

# DOING BUSINESS

IN AUSTRALIA

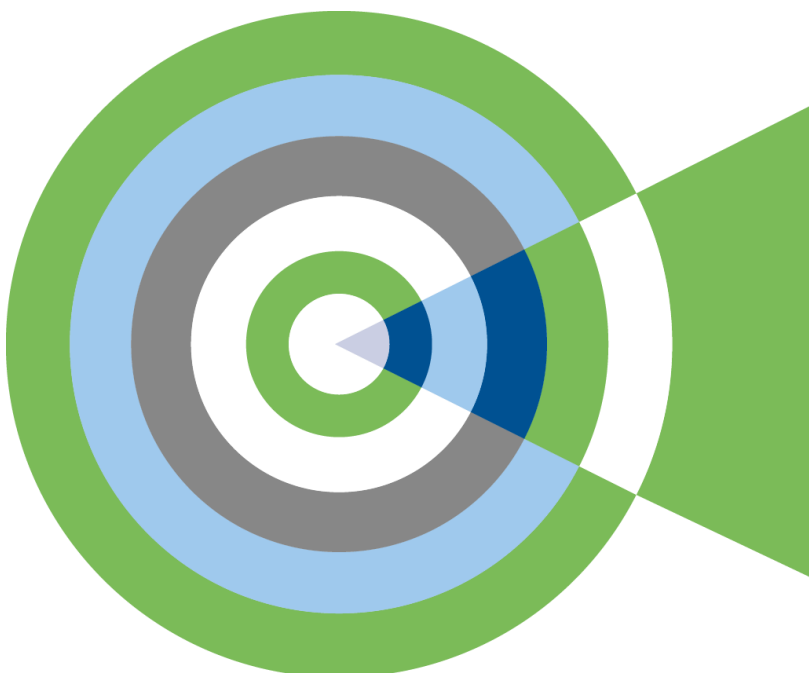


The network  
for doing  
business

---

## CONTENTS

1 – Introduction	3
2 – Business environment	4
3 – Foreign Investment	10
4 – Setting up a Business	16
5 – Employment	20
6 – Taxation	23
7 – Accounting & reporting	29
8 – Business Migration to Australia	32
9 – UHY Representation in Australia	34



# 1 – INTRODUCTION

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in around 90 countries throughout the world.

Business partners work together 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.

This publication's aim is to assist people wishing to come to Australia to set up a business and as such outlines some relevant issues and provides some general information.

This information should be used for guidance only and is therefore of a general nature and subject to change. Before making any decisions, or for specific and detailed information, we strongly recommend you obtain professional advice.

We have included a list of websites in Appendix B for reference and further information.

## UHY HAINES NORTON

UHY Haines Norton is an association of independent Chartered Accountant firms in Australia and New Zealand and a member of UHY International Limited, an international network of independent accounting and consulting firms.

Partners and staff in UHY Haines Norton have been advising Australian and overseas investors for many decades on all aspects of setting up and running businesses. If you need further advice on any issues included in this publication please contact one of the partners listed below:

CITY	CONTACT	CONTACT NUMBER	EMAIL ADDRESS
Adelaide	Dario Nazzari	+61 8 8110 0999	<a href="mailto:dario@uhyhn.com.au">dario@uhyhn.com.au</a>
Brisbane	Rowan Wallace	+61 7 3210 5500	<a href="mailto:r.wallace@uhyhn.com.au">r.wallace@uhyhn.com.au</a>
Busselton	James Gasbarri	+61 8 9752 3222	<a href="mailto:jgasbarri@uhyprt.com.au">jgasbarri@uhyprt.com.au</a>
Dunsborough	James Gasbarri	+61 8 9752 3222	<a href="mailto:jgasbarri@uhyprt.com.au">jgasbarri@uhyprt.com.au</a>
Sunshine Coast	Rowan Wallace	+61 7 5413 9204	<a href="mailto:r.wallace@uhyhn.com.au">r.wallace@uhyhn.com.au</a>
Sydney	Michael Coughtrey	+61 2 9256 6600	<a href="mailto:mcoughtrey@uhyhn.com.au">mcoughtrey@uhyhn.com.au</a>

Further information about UHY Haines Norton is included in Section 9 or can be found on our website at [www.uhyhn.com](http://www.uhyhn.com).

The information contained in this publication is current at November 2015.

