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This booklet was prepared by Tim Olynyk of Banks Group Pty Ltd and is present as at January 2017. However, since laws and tax rates will change from time to time, this booklet should only be used for general guidance and in conjunction with the relevant e-links at the end of the booklet. We strongly recommend contacting Banks Group for detailed professional advice if interested in operating any form of business within Australia. As the contents of this booklet are general comments only, they should not be relied upon as advice and the authors accept no liability for its contents.

1. Introduction

1.1 Geography

Australia came from the Latin word ‘terra australis incognita’ meaning the ‘unknown southern continent’. Australia’s official name is Commonwealth of Australia.

Australia is the world’s sixth largest country by total land area of 7,692,000 square kilometres. Australia has six States (New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania) and two Territories (Australian Capital Territory and the Northern Territory). The two largest cities in Australia are Sydney (population approximately 4.9 million) and Melbourne (population approximately 4.5 million).

Australia is one of the largest mineral exporters in the world and is abundant in natural resources such as coal, iron, lead, zinc, copper, nickel, bauxite, gold, manganese, tin, silver, uranium, oil and other rare metals.

1.2 Population

For at least 40,000 years before European settlement in the late 18th century, Australia was inhabited by indigenous Australians, who belonged to one or more of roughly 250 language groups. It has been estimated that the majority of Australia’s population of 24.3 million are descended from 19th and 20th century immigrants from the United Kingdom. However, recently, more and more people have been migrating from countries all over the world but mainly from Germany, Greece, Italy, Japan, China, Malaysia, Indonesia, Taiwan, Hong Kong, and Vietnam. Today the first Aboriginal Australians account for less than one per cent of the total population. Australia like all developed countries has an ageing population.

1.3 Political Environment

Australia is a constitutional monarchy with a federal division of powers. It uses a parliamentary system of government with Queen Elizabeth II as the Queen of Australia, a role that is distinct from her position as monarch of the other Commonwealth realms. The Queen is represented in Australia by the Governor-General at a federal level and by Governors at State levels. Although the Australian Constitution provides executive powers to the Governor-General, these are normally exercised only on the advice of the Prime Minister.

Australia has a Commonwealth government and various State Governments. The general law making powers between the Commonwealth government (which is headed by a Prime Minister) and the State governments (which are headed by Premiers) is regulated by the Australian Constitution. The Australian Constitution was enacted in 1900 and became operational from 1st January 1901 when each of the Australian States agreed to form a Federation.

The Federal Government is divided into three branches: a) The legislature: a two-tier Parliament incorporating the Senate, and the House of Representatives; b) the executive: the Federal Executive Council, in practice the Governor-General as advised by the Prime Minister and Ministers of State: and c) The judiciary: the High Court of Australia and other federal courts, whose judges are appointed by the Governor-General on advice of the Council.

In addition to Federal and State Governments, Australia also has various Local Government bodies with powers vested by the State and Territory Governments.

The largest political groups in Australia are the Liberal Party of Australia and the Australian Labor Party

1.4 Language and currency

English is the main language spoken in Australia. Australian English is a major variety of the language with a distinctive accent and lexicon. The currency used is Australian dollars and cents.

1.5 Business environment

Australia has a market economy with high Gross Domestic Product (GDP) per capita and low rate of poverty. Australia is a developed country and since the 1990's, Australia's economy has grown at a rapid pace and has withstood the global financial crisis better than many other countries. Australia's economic development is driven by its highly developed mineral resources, tourism and education sectors. After the 2006 merger of the Australian Stock Exchange and the Sydney Futures Exchange, the Australian Securities Exchange is now the ninth largest in the world.

Australia is the world' 13th largest economy and has the ninth highest per capita GDP. It ranks highly in many international comparisons of performance including human development, quality of life, health care, life expectancy, education and protection of civil liberties.

Australia is a member of the United Nations, G20, Commonwealth of Nations, ANZUS OECD, APEC, Pacific Trade Organisations and the World Trade Organisation. Australia's major trading partners include Japan, China, US, South Korea and New Zealand.

2. Business Structures

A business in Australia may be operated by an individual (commonly referred to as a sole trader), a company, a trust, a joint venture, a partnership (including limited partnerships in certain states) or a branch of a foreign company. Each has different legal and taxation implications.

In Australia, foreign enterprises most commonly conduct business through an Australian subsidiary company and/or a branch structure.

2.1 Companies

Australian companies are governed by the Corporations Act, their constitution and common law.
There are essentially five types of companies:

- A company limited by shares
- A company limited by guarantee
- A company limited by shares and guarantee
- A company with unlimited liability, and
- A non-liability company (only available to mining companies).

