competitive unit labour costs. Australia has an abundance of mineral wealth and utility and fuel costs are very competitive. The local road, rail, air and sea infrastructure is both modern and efficient. Government regulation has been substantially reduced in recent years. There are no controls on the movement of funds, profits or capital from the country (other than to certain designated tax havens).

In the following pages you will find an outline of Australia's tax and business laws and regulations.

Readers are warned that this publication is a guide only and they should not act to establish themselves in Australia without first obtaining their own independent advice.

Whilst every care has been taken in the preparation of this booklet, no responsibility can be accepted for inaccuracies or for changing circumstances occurring due to alterations in law and practice.

AUSTRALIA - OVERVIEW

The Country and its People

Australia is located to the southeast of Asia, and lies between the Indian and Pacific oceans. The country is divided into two territories and six separate states including the island state of Tasmania, which lies to the south of the country.

Australia is an island continent. The total land area is 7,686,850 sq km, which is very close to the landmass of mainland USA (the 48 states). The population in mid 2005 is slightly in excess of 20 million. The population is truly multi-national with immigrants from just about every country on earth being found around the country. The largest (and gradually falling) proportion of the people is of English, Scottish, Welsh or Irish descent. There was substantial immigration from Europe immediately following World War II and a large influx from Southeast Asia in the years following the Vietnam conflict. There has been substantial immigration from the Middle East in the last twenty years. The original inhabitants (Australian Aborigines) account for about 1.5% of the population.

With the northern regions of the country lying just south of the equator and the south being over 45 degrees south of the equator the climate understandably varies from tropical to desert to temperate (Mediterranean). Over one third of the country receives less than 250 mm (10 inches) of rain per year. Less than one third of the country receives more than 500 mm (20 inches) per year. Around 80% of the population is found in the coastal strips. Large parts of the vast inland are barely inhabited.

In the south the warmest months are from January to March and July and August are the coldest months. Variations in temperatures from month to month are much greater in the temperate south than in the tropical north. The summers can be very hot in the south, but winters are mild by comparison to Europe or USA. The north is typically tropical with the “wet” (rain and high humidity) occurring from November through to March and the “dry” (little rain and much lower humidity) over the rest of the year.

Australia is a favourite tourist location for many, with the Great Barrier Reef, which lies adjacent to the northern part of the east coast being one of the most popular destinations. However Sydney, the Queensland Gold Coast and the Outback centres of Alice Springs and Uluru (Ayers Rock) are also very popular.

The political capital and seat of the federal government is Canberra, which lies about half way between the major cities of Sydney and Melbourne.

The official language is English, but many other languages are spoken within the various ethnic communities that today make up a substantial part of the Australian population.

Government

Australia is a constitutional monarchy. There has been great debate in recent years of the prospect of becoming a republic and in 2005 the consensus view is that conversion to a republic is likely to occur within ten years. The country is a federation of the states and operates under the Westminster style of government. There is a Federal Government and each of the States has its own government. Income taxes, defence and corporate regulation are solely the responsibility of the Federal Government whilst many other services are joint Federal/State responsibilities.

Australia is an independent state within the Commonwealth. Queen Elizabeth II is represented federally by a Governor-General and in each State by a Governor. These representatives of the Queen summon and dissolve the various Parliaments, and assent to the legislation of those Parliaments.

The Commonwealth of Australia was formed by a federation of the States on 1st January 1901. The federal Parliament is divided into two houses, the lower house being known as the House of Representatives whilst the upper house (the house of review and States house) is called the Senate.

There are 150 members elected to the House of Representatives from 150 separate electorates around Australia, each with an approximately equal number of electors. Voting is compulsory for all persons over the age of 18 years and is done by preferential ballot. An elector is required to vote for each candidate on the ballot paper in order of preference. When the votes are counted the candidate with the lowest number of votes is eliminated and his/her vote is then passed to the candidate who was given as second preference by the elector. This exercise is repeated until one candidate has more than one half of the votes and is therefore elected. Members of the House of Representatives are elected for terms of up to three years.

The Senate has 76 members, with each State (Queensland, New South Wales, Victoria, Tasmania, South Australia and Western Australia) electing 12 senators and each of the territories (Northern Territory and Australian Capital Territory) electing 2. Senators are elected for terms of up to 6 years, one half having to stand for re-election at the time of each election, which occurs approximately every 3 years.