We look forward to helping you do business in Australia.

## 2 – BUSINESS ENVIRONMENT

---

Australia is recognised as one of the world's more attractive places in which to do business.

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

### ABOUT AUSTRALIA

Australia is an independent, self-governing country, located in the Asia Pacific region on the edge of the Pacific Rim—the world's fastest growing region.

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

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

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

Because of its size Australia is divided into three time zones with the east coast being two/three hours ahead of the West depending on the time of year.

The eastern States, namely Queensland, New South Wales, Victoria and Tasmania are 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.

### POPULATION

Australia has a population of 23.9 million. Approximately 90% of Australians live near the coast, centred around the main cities.

Sydney is the largest city with a population of about 4.6 million, Melbourne has approximately 4.2 million, Brisbane 2.2 million, Perth 2 million, Adelaide 1.3 million, Canberra 410,000, Hobart 210,000 and Darwin 130,000.

Australia has become a truly multi-cultural society with more than a fifth of the population born overseas. Since the mid-20th century migrants have arrived from eastern, central and southern Europe, the Middle East and increasingly from the Asia Pacific region. While the population is principally of British and Irish descent, migrants come from more than 160 different countries. Indigenous people make up approximately 2.3% of the population.

## LANGUAGE

The official language is English. However, as a result of its multi-cultural population, there are also a number of newspapers, radio stations and television programs catering for the various ethnic communities.

## STANDARD OF LIVING

Australia's standard of living is rated second in the world. This is due to its great physical and climatic environment combined with attractive working conditions, excellent health and education facilities, high quality, reasonably priced housing and an affordable cost of living.

## EMPLOYMENT

In October 2015 the labour force was 11.8 million, with a participation rate of 65.0% and an unemployment rate of 6.1%.

## GDP

The GDP was AUD 1,550 billion in 2013 (GDP per capita AUD 58,114).

## CPI

The inflation rate was 2.5% for the year to June 2014. The Reserve Bank of Australia aims to keep inflation between 2 and 3%.

## INTEREST RATES

The cash rate in November 2015 was 2.0%.

## CURRENCY

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

## SYSTEM OF GOVERNMENT

Australia was initially settled by the British in the late 1700s and was established as a Commonwealth in 1901 at the time of Federation. Australia is governed by a constitutional monarchy with the Queen as head of state and represented in Australia by the Governor-General.

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

There are three tiers of government, as set out below.

### FEDERAL

The Federal Government, based in Canberra, governs Australia at a national level, controlling matters such as the treasury, defence, foreign policy and trade, customs and excise, communication, banking and insurance.

## STATE AND TERRITORIES

The State and Territories are all self-governing, although they share mutual responsibility with the Federal Government. They have their own Westminster based forms of government and each pass their own legislation dealing with the concerns that affect most Australians on a day-to-day level, such as trade, health, education, law enforcement, agriculture, mineral resources and industry.

In practice this means that legislation relevant to doing business in Australia can vary in detail and complexity across the country.

## LOCAL

Local Governments have limited powers and govern planning, local environment and other 'local' issues.

## THE LEGAL SYSTEM

Australia has a common law legal system similar to the English system.

There are two sources of law:

- Legislation enacted by the Federal and State Governments
- Common law comprising judicial decisions.
- Parliament may pass statutes and make regulations under statutes to deal with specific issues.
- Courts are operated at both Federal and State levels, including a comprehensive appeals system. Judges are appointed by the Federal and State Governments and once appointed serve until retirement age unless removed for misconduct. Each State has its own judicial system and court hierarchy headed by a Supreme Court.
- The legal profession is closely modelled on the English legal profession with, in most States, a distinction between barristers, who mainly appear in court, 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 2013*, Australia is the second easiest country in which to start a business and the tenth easiest country to do business.

Australia currently is one of few economies in the world with a positive growth rate. The strength of the Australian economy is in part due to policy reform such as financial deregulation, strong demand for mining resources and improved labour and industrial relations. It has also been helped by low interest rates and unemployment, a stable rate of inflation, and greater than expected demand for our resources (especially from China and India).

## INDUSTRY BASE

Australia is a services-based economy and its services sector has seen strong growth over the past two decades. The 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 8.6% of the country's total real gross value added (GVA). Overall, Australia's services sector has expanded by an average of 3.6 per cent per annum, outpacing the all-industries average of 3.4 per cent.