All Australian companies have an ACN (Australian Company Number) or ARBN (Australian Registered Body Number) and are required to disclose these on all official documents. Australian subsidiaries of foreign controlled organisations and foreign branches owned by foreign enterprises may be required to annually lodge audited accounts with the ASIC (Australian Securities and Investment Commission).

The three most common 'company limited by shares' structures in Australia are:

1. **Public company (limited by shares)**
   This company may borrow money from the public and the public may subscribe to and deal in its shares. This type of company may be listed on any one of the various stock exchanges in Australia.

2. **Proprietary company (limited by shares)**
   The most common type of entity used in Australia is the proprietary company. This type of company has restrictions on the number of shareholders it can have and cannot raise funds from the public.

   There are no residency restrictions on members and no general minimum capital requirements for an Australian proprietary company. A company is managed by the directors of the company, but is owned by its members.

3. **Foreign company branch**

   A foreign company may carry on business in Australia as an Australian branch. To carry out business in Australia as a branch, the foreign company must register as a foreign company with ASIC and obtain an ARBN.

   Once registered, the foreign company is required to lodge copies of its financial statements and comply with various notification obligations under the Corporations Act.

2.2 Setting up a company

An investor may either incorporate a new company or acquire a shelf company. A private company can be registered within a period of 24-48 hours.

2.3 Registering a foreign company

A foreign company conducting business in Australia, other than through an Australian subsidiary, must register as a foreign company with ASIC before trading in Australia. A foreign company wishing to apply for registration must:

- reserve the company's name
- lodge with ASIC a certified copy of its certificate of incorporation and constituent documents together with an application form setting out various particulars relating to the company
- appoint a local agent to represent the company in Australia, and
- establish a registered office in Australia.

2.4 Appointment of officers and other particulars

The establishment of an Australian propriety company requires the following:

- the appointment of at least one Australian resident director who is over 18
- the establishment of a Registered Office Address (usually an accountants or lawyers office) which acts as the contact address for all statutory correspondence
- the establishment of a Registered Business Address, and
- the issue of shares to Shareholder(s).

The company must appoint a public officer who is a resident of Australia to meet the requirements of the ATO (Australian Taxation Office).

A company's directors can be personally liable for company obligations incurred at a time when the company continues to trade while insolvent or there are reasonable grounds for suspecting the company will become insolvent by incurring a particular obligation.

2.5 ASIC agents and tax agents

Foreign companies will usually appoint their Australian accountants (or legal advisors) as their agent for electronic lodgements and dealings with ASIC (Australian Securities Investment Commission). This is achieved by completing and lodging a form with ASIC. It is also common to appoint a tax agent for the lodgement of monthly, quarterly, and annual tax filings such as Business Activity Statements, Fringe Benefit Tax returns and Income Tax returns. This is done by the selected agent lodging an 'Appointment of Tax Agent' form directly to the ATO.

2.6 Financial reporting and auditing regulations

All companies (other than small proprietary companies, certain not-for-profit entities, and foreign companies that satisfy certain conditions of relief) must appoint auditors to have their annual financial statements audited.

A proprietary company is classified as 'small' or 'large' depending on the following factors:

- whether the consolidated gross operating revenue for the financial year of the company and the entities it controls is less than $25 million.
- whether the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls is less than $12.5 million.
- whether the company and the entities it controls have fewer than 50 employees at the end of the financial year.

If the proprietary company satisfies two out of the above three conditions, it is deemed to be a 'small' proprietary company.

If the proprietary company does not satisfy two of the three conditions it is deemed to be a 'large' proprietary company and must prepare and lodge audited financial statements with ASIC. The statements lodged with ASIC are on the public record and are available on request.

Small proprietary companies are only required to appoint an auditor if:

- requested to do so by shareholders holding at least 5% of the voting shares in the company
- requested by ASIC
- controlled by a foreign company (except where the foreign company lodges a financial report covering the Australian subsidiaries operations or an exemption applies)

Relief from the requirement to lodge audited financial statements is available for small proprietary companies that are controlled by a foreign company under certain conditions. If a foreign company is registered through ASIC (through the ARBN system), then that foreign company is required to lodge on an annual basis the following documentation with ASIC:

- Profit and Loss Statement
- Cash Flow Statement; and
- Balance Sheet.

These are not usually required to be audited. Companies must keep sufficient records of their operations. The Corporations Act requires these records to be kept for 7 years from the date of the transaction. The Act also states that these records must be maintained in English.

Each company will also have its own annual 'review date' which requires confirmation of corporate secretarial details and solvency.

2.7 Trusts

A trust is a relationship that exists when property and income generated from the property is held on trust by a trustee for the benefit of beneficiaries of the trust. Trusts may be public or private and the most common types of trusts in Australia are discretionary trusts, unit trusts, or hybrid trusts (a combination of both).