State Governments are structured and elected in a similar manner to the Federal Government. There are, however, some variations. Queensland has no upper house. Tasmania has a proportional representation method of election and Queensland uses optional preference voting.

Within each state there is a comprehensive system of local governments, which are responsible for the administration of local affairs.

There are two major political forces in Australia, a coalition of the Liberal and National Parties, who are generally conservative, and the Labor Party, which is generally more to the left in its policies.

The Federal Government in 2005 is a coalition of the Liberal and National Parties. The Labor Party presently governs in each State and Territory.

The Economy

Australia is a significant exporter to many parts of the world. The main trading partners are Asia (particularly China, Japan and Indonesia), USA, New Zealand, United Kingdom and the Middle East. The principal exports are alumina, beef, coal, iron ore, wine, manufactured goods, petroleum products, various other minerals, wheat and wool

The trading relationship with New Zealand has developed significantly with the introduction of the CER (*Closer Economic Relations*) free trade agreement between the two countries. In recent times there has been debate about a single economy and currency for Australia and New Zealand but the likelihood of this occurring in the near future still appears remote.

Recently a free trade agreement was concluded with the United States. Discussions on free trade agreements are also presently being undertaken with the People's Republic of China, and several countries.

Australia is a major exporter of motor vehicles and motor vehicle components. The Australian wine industry has grown rapidly in recent times due principally to the state of the art growing and production techniques adopted, making its product highly sought after the world over. Australia has recently surpassed France as the major exporter of wine to the United Kingdom and is a significant player in the United States market.

The provision of education services is a major export earner, as is tourism.

In the early 1980's Australia recognised that its old system of a very regulated economy with its fixed currency exchange rates, closely regulated labour markets and tariffs would eventually result in a severely reduced standard of living for its population. Within 10 years the currency had been floated, labour markets were freed up and most of the protective tariffs and industry subsidies had gone. There was an initial period of hardship for manufacturers and rural producers, but this has long been overcome and Australia now consistently has one of the fastest growing economies in the OECD.

For many years inflation has tracked between 1.5% and 3%. GDP growth is regularly above 4%. The currency is stable. Official interest rates are historically low, although there have been three rises of one quarter of one per cent since late 2003. In mid 2005 the official Reserve Bank rate is 5.50%.

The unit of currency is the Australian Dollar, which trades freely on international money markets. The majority of export trade continues to be contracted in US dollars.

INVESTMENT CLIMATE & OPPORTUNITIES

Australia welcomes international investment and has a number of forms of assistance available to any investors (local or foreign) who are prepared to invest in industries that provide for import replacement or for export or in fact in any venture that will provide a benefit to the Australian economy.

All income taxes and corporate regulation are administered federally so that separate registration within the various states and territories is unnecessary. Much of the tax lodgement and corporate regulation systems are fully electronic with the result that the establishment and registration of new entities is very streamlined. All Federal income tax returns are prepared and lodged on a self-assessment basis, meaning that returns are much simplified.

Investment and business opportunities and regulation is constantly changing in today's fast-moving society. There are a number of websites for Australian Government authorities that provide substantial up-to-the-minute information on all business opportunities and regulation.

Business Entry Point (www.business.gov.au/Business+Entry+Point/) is a gateway to information and services that assist business people in their dealings with all levels of Australian government. Starting and operating a business, e-commerce, occupational health and safety, international trading, finance and legal issues, managing staff, and taxation are examples of categories of information that can be found through the Business Entry Point. It also provides access to business compliance requirements.

The Foreign Investment Review Board (www.firb.gov.au) administers all matters relating to investment by foreign individuals and corporations.

The Export Finance and Insurance Corporation (www.efic.gov.au) provides a range of services to assist the export of Australian capital goods and services and investment in overseas projects.

Ausindustry (www.ausindustry.gov.au/) is the Australian Government's principal agency for delivering information, programs and services which support industry, research and innovation. An agency of the Australian Government Department of Industry, Science and Resources (ISR), AusIndustry serves the needs of Australian businesses in the manufacturing, resources and services sectors seeking to enhance innovative activities and improve competitiveness. AusIndustry does this by providing a range of commercial incentives and information services for Australian businesses.