While the service industry remains the backbone of Australia's economy, Australia's mining industry has been 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 fourth-largest LNG exporter in the world.

### *Industry Contribution to Australian Gross Domestic Product, 2012–13 (%)*

INDUSTRY	CONTRIBUTION TO GDP, 2012–13 (%)
Services	50.7
Mining	9.8
Construction	7.6
Manufacturing	6.8
Retail Trade	4.5
Wholesale Trade	4.2
Agriculture, forestry and fishing	2.1

Source: Australian Government, Department of Industry

## TRADE

Australia is a strong supporter of reductions to trade barriers as well as the concept of open and multilateral trading systems. The Australian Government actively supports the General Agreement on Tariffs and Trade (GATT).

Australia is ideally situated to take advantage of the 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. It is the regional economic leader and 50% of global trade is now focused in this part of the world.

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 oil and natural gas.

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

### MAIN TRADING PARTNERS AND EXPORT DESTINATIONS

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

### BANKING AND FINANCE SECTOR

The central bank in Australia is the Reserve Bank of Australia. The Reserve Bank is responsible for setting Australia's official interest rate and for maintaining a stable and efficient monetary policy and framework. It is responsible for foreign exchange control, maintaining a general oversight of dealers in the foreign exchange market and setting conditions and prudential standards.

Until the mid-1980s, the Reserve Bank exercised greater powers over the activities of banks, limiting the range of financial intermediaries and services on offer. Recent deregulation of the financial markets has removed barriers between classes of institutions and enabled integration into world capital markets. This has been accompanied by the virtual abolition of exchange controls and the floating of the Australian dollar.

The four major Australian trading banks 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 majority share of banking business in Australia. In addition to the 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.

### ASX

The Australian Stock Exchange Limited (ASX) was formed in 1987 when six independent stock exchanges amalgamated. The ASX has five regional branches, situated in Sydney, Melbourne, Brisbane, Adelaide and Perth. It was recently floated and listed on itself—a world first. It 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.

### EXCHANGE CONTROL

Almost all restrictions on foreign currency have been removed since the floating of the Australian dollar.



## BUSINESS ENVIRONMENT CONTROLS

### APRA

Banking regulation is split between the Australian Securities and Investment Commission (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 registered under the *Financial Corporations Act (1974)*.

APRA supervises the functions of the Reserve Bank as well as being responsible for prudential supervision of the other deposit taking institutions. This includes banks, building societies, credit unions and friendly societies, as well as life and general insurance companies and superannuation funds.

### ASIC

The Australian Securities and Investment Commission (ASIC) is an independent 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.

### ACCC

The Australian Competition and Consumer Council (ACCC) is an independent statutory authority dealing with competition matters and responsible for enforcing the *Trade Practices Act 1974* and the *Prices Surveillances Act 1983* and associated legislation. Consumer protection measures are aimed at prohibiting unfair trade practices such as misleading or deceptive conduct, false representation and various advertising practices. These measures also cover conditions and warranties, product safety standards and information.

### TRADE PRACTICES ACT 1974

This act prohibits and 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 and third party access to facilities of national significance.

## 3 – FOREIGN INVESTMENT

---

Australia actively welcomes and encourages foreign investment and has a strong commitment to business development.

It is widely recognised that foreign investment 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:

- a natural person not ordinarily resident in Australia
- any corporation, business or trust in which there is substantial foreign interest, regardless of whether such an entity is foreign controlled.