Discretionary trusts are able to distribute property and income to those beneficiaries set out in the Trust Deed of the trust at the trustee's absolute discretion. A unit trust must distribute property and income to unit holders in proportion to their unit holdings in the trust. A hybrid trust is a combination of the two and allows the trustee to distribute property and income to discretionary beneficiaries and to fixed entitlement beneficiaries.

Generally, trusts do not pay tax on their taxable income in their own right provided the trust distributes its income to its beneficiaries. Beneficiaries are generally taxed on their entitlements according to their status (individual, company, etc.). Any undistributed amounts are taxed to the trustee of the trust at the top individual marginal tax rate. An exception to the above is where the trust distributes income to non-resident beneficiaries of Australia. When this occurs, the trustee (i.e. rather than the beneficiary) will be assessed on the distribution and be required to pay tax on the amount distributed to the non-resident beneficiary.

An important attribute of trust taxation is that income passing through a trust to its beneficiaries retains its character. This income is assessed in the hands of a beneficiary as if the beneficiary had derived that income directly. Thus, beneficiaries are able to retain the tax attributes associated with the particular income distributed to them – capital gains may be eligible to be discounted in accordance with the 50% CGT discount concession, dividends may have franking credits attached to them etc.).

2.8 Partnerships

A partnership is a relationship between two or more parties carrying on a business together. Profits, losses and liability do not remain in the business but pass through to the partners themselves which is also where the income is taxed.

Importantly, partners in partnerships have joint & several liability which means they are each potentially legally liable for all debts incurred by the partnership.

Laws relating to the establishment of a partnership are found in the various State Acts within Australia.

2.9 Joint ventures

A joint venture results when two businesses combine together for a particular outcome. The joint venture agreement specifies each participant's proportional share in the assets, liabilities and results. There are no specific regulations governing the establishment of a joint venture. The key differentiating factor between a partnership and a joint venture is that within a joint venture structure, the participants do not share in the profit of the structure. Instead, the participants contribute their own individual inputs and subsequently, receive their own individual outputs from the structure.

2.10 Representative offices / branches

Representative offices in Australia will only be taxable in Australia to the extent to which it constitutes a permanent establishment in Australia. If the representative office does constitute a permanent establishment, the profits will be subject to Australian tax to the extent to which they can be attributed to the permanent establishment. Each country, to which Australia has a DTA (Double Tax Agreement) with, has a definition of what constitutes a permanent establishment.

3. Other matters to note

3.1 Funding issues

It is common business practice for initial funding to be made by way of loan rather than share capital due to the potential adverse tax consequences when returning capital to shareholders. It is for this reason that most Australian resident entities will fund the start-up of their business using low share capital and the balance as a loan. The terms of this loan should be clearly documented both for the purposes of Corporations Act and Income Tax Assessment Act.

3.2 Registrations

A single registration may be done by your appointed tax agent to apply for the following:

- Australian Business Number (ABN) – used to identify businesses in dealings with other businesses (or an ARBN for foreign companies)
- Tax File Number (TFN)
- Goods and Services Tax (GST) registration – allows an entity to charge GST on its taxable supplies and obtain a refund of any GST paid in most circumstances
- Pay-As-You-Go (PAYG) withholding registration

3.3 Employment issues

Each employee is generally required to sign an employment contract. On commencement of employment, the employee would be required to complete the following documentation:

- Employment declaration: this to be completed in duplicate and held by the employer with the original to be sent to the Australian Taxation Office with 28 days
- Employee details, and
- Notification of direction for Superannuation Guarantee Contributions (SGC).

3.4 Expatriate employees

Expatriate employees have a number of additional employment issues that must be resolved. Some of these issues can lead to significant tax savings. Professional advice should be sought should you require additional information.

The selection of the type of visa has important tax implications for the expatriate employee. For example, expatriate employees who hold temporary resident visa's in Australia generally receive concessional tax treatment in Australia.

Expatriate employees must obtain the necessary visa for Australia. The employer must obtain sponsorship status with the Department of Immigration and Citizenship (DIAC) and the employee and any dependent family members must make visa applications.

3.5 Employment contracts

Australian employment conditions include annual leave, sick leave, long service leave and maternity leave. The conditions vary depending upon whether the employee is under a State or Federal award. Employment contracts drafted overseas may need substantial modifications to meet Australian requirements and may require some form of tax equalisation process. Employment is regulated by the current Fair Work Act and controlled by the DEEWR (Department of Education, Employment and Workplace Relations).