Australian Securities and Investment Commission (www.asic.gov.au/asic/asic.nsf) is the independent government body that enforces and administers Corporations Law and consumer protection law for investments, life and general insurance, superannuation and banking (except lending) throughout Australia.

THE FOREIGN INVESTMENT REVIEW BOARD

The Board examines proposals by foreign interests to undertake direct investment in Australia and makes recommendations to the Government on whether those proposals are suitable for approval under the Government's policy.

The main functions of the Board are:

- to examine proposals by foreign interests for investment in Australia and, against the background of the Government's foreign investment policy, to make recommendations to the Government on those proposals;
- to advise the Government on foreign investment matters generally;
- to foster an awareness and understanding, both in Australia and abroad, of the Government's foreign investment policy;
- to provide guidance, where necessary, to foreign investors so that their proposals may be in conformity with the policy; and
- to monitor and ensure compliance with foreign investment policy.

The Board's functions are advisory only. Responsibility for the Government's foreign investment policy and for making decisions on proposals rests with the Federal Treasurer. Many of the decisions requiring Ministerial consideration are made by the Parliamentary Secretary to the Treasurer.

The Board is assisted by an Executive which is part of the Treasury and also has available to it advice from other Commonwealth and State Government departments and authorities.

One of the Australian Government's principal trade objectives is to capture the benefits of trade liberalisation and international investment for Australia by pursuing a multi-faceted trade policy of progressing complementary multilateral, regional and bilateral partnerships.

The Foreign Investment Policy Division is responsible for international investment policy issues in multilateral forums, such as the Organisation for Economic Cooperation and Development (OECD) and the World Trade Organisation (WTO), in regional forums such as Asia-Pacific Economic Cooperation (APEC), and bilaterally through free trade agreements, investment protection and promotion agreements and other bilateral partnerships.

The capacity to invest in foreign economies is increasingly becoming as important to global growth as the capacity to trade. Accordingly in Australian Government policy, bilateral free trade agreements (and to some extent multilateral agreements) now perform a larger role than just the removal of trade barriers. They are considered an instrument to promote two-way investment and to define investment parameters.

Acquisitions of businesses or developed commercial properties valued at less than \$50 million do not require FIRB approval, unless they are in a sensitive sector, contain residential real estate or an accommodation facility.

Generally it is not possible for foreigners to acquire existing residential dwellings in Australia, but FIRB approval is usually granted to foreigners wishing to acquire new residential dwellings or to acquire existing residential dwellings that will be redeveloped within one year and which are not occupied until the redevelopment is completed.

The foreign investment policy provides for Government scrutiny of many proposed foreign purchases of Australian businesses and properties. The Government has the power to block proposals that are determined to be contrary to the national interest.

In the majority of industry sectors, smaller proposals are exempt from notification and larger proposals are approved unless judged contrary to the national interest. The screening process undertaken by the Foreign Investment Review Board (FIRB) enables comments to be obtained from relevant parties and other Government agencies in considering whether larger or more sensitive foreign investment proposals are contrary to the national interest.

The Government determines what is 'contrary to the national interest' by having regard to the widely held community concerns of Australians. Reflecting community concerns, specific restrictions on foreign investment are in force in more sensitive sectors such as the media and developed residential real estate. The screening process provides a clear and simple mechanism for reviewing the operations of foreign investors in Australia whenever they seek to establish or acquire new business interests or purchase additional properties. In this way the Government is able to put pressure on foreign investors to operate in Australia as good corporate citizens if they wish to extend their activities in Australia.

Under the Act, a **foreign person** is:

- a natural person not ordinarily resident in Australia;
- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest (that is, a holding of 15 percent or more);
- a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest (that is, a total holding of 40 percent or more);
- the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

A **substantial foreign interest** occurs when a single foreigner (and any associates) has 15 per cent or more of the ownership or several foreigners (and any associates) have 40 per cent or more in aggregate of the ownership of any corporation, business or trust.

The Australian Government recognises the commercial-in-confidence sensitivity of much of the information provided to the Board. The Government respects this confidential status and ensures that appropriate security is given to it.