### **INVESTING IN AUSTRALIA**

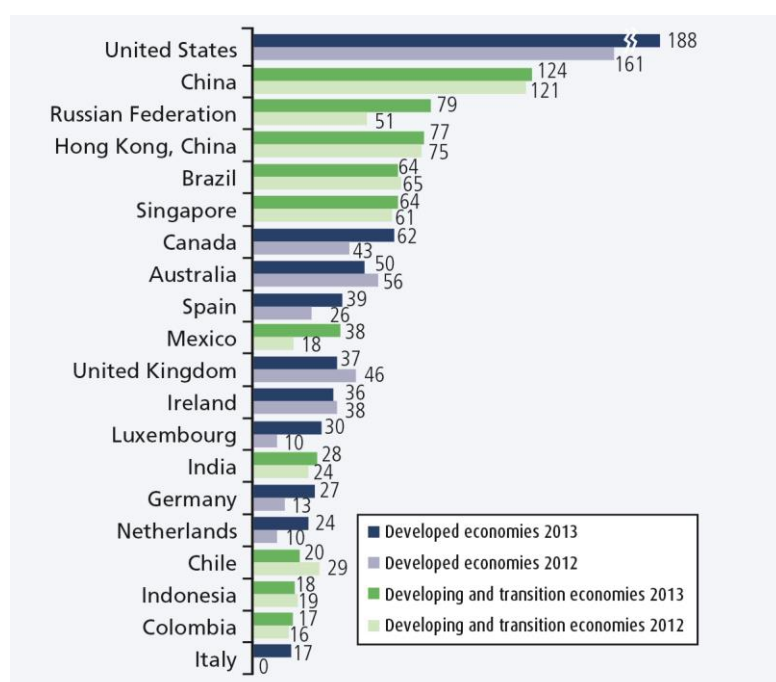
#### **REASONS FOR INVESTING IN AUSTRALIA**

There are a large number of sound reasons for investing in Australia:

- long term political stability
- sound economic management and growth
- low rates of inflation
- favourable location within the Asia Pacific region
- highly skilled, diverse workforce
- technologically advanced with a rapid uptake of communications technology
- innovative culture with a high proportion of research and development expenditure
- open and efficient regulatory systems.

## FOREIGN DIRECT INVESTMENT INFLOWS

Foreign Direct Investment inflows: top 20 host economies, 2012 and 2013 (billions of dollars)



Source: UNCTAD FDI-TNC-GVC Information System, FDI/TNC database ([www.unctad.org/fdistatistics](http://www.unctad.org/fdistatistics)).

Note: British Virgin Islands is not included in the ranking because of its nature as an offshore financial centre (most FDI is in transit).

## BUSINESS EFFICIENCY AND ENVIRONMENT

Global Competitiveness Report 2013–14 Ranking In:

SECTOR	AUS	USA	UK	CHN	JPN	KOR	IND	HKG	SIN
Legal Rights Index	=1	13	=1	65	42	=28	=28	=1	=1
Time Required to Start a Business	2	16	63	112	95	25	103	=5	=5
No. of Procedures to Start a Business	3	=47	=47	135	88	30	129	=10	=10
Efficacy of Corporate Boards	7	15	21	84	19	130	65	17	5
Financing Through Local Equity Market	8	5	12	38	16	75	18	1	7
Soundness of Banks	9	58	105	72	43	113	49	4	5
Country Credit Rating	10	12	15	23	18	22	47	14	4
Regulation of Securities Exchanges	11	30	24	63	29	94	27	4	5
Intensity of Local Competition	13	14	3	46	1	8	24	7	19

*World Competitiveness Yearbook 2013 Ranking In:*

SECTOR	AUS	USA	UK	CHN	JPN	KOR	IND	HKG	SIN
Finance—Financial Risk Factor	1	33	44	45	24	42	25	12	5
Finance—Finance and Banking Regulation	2	31	41	46	30	43	26	4	3
Management Practices—Corporate Boards	3	23	34	24	39	57	27	14	1
Finance—Shareholders' Rights	7	16	21	54	47	51	44	30	6
Finance—Corporate Debt	8	7	24	47	19	45	28	4	14
Business Legislation—Protectionism	8	10	11	51	30	46	36	4	19
Business Legislation—Competition Legislation	8	14	15	53	9	27	45	38	11
Management Practices—Auditing and Accounting Practices	9	15	29	54	34	58	41	17	7

Source: World Economic Forum, Switzerland and Harvard University, Global Competitiveness Report 2013-14.