3.6 Expatriate staff and income tax

Expatriate personnel involved in the Australian operation will be subject to the Australian Income Tax Legislation and will be required to lodge income tax returns in Australia. The nature of the income disclosed will depend on whether the expatriate is classified as a resident or a non-resident of Australia. There are significant tax concessions available to expatriate staff who temporarily work in Australia. It is therefore essential that expatriate staff seek advice on the best way to structure their salary package and on the implications of becoming an Australian resident.

4. Taxation

Australia imposes taxation on the worldwide income of Australian resident entities and the Australian-sourced income of non-resident entities.

Australia's capacity to tax non-residents may be limited where the non-resident is resident in a country with which Australia has concluded a DTA[1].

Generally, DTAs allocate taxing rights to the country of residence of the taxpayer. However, the country of the source of the income may impose withholding taxes on dividends, interests and royalties and may also tax in full the actual or attributed profits of any commercial enterprise carried on through a 'permanent establishment' in the country.

Australia has a general non-resident withholding tax regime in relation to interest, dividends and royalties paid from an Australian resident taxpayer to a non-resident taxpayer.

4.1 Residence

A company is a resident of Australia for tax purposes if:

- it is incorporated in Australia or
- where the company is not incorporated in Australia it carries on business in Australia and either:
- has its central management and control in Australia or
- its voting power is controlled by shareholders who are residents of Australia.

An individual is a resident of Australia for tax purposes if, generally, he or she:

- resides or is domiciled in Australia, unless the Commissioner of Taxation is satisfied that the person's permanent place of abode is outside Australia
- is in Australia for at least 183 days in a tax year, unless he or she does not intend to take up Australian residence and has a usual place of abode overseas or
- is a member or eligible employee under certain superannuation legislation or is the spouse or a child under 16 of a person covered by such superannuation legislation.

Where an individual would ordinarily be treated as a resident of Australia, the individual may still be taxed on a concessional basis if they reside in Australia on a temporary visa. Under this scenario, the individual will only generally be taxable on Australian sourced income.

4.2 Source of income

The source of particular items of income is dependent in most cases on matters of practical fact and, with certain exceptions, is generally determined on a common law rather than statutory basis. Australian income tax law also lays down rules in a number of instances which deem income to have an Australian source.

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[1] Please refer to Table 1 to see a list of the countries which Australia currently has a DTA with.

4.3 Taxable income

Taxable income is computed in the same manner for both individuals and companies. Tax is charged on taxable income which is calculated as the assessable income less allowable deductions.

Generally all losses and outgoings incurred in gaining or producing the assessable income, or necessarily incurred in carrying on business for that purpose are deductible except for losses and outgoings that are of a 'capital', 'private' or 'domestic' nature.

Certain tax deductions can be claimed by a taxpayer notwithstanding that they are of a capital nature, such as for depreciation of plant (known collectively as capital allowances) and certain expenses in establishing a business.

The Australian tax rules have recently introduced additional capital allowance deductions in relation to the acquisition of certain plant and equipment used by taxpayers in carrying on a business in Australia.

4.4 Withholding taxes

A Pay-As-You-Go (PAYG) withholding system operates in respect of income tax withheld from salaries for individuals, company taxation and GST.

Most businesses are required to lodge a Business Activity Statement (BAS) on a quarterly basis, but the frequency will vary depending on what size the withholder is. Large withholders are required to make more regular periodic payments.

In addition, a withholding tax may be required to be withheld by the Australian taxpayer for payments to non-residents for:

- unfranked dividends (usually 30%, 15% for treaty countries)
- interest (10%), and
- royalties (30%, reduced to 10% for most treaty countries).

No withholding tax will be required on fully franked dividends paid to a non-resident.

4.5 Australian tax rates

The hyperlink below summarises the principal rates of taxation that apply to individuals in Australia. It is noted that Australia's marginal tax rates may change from year to year.

Resident individuals

The taxation year runs from 1 July in each year to 30 June in the following year, except for FBT (Fringe Benefit Tax). Certain non-resident entities may qualify for a substituted accounting period to align with their accounting period adopted overseas. An application will need to be made to the ATO to obtain a substituted accounting period.

4.6 Companies

Most companies are generally taxed at the fixed rate of 30%. However, companies classified as Small Business Entities (currently prescribed as companies with turnover of less than A$2M per annum) will be taxable at 28.5%.

4.7 Consolidated groups

An Australian company can elect to form a tax consolidated group with its wholly owned subsidiaries. The effect is to treat the group as a single entity for Australian income tax purposes. This effectively means that intra-group transactions will be ignored for income tax purposes.

4.8 Capital gains

Gains on the disposal of assets will be treated as either revenue gains (income) or capital gains. Whether an asset is on revenue or capital account will be contingent on the relevant facts and circumstances. Capital gains are included in the calculation of the taxable income of the taxpayer.