IMPORTING & EXPORTING

The Australian Customs Service (www.customs.gov.au/) is responsible for the administration of the movement of all goods into and out of Australia. It is also charged with collecting all duties and tariffs and with ensuring compliance with Australia's anti-dumping laws.

Duties and tariffs have been substantially reduced over recent years, but some still apply.

Preferential tariff rates apply to many items from specified countries of origin, such as New Zealand and Developing Countries

Full details of the regulations and tariffs governing Australian imports can be obtained by downloading the booklet *Customs Guide to Importing and Exporting* from the Customs website:

http://www.customs.gov.au/webdata/resources/files/guideimport_export1.pdf

This booklet will prove useful not only because of the information that it provides concerning imports and exports but also because it contains information on a range of indirect taxes and government regulations affecting organisations doing business in Australia.

IMMIGRATION

Australia encourages immigration, but it has clearly defined criteria as to who can be accepted into its immigration programme. There are various categories of immigration. Full details of Australia's immigration programme can be found at www.immi.gov.au

Business Skills Migration

The Business Skills visa class of Australia's migration program encourages successful business people to settle permanently in Australia and develop new or existing businesses.

Business owners, senior executives and investors can apply for a visa under the Business Skills category.

Under the two-stage arrangements, business migrants are granted a Business Skills (Provisional) visa for four years and, after establishing the requisite level of business or maintaining their eligible investment, are eligible to make an application for a Business Skills (Residence) visa.

A direct permanent residence category will still be available for high-calibre business migrants sponsored by State/Territory governments. This is known as the Business Talent visa (see below).

The Business Skills program is divided into four categories. These are:

1. Business Owner Category for owners or part-owners of a business;
2. SeniorExecutive Category for senior executive employees of major businesses;
3. Investor category for investors/business people willing to invest in Australia;
4. Business Talent Category for high-calibre business people who have sponsorship from a State/Territory government.

Employer Sponsored Migration

There are four categories for employer-sponsored migration to Australia:

1. The Employer Nomination Scheme (ENS) has been developed for Australian employers to recruit permanent, highly-skilled staff from overseas or from people temporarily in Australia, when the employers have been unable to fill a vacancy from within the Australian labour market or through their own training programs.
2. The Regional Sponsored Migration Scheme (RSMS) is designed to help employers in regional or low population growth areas of Australia, who are unable to fill skilled vacancies from the Australian labour market.
3. Labour Agreements(LA) enable Australian employers to recruit (either permanently or temporarily) a specified number of workers from overseas in

response to identified or emerging labour market (or skill) shortages in the Australian labour market.

4. Invest Australia Support Skills (IASS) program is designed to encourage international firms to choose Australia as a location for foreign direct investment. It allows companies that make a significant investment in Australia to bring out essential key expatriate managerial and specialist employees from within the company group.

Australia also has special provisions for persons wishing to migrate from New Zealand as well as family reunion and humanitarian immigration programmes.

RECOGNISED FORMS OF BUSINESS ENTERPRISE

1. Sole Trader / Sole Proprietor

Any individual may commence in business as a sole trader, and personally realise all profits and losses arising from the enterprise.

Business names, where they are different to the name of the proprietor, must be registered with the Consumer & Business Affairs office in the State where the business is being conducted.

There is no limitation of personal liability, the sole trader being personally liable for all the debts and obligations of the business.

2. Partnerships & Joint Ventures

Partnerships and joint ventures may be entered into by groups of individuals, trusts, companies, or combinations of these.

The partners are jointly and severally liable for debts and obligations of the partnership and individuals may be sued for debts of the partnership as a whole.

3. Trusts

A Trust may be created by Will or by Deed. There two forms of trusts: discretionary and fixed.

Discretionary trusts are generally used for family groups as the trustee is granted discretion to distribute the income between the beneficiaries in any manner deemed appropriate by the trustee.

Fixed (or unit) trusts are generally used for joint venture or partnership ventures as the entitlement of each party is fixed.

4. Companies

The "Limited Liability Company" is the most common means of conducting business in Australia.

There are a number of statutory regulations pertaining to overseas investors commencing operations in Australia:

Australian subsidiary of a Non-resident company.

Provision of capital from overseas may require consent under the Foreign Investment Review Board regulations. Generally this is only for investments in excess of \$50 million. However, in most other instances company law relating to incorporation of an Australian subsidiary is the same as that for incorporation of a local company.