## Key indicators of ease of doing business—2014

Economy	Ease of Doing Business	Starting a Business		Getting Credit		Trading Across Borders		Enforcing Contracts		Resolving Insolvency	
	Out of 189 Economies <sup>1</sup>	Procedures (number)	Time (days)	Strength of Legal Rights Index (0–10)	Depth of Credit Information Index (0–6)	Time to Export (days)	Time to Import (days)	Procedures (number)	Time (days)	Time (years)	Recovery Rate (cents on the dollar)
Singapore	1	3	2.5	10	5	6	4	21	150	0.8	89.4
Hong Kong	2	3	2.5	10	5	6	5	27	360	1.1	81.2
USA	4	6	5.0	9	6	6	5	32	370	1.5	81.5
Malaysia	6	3	6.0	10	6	11	8	29	425	1.5	48.9
South Korea	7	5	5.5	8	6	8	7	33	230	1.5	82.3
UK	10	6	12.0	10	6	8	6	28	437	1.0	88.6
<b>Australia</b>	<b>11</b>	<b>3</b>	<b>2.5</b>	<b>10</b>	<b>5</b>	<b>9</b>	<b>8</b>	<b>28</b>	<b>395</b>	<b>1.0</b>	<b>81.3</b>
Taiwan	16	3	10.0	5	5	10	10	45	510	1.9	81.8
Thailand	18	4	27.5	5	5	14	13	36	440	2.7	42.2
Japan	27	8	22.0	7	6	11	11	31	360	0.6	92.8
China	96	13	33.0	5	5	21	24	37	406	1.7	36.0
Vietnam	99	10	34.0	8	4	21	21	36	400	5.0	16.2
Philippines	108	15	35.0	4	5	15	14	37	842	2.7	29.9
Indonesia	120	10	48.0	5	4	17	23	40	498	4.5	17.9
India	134	12	27.0	8	5	16	20	46	1,420	4.3	25.6
East Asia and Pacific	NA	7	37.8	7	3	21	22	37	551	2.8	30.7
South Asia	NA	7	16.2	6	4	33	34	43	1,075	3.1	29.1
OECD High Income	NA	5	11.1	7	5	11	10	31	529	1.7	70.6

NA=Not Applicable

<sup>1</sup>Economies are ranked on their ease of doing business, from 1 to 189. A high ranking on the ease of doing business index means the regulatory environment is more conducive to starting and operating of a local firm. This index averages each country's percentile rankings on 10 topics, giving equal weight to each topic.

Source: The World Bank and International Corporation: Doing Business—2014; Austrade

## FOREIGN INVESTOR OPTIONS

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

- register as a foreign company
- enter into a joint venture
- acquire an Australian company
- establish a new business
- set up a branch operation.

## REGISTERING AS A FOREIGN COMPANY

A foreign company or similar entity is able to carry on a business on its own account (i.e. as a branch or subsidiary) provided it has registered in Australia. Registering generally involves:

- appointing and authorising at least one local agent or 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.  
(See Chapter 4 for more detailed information)

## JOINT VENTURES

Foreign investors may also enter into a joint venture with an Australian business or organisation.

This has become a popular option in recent years particularly if the investment is in natural resources. As there is no legislation specifically regulating joint venture agreements, the investor, therefore, does not have to go through the process of:

- incorporating with another Australian subsidiary
- registering as a foreign corporation.

The investor should however create a joint venture agreement with the other party. The participants are generally taxed on an individual basis.

## ACQUIRING AN AUSTRALIAN COMPANY OR BUSINESS

Alternatively investors can acquire the shares in or assets of an existing Australian company. This has to be undertaken in accordance with both takeover legislation and the *Corporations Act 2001* as well as be in accordance with Australia's foreign investment policy.

## ESTABLISHING A NEW BUSINESS

Details about establishing a new business in Australia are provided in Chapter 4.

## SETTING UP A BRANCH OPERATION

An overseas company can operate through a branch office in Australia, referred to for tax purposes as a 'Permanent Establishment'. The overseas company registers with ASIC and the ATO and for tax purposes is treated like a company. The main advantage is the possible elimination of double taxation when compared to an Australian subsidiary company of a foreign parent.

## LEGISLATION AFFECTING FOREIGN INVESTMENT

While it recognises the importance of foreign investments, Australia is also keenly aware of the importance of looking after its own affairs.

There is a natural apprehension about Australian assets being owned and controlled by foreign concerns, particularly in sensitive sectors such as the media and developed residential real estate.

Australia's foreign investment policy is accordingly designed to:

- encourage foreign investment
- ensure that foreign investment enhances Australia's economic development
- ensure that foreign investment is consistent with Australia's needs.

These policies are administered by the Foreign Investment Review Board (FIRB) and contained within:

- *The Foreign Acquisitions and Takeovers Act 1975*
- Ministerial Policy Statements
- specific State or Territory based legislation.