Capital gains derived by resident individuals and trusts (but not companies) that dispose of assets held for more than 12 months will generally be reduced by half. Capital gains derived by complying superannuation entities that dispose of assets held for more than 12 months will generally be reduced by one-third. Capital gains derived by companies are not eligible for the capital gains tax concessions.

Non-residents will only be subject to tax on capital gains made on the disposal of 'Taxable Australian Property'. Taxable Australian Property is defined broadly to include direct real property interests, indirect real property interests and assets used in carrying on business in Australia through a permanent establishment.

A non-resident will have an indirect real property interest where it has a non-portfolio interest (i.e. 10% or more) in a company or trust that has Australian real property interests where those real property interests represent more than 50% of the market value of the underlying assets (land rich entities).

Non-residents are generally ineligible to apply any reductions to reduce the amount of a capital gain from the sale of an asset that is classified as Taxable Australian Property.

4.9 Dividends – repatriation of profits

Dividends distributed from after-tax profits are subject to Australia's 'imputation system'. Generally, the system operates to impute the tax paid by the company as a credit to shareholders. To the extent that the shareholder's tax liability is less that the credit, the shareholder may be entitled to a refund.

Dividends with an imputation credit attached are known as 'franked dividends'. Franked dividends paid to non-residents are not subject to dividend withholding tax. However, unfranked dividends (dividends paid out of pre-tax profits) paid to non-residents will be subject to dividend withholding tax at the rate of 30% which may be reduced by the application of a relevant DTA.

4.10 Branch operations

An overseas company carrying on business in Australia through a permanent establishment is subject to Australian company tax at the current rate of 30% on profits attributable to that branch. There is no branch profits tax.

4.11 Losses

Generally, a company or a trust can carry forward their tax losses on revenue account indefinitely, and can set-off those losses against both income and capital gains. Capital losses can also be carried forward indefinitely. However, they can only be set-off against future capital gains.

Broadly, the capacity of a company to utilise its carried forward tax losses is contingent on it satisfying the continuity of ownership test. This test requires that more than 50% of all voting, dividend and capital rights be held by the same natural persons in the year of loss, in the year of recoupment and all intervening years. Trusts have their own loss recoupment rules.

If a company fails to satisfy the continuity of ownership test it may utilise its carried forward tax losses if the company carries on the same business it carried on immediately before the failure of the continuity of ownership test.

4.12 Residency, double taxation and foreign tax offsets

The taxation of worldwide income earned by Australian residents may in certain circumstances result in double taxation problems. Australia manages taxation by either a foreign tax offset or a tax exemption.

Each DTA provides taxing rights between Australian and foreign jurisdictions. Where tax is payable in a foreign jurisdiction, a foreign tax offset is a credit allowed for foreign tax that is paid by an Australian resident on foreign sourced income which is also assessable in Australia.

4.13 Tax Concessions

Australia offers general incentives to encourage investment in Australia. Some specific concessions are however available, including:

- deductions for certain set-up or relocation costs in establishing a regional headquarters in Australia
- exemption from dividend withholding tax for certain foreign source dividends
- research and development credits to eligible Australian resident companies

- concessionary tax rates for income derived by offshore banking units
- capital gains on the sale of shares in a foreign company held by an Australian company will be disregarded where the foreign company has an active underlying business.

Investors proposing to use Australia as an intermediary in their investment strategy should seek professional advice as to the availability of taxation concessions (including those mentioned above) in respect of 'foreign income dividends' and offshore banking units.

5 Other taxes and imposts

5.1 Goods and Services Tax ("GST")

GST is imposed on all goods and services imported or sold (with a few exceptions) at a flat rate of 10%. An input tax credit is allowed for the GST paid on goods and services acquired in carrying on an enterprise. GST is very similar to VAT.

Generally, an entity will be required to be registered for GST purposes if that entity has an Australian turnover of more than A$75,000 per year. The GST payable on that supply will be calculated as 10% of the value of the consideration that entity receives for making the supply (excluding GST). The GST on a taxable supply must be paid to the ATO by the entity making that supply.

Some supplies are input taxed. Input taxed supplies are not subject to GST. However, the supplier is not entitled to a refund of the input tax credits incurred in making financial supplies. There is also a limited range of GST free supplies where GST is not charged on the supplies but the supplier is entitled to a refund of the input tax.

GST on taxable supplies and input tax credits are accounted for in the Business Activity Statement that may be lodged monthly or quarterly. Monthly returns are compulsory in some situations, such as where annual turnover is A$20 million or more.

5.2 Importing goods – customs duty and GST

A customs duty is imposed on many goods imported into Australia. This duty is imposed as an anti-dumping instrument and to provide protection for domestic manufacturers and wholesalers.