Non-resident shareholding in an Australian Company

There are restrictions on the level of ownership of corporations in Australia. If these ownership levels are exceeded that corporation is considered to be a foreign corporation

and then becomes subject to the regulations of the Foreign Investment Review Board. The following are considered as foreign corporations:

- A corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest (that is, a holding of 15 percent or more);
- A corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest (that is, a total holding of 40 percent or more).

An Australian Branch

Any company wishing to conduct business through a New Zealand Branch may require consent from the Foreign Investment Review Board.

LAW RELATING TO BUSINESS IN AUSTRALIA

Australia's legal system is based on British Common Law and Jurisprudence, with clear legal processes for resolving disputes and defining property rights.

International best practice is adopted in areas such as accounting standards.

There has been a concerted effort by all forms of Government in Australia to reduce the paperwork and processes associated with the establishment and conduct of business. Nonetheless there are still several different registrations required, dependent upon the type of business being conducted. You should refer to the Business Entry Point website (www.business.gov.au/Business+Entry+Point/) for full details.

It is essential that any person or company contemplating business in Australia seek competent local advice before proceeding. Each of the Australian member firms of MGI is able to assist you.

COMPANY LEGISLATION

The registration and management of companies and corporations is governed by the Corporations Law, which is an Act of the Federal Parliament. Companies are regulated by the Australian Securities and Investment Commission (ASIC). Their website may be viewed at www.asic.gov.au/asic/asic.nsf.

Other important areas of legislative control covered by ASIC include the activities of companies offering securities to the public; co-operative companies operating in the public sector; standards of financial reporting; receiverships and takeovers.

Directors' Duties

Directors undertake wide-ranging duties and obligations under the law. Breach of a duty can make the director liable for damages to the company or its shareholders. In addition, directors must not allow a company to continue trading if this would create a substantial risk of serious loss to creditors.

Stock Exchange Listing

The Australian Stock Exchange (www.asx.com.au/index.htm) issues a Listing Manual detailing specific requirements relating primarily to disclosure of accounts, Constitution or Articles of Association and shareholding.

LABOUR RELATIONS & EMPLOYMENT

In Australia, organisations and individuals have the right to negotiate their own Employment Contracts, commonly called enterprise workplace agreements within a specific framework. There is a system of registered Awards for specific industries.

Business Entry Point (www.business.gov.au/Business+Entry+Point) provides useful information in relation to obligations to employment and employees.

Minimum Conditions of employment

The various State and Federal laws provide for certain minimum standards of employment conditions.

Employees are entitled to between 9 and 11 statutory holidays a year (depending upon the State in which employment takes place), and a minimum of 4 weeks annual leave. Employees are entitled to a minimum of 5 days paid sick leave per year. Long service leave is due to employees after the completion of 10 years (7 in South Australia) continuous employment with the same employer. This is generally 8.67 weeks for each ten years of service (13 weeks in South Australia).

There are laws in place that outlaw all forms of discrimination in the workplace.

A normal working week is usually of between 37.5 and 40 hours.

Workers Compensation

All States and Territories have statutory bodies who oversee workplace safety and which provide remuneration to employees in the event that they are injured during the course of their work. These statutory bodies are funded by a levy on the gross payrolls of employers. The rate of the levy varies dependent upon the industry in which the employer operates.

Compulsory Superannuation for Employees

With only minor exceptions all employers are required to contribute an amount equal to 9% of employees earnings into a superannuation (retirement) fund for each employee.

Payroll Tax

Each of the States and Territories imposes a payroll tax on employers. The rate of this tax varies from State to State. Information may be found at Business Entry Point (www.business.gov.au/Business+Entry+Point)

Fringe Benefits

Employer-provided fringe benefits are subject to a Fringe Benefit Tax (FBT), which is payable by the employer.

TAXATION

Taxation is the primary source of Government revenue. Included in the regime are:

Direct Taxation

Individual Income Tax
Corporation Income Tax
Taxation of Capital Gains
Taxation of Interest
Taxation of Dividends
Taxation of Royalties
Withholding Payments

Indirect Taxation

Goods & Services Tax (GST- a value added tax)
Wine Taxes
Stamp Duties
Import Duties
Excise Duty (fuel, beer and spirits)
Payroll Tax
Workers Compensation Levy
Fringe Benefit Tax (FBT)

There are currently no Death Duties levied against the estates of Australian residents and there is no longer any taxes payable on certain gifts.