The FIRB generally examines all foreign investment proposals involving:

- acquisitions of substantial interests in existing Australian businesses or concerns with total assets valued at over AUD 50 million
- the establishment of a new business involving a total investment of more than AUD 10 million
- Agricultural investment (e.g. agricultural land) over AUD 15 million
- portfolio investments in the media of 5% or more as well as all non-portfolio investments
- takeovers of offshore companies whose Australian subsidiaries or assets are valued at AUD 50 million or more, or account for more than 50% of the company's global assets
- acquisitions of interests in urban real estate regardless of value
- direct investments by foreign governments or their agencies.

The 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 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.

## AUSTRADE

The Australian Trade 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.

## 4 – SETTING UP A BUSINESS

---

There are a number of legal structures available for setting up a business in Australia. These are essentially the same as those used in the United Kingdom, the United States, New Zealand and other English speaking countries.

The most common structures include:

- Company – private or public
- Partnership
- Trusts
- Sole trader.

### COMPANIES

Foreign investors may find a company the easiest structure to use, particularly if opening a branch or subsidiary of their existing overseas business. The most common form of company in Australia is either a private (proprietary) company or a public company limited by shares.

A private company uses Proprietary (Pty) 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.

All companies are regulated by the *Corporations Act 2001*.

### PRIVATE COMPANIES

Smaller businesses will generally use a private company structure as it is easier and less expensive to arrange and administer.

Private companies:

- must have at least one director
- at least one director must ordinarily reside in Australia
- do not have to have a 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 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.

An audit for a private company is required:

1. Where a company exceeds any two of:
  - Turnover of AUD 25 million
  - Staff of 50 employees
  - Gross assets of AUD 12.5 million
2. Where at least 5% of the shareholders request an audit.
3. Where ASIC requests an audit.
4. Where the Australian company is controlled by a foreign company.



## PUBLIC COMPANIES

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

Public companies:

- must have at least three directors
- at least two directors must ordinarily reside in Australia
- at least one secretary must ordinarily reside in Australia
- must have at least one shareholder
- may also have an unlimited number of shareholders
- may offer shares to the public
- must comply with the *Corporations Act* before offering shares
- place no restrictions on the transfer of shares.

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.

Incorporating a company requires registering with ASIC, the Australian Securities and Investments Commission, and lodging the company name. The 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 ABN described on page 19 may be shown.

## LISTING WITH THE AUSTRALIAN STOCK EXCHANGE (ASX)

Companies wishing to list on the Australian Stock Exchange have to conform to the requirements of both the ASX and the *Corporations Act*.

The ASX requires the company to provide the following details:

- the company's capital structure
- number of members
- paid up value of shares it plans to issue.

The *Corporations Act* requires the company to issue a detailed prospectus before the public offering is made.

## PARTNERSHIPS

In Australia partnerships can be established by two or more, and up to a maximum of 20 people. Partnerships are a popular structure with many small and medium sized businesses as they have low set up costs, have minimal formal set up requirements and are reasonably flexible for taxation purposes.

In Australia partnerships are covered by the *Partnership Act* and contract law. In most States the partners share profits and costs equally and are held jointly and severally liable for debts and obligations. Some States and Territories have state based legislation allowing limited partnerships which regulate the liability of the partners.

The partnership is required to lodge a partnership tax return but is not taxed as a separate entity. Each partner lodges an individual tax return, paying tax on their share of profit, and currently can claim their share of losses as an offset against other income.

## TRUSTS

In no other country are trusts as commonly used in small or medium sized businesses as in Australia. They have become popular because of their flexibility and ability to minimise income and capital gains tax. Probably more new small businesses operate through a trust structure than through partnerships and companies.

Trusts are usually set up using a company as a trustee, whereby the company's shares are held by the individual who is also the director. This has the advantage of providing limited liability protection.

Some trusts, commonly known as family trusts, are normally of a discretionary nature. This allows them to distribute income within the family, or to related entities, in the most tax efficient manner.

## SOLE TRADERS

This is the simplest and most cost efficient method of legally establishing 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 tax purposes.

This structure does not have the limited liability protection provided by a company or a company/trust structure.

## REGULATION OF BUSINESSES

### CORPORATIONS LAW

Company law in Australia is governed by the Corporations Law of the individual States and Territories and subject to the *Corporations Act 2001*, which is administered by ASIC. This regulates the rules, procedures, and accounting and reporting requirement for companies.

### REGISTRATION OF BUSINESS NAMES

In 2012 a new national business names registration was launched. This replaced the previous state and territory services and means that a business need only register their name with a single national register. This new register is maintained by ASIC.