Customs duty is imposed on most goods at the rate of 5%. An exemption may be provided for goods that are not subject to Australian competition.

GST is charged on the importation of goods. A deferral of the GST can be arranged so that it is effectively offset against the GST collected from the sale of goods, to improve cashflow.

5.3 Payroll tax

Payroll tax is a State/Territory tax levied by reference to annual wages and salaries of employees that exceed prescribed threshold amounts in each State or Territory. Employers are required to register with the relevant State/Territory revenue authority. Although the taxes are similar in each State/Territory, there are differences in each jurisdiction.

Related companies and companies sharing employees are grouped together to determine the tax threshold.

5.4 Workcover

Workcover is series of State/Territory administered schemes which require employers of employees to pay insurance premiums to a Government body to cover for situations where their employees are injured while at work.

Under workcover, injured employees are then eligible to receive compensation.

5.5 Stamp duty

All states impose duty on the transfer of various types of assets located in the State/Territory (including land, business assets, motor vehicles etc.). Rates vary from State to State but may be as high as 7%.

Non-residents of Australia who purchase property in Australia are subject to surcharge stamp duty rates.

5.6 Land tax

Most states impose tax on the unimproved value of holdings of land at a rate between 0 and 3.7%. Various thresholds and exemptions are provided under the legislation of each State. For example, an individual's principal place of residence will generally not be subject to land tax.

Non-residents of Australia who purchase property in Australia are subject to higher annual land tax rates.

5.7 Superannuation Guarantee Charge (SGC)

Federal legislation requires employers to provide a prescribed minimum level of superannuation (or pension) contributions for each of their employees. Where employers provide less than the required minimum level of support, they will be liable to pay a non-deductible charge called the Superannuation Guarantee Charge.

The prescribed minimum level of superannuation that employers must provide for each of their employees is currently 9.5% of an employee's notional earnings base (payroll). The Federal Government has announced that this rate will gradually increase to 12% by 2019-20. However, there are exemptions for some executive employees on certain classes of visa.

5.8 Fringe benefits tax

Benefits provided to employees other than salary and superannuation are subject to Fringe Benefits Tax (FBT) payable by the employer. Examples of benefits that are subject to FBT include private use of motor vehicles provided by the employer, car parking, entertainment and the provision of private health insurance. Benefits provided are grossed up by a gross-up factor to determine the taxable value of the fringe benefit. FBT will then be payable on the amount so calculated. The FBT is deductible from the employer's assessable income. The cost of FBT is usually packaged into the overall salary package of the particular employee.

Separate rules apply regarding self-assessment by the employer and the quarterly instalments of tax required. The FBT year ends on 31 March of each year.

5.9 Gifts, death and inheritance

There are no direct taxes or duties on gifts, deaths or inheritances.

6. Australia's business rules

6.1 Foreign investment policy and rules

The Australian Government's foreign investment policy, generally speaking, encourages foreign investment in Australia. The policy and the *Foreign Acquisitions and Takeovers Act (FATA)* (which provides the legislative support for the policy) are administered by the Foreign Investment Review Board (FIRB), a division of the Australian Treasury.

As Australia seeks to enhance trade with many countries, free trade and other bilateral agreements will be reached with the intention of promoting two-way investment and setting the parameters for trade between Australia and its trading partners. For example, the *Australia United States Free Trade Agreement and US Free Trade Agreement Implementation Act* increase the notification threshold for acquisitions of substantial interests in Australian businesses by US investors from A$50 million to A$1,004 million. The thresholds applying to US investors are subject to annual indexation and should be checked accordingly.

Certain types of proposals by foreign interests to invest in Australia require prior approval (depending on the value of the assets or business being acquired) and therefore need to be notified to FIRB. Proposals likely to require prior notification to FIRB and approval by the Treasurer include:

- acquisitions of land for commercial development
- all direct investments by foreign governments or their agencies
- acquisitions of substantial interests in existing Australian corporations or businesses with total assets over A$231 million (or A$1004 million for US investors) or more, where those assets account for less than 50% on the target company's global assets and
- investments in 'sensitive' sectors.

Briefly, a foreign person acquired a substantial interest in the ownership of a corporation or business if that person (and any associates) acquires 15% or more of the ownership of the entity, or that person together with other foreign persons and each of their associates acquire 40% or more in aggregate of the ownership.

In most industry sectors, foreign investment proposals which require approval are approved unless determined to be contrary to the national interest. However, specific policies and rules apply in the case of proposals involving foreign investment in urban land (particularly developed residential real estate), or in the banking, civil aviation, airports, shipping, media and telecommunications industry sectors.

FIRB approval is usually given within 30 days of lodging an application.