The Australian financial year runs from 1 July to 30 June.

Australian residents, (persons or corporations) are assessable for income tax on all income derived worldwide, except salaries and wages. Australia has Double Tax agreements with many countries. Income earned and taxed in such foreign jurisdictions is taxed in Australia, but credit is given for taxes paid in most instances.

A non-resident is assessable for income tax only on income with a source in Australia.

Classification of Residency

An individual is classified as "Resident" for taxation purposes if he or she has a permanent place of living in Australia, or is physically present in the country for more than 183 days in any 12-month period.

A Company is classified as "Resident" for taxation purposes if the company is incorporated in Australia or has its Head Office located in Australia or has its centre of management or control of the company exercised in Australia.

Assessment of Tax

Income tax is levied on assessable gross income and receipts, less specified exemptions and deductions.

Gross income includes:

- Income from employment
- Earnings-related compensation
- Business and venture profits
- Superannuation and pensions
- Rents
- Interest and dividends
- Royalties and know-how payments
- Capital Gains.

Deductions allowable

To be deductible, an expenditure or loss must be incurred in producing assessable income or in carrying on a business. Depreciation is allowed at specified rates.

Business entertainment expenditure is generally not deductible.

Tax Losses

Losses from previous years may be carried forward indefinitely by all classes of taxpayer, and offset against future income, subject in the case of corporations and trusts to certain rules relating to a continuity in majority ownership/control and/or continued conduct of the same business.

Consolidation

Commonly owned company groups are taxed as a consolidated entity.

TAX – COMPANY INCOME

The current rate of tax on resident and non-resident companies is 30%.

Generally income tax liabilities are payable quarterly on an estimated basis. There is then a reconciliation made upon lodgement of the annual income tax return with any overpayments refunded and underpayments collected at the time of lodgement of the return.

TAX - INDIVIDUAL INCOME – RESIDENTS FROM JULY 2004

<i>2005/06 Year Income Bracket</i>	<i>2006/07 Year Income Bracket</i>	<i>Tax rate per dollar</i>
\$0 - \$6,000	\$0 - \$6,000	0%
\$6,001 - \$21,600	\$6,000 - \$21,600	15.0%
\$21,601 – \$63,000	\$21,601 - \$70,000	30.0%
\$63,001 - \$95,000	\$70,001 - \$125,000	42.0%
Over \$95,000	Over \$125,000	47.0%

Resident taxpayers are also subject to payment of the Medicare levy. The levy payable is 1.5% of taxable income above a predetermined minimum, which is presently (May 2005) \$17,192 for individuals, \$19,252 for pensioners under the normal pension age and \$21,968 for senior Australians of pensionable age who do not receive a Government pension.

TAX - INDIVIDUAL INCOME –NON-RESIDENTS FROM JULY 2004

<i>2005/06 Income Bracket</i>	<i>2006/07 Income Bracket</i>	<i>Tax rate per dollar</i>
\$0 - \$21,600	\$0 - \$21,600	29.0%
\$21,601 – \$63,000	\$21,601 - \$70,000	30.0%
\$63,001 - \$95,000	\$70,001 - \$125,000	42.0%
Over \$95,000	Over \$125,000	47.0%

TAX - PARTNERSHIPS & TRUSTS

In Australia, a partnership is not a taxable entity, although it must file an annual return of income. The income of the partnership is then taxed in the returns of the partners.

Discretionary and fixed trusts are generally not taxed. Income of the trust that is distributed to a beneficiary/unit-holder is included in the income of the recipient and taxed as part of the recipient's income. Any income not distributed is assessed at the maximum personal rate, which is presently 47%.

TAX – SUPERANNUATION FUNDS

The investment income of superannuation funds is taxed at 15 %. The contributions received by superannuation funds is taxed at 15%.

TAXATION OF CAPITAL GAINS

There have been amendments over the years to the manner in which the taxable part of a capital gain is calculated. At the time that amendments have been made assets acquired before that date are quarantined and may then apply either the current law or the repealed law to calculate capital gains, depending which gives the best result.