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.

## ABN

Companies, trusts, partnerships or sole traders carrying on a business 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.

## REGISTERING FOR TAX

All businesses are required to have a Tax File Number (TFN) and to lodge a tax return with the ATO.

## GST

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 turnover of AUD 75,000 or more.

## 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.

## PPSA

The *Personal Property Security Act* is a new Federal law which commenced in 2012. The primary purpose of PPSA is to provide 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 newly created register – the Personal Property Securities Register or PPSR. Failure to register would cause the creditor or financier to lose rights in the secured asset(s), in the event of the insolvency of the debtor.

## INSURANCE

All employers are required to have Worker's Compensation Insurance to cover their employees for personal injury occurring at or while travelling to or from work. All business vehicles must be covered by compulsory third party motor insurance which provides cover against legal liability from death or injury due to the motor vehicle use.

## 5 – EMPLOYMENT

---

There have been major changes to the working conditions in Australia in recent years. This is due in the main 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 determination. Employment is regulated through the *Fair Work Act*.

### EMPLOYMENT STATISTICS

In October 2015 approximately 11.8 million people were in the Australian labour force.

The average 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 May 2015 was AUD 1,485.

The workforce is highly educated with over 44% 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 6.1% at October 2015.

The general retirement age for Australian employees is 65 for men and 65 for women, which is when they become eligible for the Government pension. This is rising to 65 ½ in July 2017 and then in stages to 67 in July 2023. Some large companies allow retirement from the age of 55. 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 increased changes in legislation concerning workplace health and safety, industrial relations and training, working conditions and rates of pay.

Approximately 17% of the Australian workforce belongs to a trade union. These unions are usually based on industry or occupation and the greatest rate of union membership is within the communications industry. The largest union organisation, the Australian Council of Trade Unions (ACTU), has approximately 1.8 million members.

#### AWARD COMPLIANCE

In Australia some form of National Employment Standard and/or Modern Award, Enterprise Agreement covers most workers. Generally these awards or regulations are

designed to ensure equitable and fair treatment of all employees whilst still encouraging a competitive and flexible business environment. Employers are obligated to comply with the awards and legislative provisions that relate to their employees.

Provisions usually relate to:

- types of employment and termination of employment
- consultation and dispute resolution
- minimum rates of pay
- working hours
- overtime rates
- breaks
- Personal/Carers/Compassionate leave
- Annual leave
- Termination of employment entitlements.

They are primarily regulated by Fair Work Australia which was formed in accordance with the *Fair Work Act 2009*.

#### ENTERPRISE AGREEMENTS

A large number of employees work under terms and conditions privately negotiated with their employer termed Enterprise Agreements. This is a written agreement on the terms and conditions of employment between an employer and employees under the *Fair Work Act 2009*. An Enterprise Agreement has to be approved by FWA, it will, in order to pass the approval process, have passed the 'better off overall test' (BOOT) meaning an employee is deemed to be better off than under the National Employment Standards and modern awards.

#### EMPLOYER OBLIGATIONS

##### WORKERS COMPENSATION

All employers have to take out Workers Compensation insurance to cover their employees. This covers employees injured in the course of their employment or while travelling to or from their place of employment.

##### OCCUPATIONAL HEALTH AND SAFETY

All businesses have to comply with legislation set in their State or Territory requiring employers to provide safe work places together with safe work practices, such as safe handling of hazardous substances and dangerous goods.

##### TAX COMPLIANCE

Taxation legislation requires the employer to withhold an appropriate amount of tax from an employee's income and to submit this to the Australian Taxation Office.

##### SUPERANNUATION (PENSION CONTRIBUTIONS)

Superannuation is a specially designed long-term investment for retirement savings. Employers are obliged to pay a minimum superannuation amount for each employee into a recognised superannuation fund. Currently this is set at 9.5% of their wages or salary until 30 June 2021. In many circumstances employees have the right to nominate their preferred fund.

### **UNFAIR DISMISSAL, REDUNDANCY AND SOCIAL SECURITY**

It is illegal for an employer to dismiss an employee in circumstances which could be held to be unjust, harsh or unreasonable. Specific procedures must be followed when dismissing an employee, and employers who fail to comply may have to reinstate the employee.

Employees who are made redundant when their jobs cease are usually entitled to additional severance pay. This is often in the form of a lump sum payment and the amount is based on the length of employment.