The Federal Treasurer has the power to block an investment or to require divestment if the FATA is breached or the investment is considered to be contrary to the national interest.

6.2 Exchange controls and cash transaction reporting

Most dealings in foreign currencies in Australia must be transacted with an institution holding an authority from the Reserve Bank of Australia or licenced to do so by the ASIC.

Inward investment is not subject to exchange controls, though this does not preclude the need to obtain approval from the FIRB in certain situation as described above. Outward exchange flows are not restricted. However both outward bound and inward bound exchange flows are subject to cash transaction reporting guidelines imposed on 'cash dealers' and other persons who send or receive international fund transfer instructions. Cash dealers which include banks, financial institutions, insurance companies, currency and bullion dealers and others, must report to the Australian Transaction Reports and Analysis Centre (AUSTRAC) details of certain transactions including:

- significant cash transactions involving the transfer of currency (coin and paper money of Australia or a foreign country) of A$10,000 or more including foreign currency equivalents, unless the transaction has been specifically exempted
- international telegraphic or electronic funds transfers to and from Australia, unless the transaction has been specifically exempted and
- transactions which the cash dealer has reasonable grounds to suspect are relevant to criminal activity.

6.3 Acquisitions of companies and businesses

Depending on the method of acquisition, the following issues may need to be considered when acquiring shares or businesses in Australia.

6.3.1 Takeovers

Acquisitions of substantial interests in Australian companies are regulated by the takeover provisions of the *Corporations Act*. Subject to a few exemptions (including unlisted companies with 50 or fewer members), if a person acquired a 'relevant interest' in more than 20% of the issued share capital of a company, that person must make a takeover bid. The concept of 'relevant interest' covers a broad range of direct and indirect interests in securities and a person can reach the 20% threshold without becoming a registered holder of securities.

If a person acquires interests in more than 90% of the voting shares of a company under a takeover offer, the compulsory acquisition provisions can be used in other circumstances where thresholds are met.

6.3.2 Schemes of arrangement

It is common for Australian companies to merge with foreign companies by way of scheme of arrangement. These schemes are highly regulated by the *Corporations Act* and required shareholder and court approvals.

6.3.3 Reduction of capital

Sometimes a change of control may be achieved through a reduction of capital. Reductions of capital are regulated under the *Corporations Act*. A reduction of capital requires shareholder approval and must be fair and reasonable.

6.3.4 Other matters for consideration

Other restrictions that may apply to a particular transaction include:

- under the *Corporations Act*, the requirement for substantial shareholding notices to be lodged when a 5% threshold is reached. The threshold relates to the number of votes attached to shares in which a person and their associates have a relevant interest. It may be reached before shares are actually acquired or transferred
- under the Listing Rules, provisions regulating various activities, including the sale of a company's main undertaking or the issue of shares over a prescribed level. These activities require shareholder approval and must comply with certain ASX requirements
- a company can only financially assist a person to acquire shares in itself, if the assistance does not materially prejudice the company, the shareholders or the company's ability to pay its creditors or if the shareholders give their approval
- trading in securities while in possession of information which is not generally available to the public, but have a material effect on the price of the securities, is prohibited by the *Corporations Act* under insider trading provisions and
- transactions between parties which are considered to be related usually require shareholder approval.

7. Relevant e-links

Australian Common Law

http://www.comlaw.gov.au

Australasian Legal Information Institute

http://www.austlii.edu.au

Australian Competition & Consumer Commission

http://www.accc.gov.au

Australian Stock Exchange

http://www.asx.com.au

Australian Securities and Investment Commission

http://www.asic.gov.au

Reserve Bank of Australia

http://www.rba.gov.au

The Australian Treasury

http://www.treasury.gov.au

Australian Taxation Office

http://www.ato.gov.au

State Revenue Office (Victoria)

http://www.sro.vic.gov.au

State Revenue Office (NSW)

http://www.osr.nsw.gov.au

State Revenue Office (QLD)

http://www.osr.qld.gov.au

State Revenue Office (South Australia)

http://www.revenuesa.sa.gov.au

State Revenue Office (Western Australia)

http://www.finance.wa.gov.au

State Revenue Office (Tasmania)

http://www.sro.tas.gov.au/

State Revenue Office (Northern Territory)

http://www.revenue.nt.gov.au

State Revenue Office (ACT)