For individuals assets first acquired on or after 20th September 1985 and held for at least one year, will be subject to tax on 50% of any gain made on sale. For companies the whole amount of the gain is assessable. Superannuation funds are subject to tax on two thirds of any gains made.

The taxable part of the capital gain is treated as part of the taxable income of the taxpayer and is taxed accordingly.

For assets acquired between 20th September 1985 and 21st September 1999 taxpayers may adopt an alternative method of calculating the assessable capital gain. In the case of these assets the original asset cost is indexed by the rate of inflation between the date of purchase and 30th September 1999. The assessable gain is the difference between the sale proceeds and the indexed cost.

There are further discounts in the amount of a gain that is assessable when the sale involves the sale of “active” assets (such as a business) or when a business is sold and the taxpayer retires. There is also rollover relief granted when a taxpayer sells an asset and replaces it with another.

TAXATION OF INTEREST

Interest received by an Australian resident (individual, partnership, trust or company) is included in the assessable income of the recipient and taxed accordingly.

Interest derived by a non-resident, from Australian sources, is subject to a non-resident Withholding Tax of 15% on gross interest, reduced to 10% under some Double Tax Treaties.

TAXATION OF DIVIDENDS

The definition of "Dividends" includes: cash distributions, some bonus issues, and certain transactions between a company and shareholders, where some benefit is passed to the shareholder or associate. Imputation credits can be attached to these Dividends, but are not available to non-resident shareholders.

Dividends received from foreign corporations are included in the assessable income of the recipient. Credit is given for some or all of any foreign taxes paid.

Dividends derived by non-residents are not liable to income tax, but are liable to non-resident Withholding Tax at the rate of 30% of the gross dividend, unless a lower rate (usually 15%) is provided by the relevant Double Tax treaty. This withholding tax is reduced where imputation credits are applicable to the dividend.

Full dividend imputation enables companies to allocate tax credits for payments of company taxes to dividends paid to shareholders. Individual shareholders may then use this "imputed" tax credit to offset their own tax liability.

Corporate shareholders can pass this credit on to their shareholders.

TAXATION OF ROYALTIES

Royalties with a source in Australia, derived by non-residents, are subject to a Withholding Tax at rates that vary from 5% (USA & United Kingdom) to 15%. The rate is reduced to 10% in most of the Double Tax Treaties.

FRINGE BENEFITS TAX

The rate of fringe benefits tax in most cases is levied at between 94% and 103% of the value of the fringe benefit provided.

STAMP DUTIES

Each of the States and Territories levies stamp duties on the transfer of certain assets including real property and businesses. The rates vary considerably, depending upon the value and nature of the asset being transferred. These costs can be significant and it is recommended that advice be taken before acquiring such assets.

OTHER TAXES

The Federal Government levies taxes and excises on the production and/or sale of beers, wines and spirits. Excise is also levied on the production and/or sale of petroleum products. These taxes are very substantial and any person contemplating establishing a business in any such industry should take great care.

Each State and Territory levies a Payroll Tax on employers. This tax is applied to annual payrolls above a pre-determined minimum, which varies between jurisdictions. The rate of tax also varies from State to State and is usually around 5.5% to 6.0%.

Workers Compensation levies are also payable in each jurisdiction. The rate payable varies dependent upon the industry in which the employer operates. The rates vary from as low as 0.2% to as much as 8.0%.

DOUBLE TAXATION

An Australian resident is subject to tax on any income from outside the country.

To prevent attracting Double Taxation, a Foreign Tax Credit is made available, if the foreign tax is of the same nature as Australian tax.

Australia has agreements for the avoidance of double taxation with the following countries:

Argentina	Austria	Belgium	Bulgaria	Canada	Chile
China	Czech Republic	Denmark	Fiji	Finland	France
Germany	Hungary	India	Indonesia	Ireland	Italy
Japan	Kirabati	Korea	Malaysia	Malta	Mexico
Netherlands	New Zealand	Norway	Papua New Guinea	Philippines	Poland
Romania	Russian Federation	Singapore	Slovak Republic	South Africa	Spain
Sri Lanka	Sweden	Switzerland	Taiwan	Thailand	Turkey
United Kingdom	USA	Vietnam			

Tax treaties with a number of other countries are in the process of negotiation.

In general, agreements follow the principles of the OECD model convention.

GOODS & SERVICES TAX

GST is a domestic value-added tax. It is charged on business transactions and on imports.

The current rate of GST taxation is 10.0% and it applies almost right across the board.

Goods and services **not** subject to GST are:

- Exported items.

- The sale of a business as a "going concern".

- The sale of previously occupied residential accommodation (with some exceptions)

- Goods not located in Australia at the time of supply and which will not enter the country for domestic consumption.

- Services related to land and property outside Australia.

- Services performed outside the country.

- Services supplied to non-residents who are not present in the country.

- Services related to temporary Imports.

The major categories of GST exemptions are those in medical services, financial services and residential accommodation.

Any business operation must register for payment of GST if the taxable trading activity is valued in excess of \$50,000.

Goods imported into Australia are subject to GST. This is imposed on the total value of goods imported and is collected by the Customs Department at point of entry.

ADMINISTRATION OF INCOME TAX

Filing of Tax Returns

Taxpayers with a 30 June balance date must file their tax return on or before 31 October of that year. However extensions for lodgement to as late as mid-May are granted to taxpayers lodging through a Registered Tax Agent.

A taxpayer is liable to a late filing penalty if the required return is not filed on time.

Payment & Instalments

Individuals who receive salary or wages have PAYE (pay as you earn) tax deducted at source by their employers. The employer then remits this tax to the Australian Taxation Office.

Any tax outstanding after assessment of the individual's tax return must be paid by the date set by the Australian Taxation Office when an assessment is issued.

Any taxpayer whose income is not taxed at source, and whose residual tax in any year exceeds \$1,000 will usually be required to make quarterly income tax instalment payments toward their current year's tax liability. These instalments can either be calculated by the taxpayer by reference to current year income or they can be a sum calculated by the Australian Taxation Office.

Quarterly tax instalments are due for payment on 28 October, 28 February, 28 April and 28 July.

Any amount outstanding once the taxpayer's final liability has been assessed is paid at a date determined by the Australian Taxation Office when the assessment is issued.

Interest & Late Payment Penalties

Late payment penalty tax

Where tax is not paid on time interest is charged at a rate determined from time to time by the Australian Taxation Office. In mid 2005 this rate is around 12.5%.

Penalties

Offences under the Income Tax Assessment Act usually attract a penal tax. Subsequent offences attract a higher level of monetary penalty, some calculated on a daily basis.

Criminal penalties may also be imposed in some instances.

Assessment - Audit - Reassessment

Once a return has been filed, the Commissioner is empowered to make an assessment of the taxable income and tax payable. This "self-assessment" is generally based on the return as submitted.

An assessment is deemed to be correct, except in objection proceedings, or if the Commissioner at a later date submits the return to an audit.

If any changes arise out of these procedures, then the Commissioner will issue an amended assessment.

Objections & Appeals

There is a comprehensive system of objections and appeals, ensuring that taxpayers have every opportunity to receive a fair hearing.

An objection can be lodged with the Australian Taxation Office.

If this is disallowed, the case may then be taken further with the Administrative Appeals Tribunal, and then to the Courts.

STATUTORY DISCLOSURE & AUDIT

Statutory Disclosure requirements in Australia are governed by the Corporations Law.

This Law prescribes standards for financial reporting by all entities and gives legal force to accounting standards, as approved by the Accounting Standards Review Board. The Act requires all issuers of securities to the public to file financial statements that comply with "generally accepted accounting practice" (GAAP), giving a true and fair view of their affairs.

CONCLUSION

No publication can hope to cover all aspects of doing business in Australia, nor give full details of accounting procedures, law and taxation.

This presentation is simply intended as a guide to those who are looking at new business opportunities, or who have clients seeking guidance on the business environment in Australia.

If you require any further information, please contact any of the MGI Firms in Australia. Details may be found at www.mgiaust.com.au

MGI PUBLICATIONS

Booklets are available on doing business in many countries.

In addition, *MGI News*, which reports on events within the Association, is published quarterly.

An International Directory of the firms within MGI is published annually giving details of the offices and partners in each of the firms.

Up-to-date details can be found at www.mgiworld.com