www.revenue.act.gov.au

Department of Immigration and Citizenship

http://www.immi.gov.au/

Table 1 Double Taxation Agreements

Country	Signature	Status	Dividends	Interest	Royalties
Argentina	29/08/1999	In force	10/15	12	10/15
Austria	8/07/1986	In force	15	10	10
Canada	21/05/1980	In force	15	15	10
Chile	10/03/2010	Not yet in force	5/15	5/10	5/10
China	17/11/1988	In force	15	10	10
Czech Republic	28/03/1995	In force	5/15	10	10
Denmark	1/04/1981	In force	15	10	10
East Timor	20/05/2002	In force	15	10	10
Fiji	15/10/1990	In force	20	10	15
Finland	20/11/2006	In force	0/5/15	10	5
France	20/06/2006	In force	0/5/15	0/10	5
Germany	24/11/1972	In force	15	10	10
* Greece	5/05/1977	In force	n/a	n/a	n/a
Hungary	29/11/1990	In force	15	10	10
India	25/07/1991	In force	15	15	10/15
Indonesia	22/04/1992	In force	15	10	10/15
Ireland	31/05/1983	In force	15	10	10
Italy	14/12/1982	In force	15	0/10	10
Japan	31/01/2008	In force	0/5/10	0/10	5
Kiribati	23/03/1991	In force	20	10	15
Korea (Republic of)	12/07/1982	In force	15	15	15
Malaysia	20/08/1980	In force	0/15	15	15
Malta	9/05/1984	In force	15	15	10
Mexico	9/09/2002	In force	0/15	10/15	10
Netherlands	17/03/1976	In force	15	10	10
New Zealand	26/06/2009	In force	0/5/15	0/10	5
Norway	8/08/2006	In force	0/5/15	0/10	5
Papua New Guinea	24/05/1989	In force	15/20	10	10
Philippines	11/05/1979	In force	15/25	10/15	15/25
Poland	7/05/1991	In force	15	10	10
Romania	2/02/2000	In force	5/15	10	10
Russia	7/09/2000	In force	5/15	10	10
Singapore	11/02/1969	In force	0/15	10	10
Slovakia	24/08/1999	In force	15	10	10
South Africa	1/07/1999	In force	15	10	10
Spain	24/03/1992	In force	15	10	10
Sri Lanka	18/12/1989	In force	15	10	10
Sweden	14/01/1981	In force	15	0/10	10
Switzerland	28/02/1980	In force	15	10	10
Taiwan	29/05/1996	In force	10/15	10	12.5
Thailand	31/08/1989	In force	15/20	10/25	15
Turkey	28/04/2010	Not yet in force	5/15	0/10	10
United Kingdom	21/08/2003	In force	0/5/15	0/10	5
United States of America	27/09/2001	In force	0/5/15	0/10	5
Vietnam	13/04/1992	In force	10/15	10	10

* Double Taxation on Income derived from Air Transport

- The rate limits provided are generally those for outbound flows. Inbound flows may be subject to different rates
- The interest column does not address exemptions for Governments and Central Banks
- Different rates may apply as stated in the Protocol of each Tax Treaty, if applicable

Table 2 Tax Information Exchange Agreements

Country	Signature	Status of Treaty	Entry Into Force
Anguilla	19/03/2010	In force	17/02/2011
Antigua & Barbuda	30/01/2007	In force	14/12/2009
Aruba	16/12/2009	Not yet in force	
The Bahamas	30/03/2010	In force	11/01/2011
Belize	31/03/2010	In force	11/01/2011
Bermuda	10/11/2005	In force	06/08/2007
British Virgin Islands	27/10/2008	In force	19/04/2010
The Cayman Islands	30/03/2010	In force	14/02/2011
Cook Islands	27/10/2009	In force	02/09/2011
Costa Rica	01/07/2011	Not yet in force	In progress
Dominica	30/03/2010	Not yet in force	
Gibraltar	25/08/2009	In force	26/07/2010
Grenada	30/03/2010	Not yet in force	
Guernsey	07/10/2009	TIEA In force	27/07/2010
Isle of Man	29/01/2009	TIEA In force	05/01/2010
Jersey	10/06/2009	TIEA In force	05/01/2010
Liechtenstein	21/06/2011	Not yet in force	In progress
Macao	12/07/2011	Not yet in force	In progress
Marshall Islands	12/05/2010	Not yet in force	
Mauritius	08/12/2010	Not yet in force	
Monaco	01/04/2010	In force	13/01/2011
Montserrat	23/11/2010	Not yet in force	
Netherlands Antilles	01/03/2007	In force	04/04/2008
Samoa	16/12/2009	Not yet in force	
San Marino	04/03/2010	In force	11/01/2011
St Kitts and Nevis	05/03/2010	In force	11/01/2011
St Lucia	30/03/2010	In force	10/02/2011
St Vincent & the Grenadines	18/03/2010	In force	11/01/2011
Turks and Caicos Islands	30/03/2010	In force	25/01/2011
Vanuatu	21/04/2010	Not yet in force	