The Government provides social security benefits or pensions to unemployed, underprivileged, sick and elderly Australians and for dependent children and students under certain circumstances.

### **EMPLOYEE IMPLICATIONS WHEN BUYING OR SELLING A BUSINESS**

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

In some circumstances, the business purchaser may be bound by the terms and conditions of employment established in accordance with the purchase agreement.

### **WORK PERMITS**

Skilled foreign workers are allowed to be employed in Australia once a number of conditions have been met.

These include the employer demonstrating that the occupation's requirements cannot be fulfilled by an Australian resident and that comprehensive measures have been taken to attempt to fill the position locally.

## 6 – TAXATION

---

In Australia the *Tax Act* is extremely complex and is constantly changing. It is, therefore, only possible to provide a broad outline here.

### TAX AUTHORITIES AND RESPONSIBILITY

Australia's taxation is spread between the three levels of Government, the Commonwealth, or Federal Government, the individual States or Territories and at the Local Government level.

#### FEDERAL GOVERNMENT TAXES

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

Indirect taxes include GST, customs and excise duties and fringe benefits tax. Excise is imposed on commodities such as alcohol, tobacco and petroleum. Fringe benefit taxes are levied on non-monetary benefits provided to employees.

#### STATE TAXES

Each State or Territory imposes a large number of taxes and is responsible for determining their own tax legislation, regulations and rates. There can be distinct differences between these rates of tax. The primary taxes they impose include payroll tax, stamp duty and land taxes.

#### LOCAL GOVERNMENT TAXES

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

#### LIABILITY FOR INCOME TAX

The general rule is that Australian tax residents must pay income tax on all their income and capital gains from sources anywhere in the world.

Tax residents on provisional visas are not taxed on most foreign income and capital gains. This provides a window during which foreign assets can be sold overseas or brought into Australia very tax effectively.

Non-residents are taxed on all income and capital gains from Australian sources. However this is modified where applicable by Australia's double tax treaties. Legislation governing income tax is jointly contained in the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* and is administered by the Commissioner of Taxation who is responsible for the operation of the ATO. The system operates by self-assessment, with random ATO audits to verify assessments.

Australia's income tax and fiscal year ends on the 30<sup>th</sup> of June.

Generally businesses, corporations, trusts, partnerships and individuals are obliged to lodge an income tax return on an annual basis if their total taxable income exceeds the limit set by the Commissioner.

## TAXABLE INCOME

Taxable income is the amount remaining after making all allowable deductions from assessable income.

## PERSONAL TAX

The rates of tax for resident individuals for the 2015/16 financial year is set out below in Australian dollars (the rate does not include the Medicare Levy):

TABLE 1

*Tax rates for resident individuals*

THRESHOLD 1 JULY 2015 – 30 JUNE 2016	TAX RATE %
AUD 0 – 18,200	0
AUD 18,201 – 37,000	19
AUD 37,001 – 80,000	32.5
AUD 80,001 – 180,000	37
AUD 180,001 +	45

For the tax years ending 30 June 2015 through to 30 June 2017, there will be an additional 2% Budget Repair levy on taxable income over \$180,000.

Non-resident individuals will pay tax at the following rates for the 2014/15 financial year. Non-residents do not pay the Medicare Levy:

TABLE 2

*Tax rates for non-resident individuals*

THRESHOLD 1 JULY 2015 – 30 JUNE 2016	TAX RATE %
AUD 0 – 80,000	32.5
AUD 80,001 – 180,000	37
AUD 180,000 +	45

## THE RESIDENTS TEST

There are many issues determining residency, but generally individuals are deemed 'residents' if they are domiciled in Australia, unless that person can prove their permanent place of abode is outside Australia and there is no intention of residing in Australia.

Tax residency can be different to visa residency.

## MEDICARE

Medicare is the scheme which gives Australian residents access to healthcare. Australian taxpayers generally have to pay a Medicare levy at the rate of 2% of taxable income once their income exceeds a certain threshold. Individuals classified as non-Australian residents are exempt from paying this levy unless they are citizens of a country that has a healthcare agreement with Australia.

## BUSINESS TAXES

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



Income tax laws include provisions which may attribute income from personal services to the individual even though the income has passed through a Company or Trust. The States and Territories have differing laws regulating whether some professional incomes can be earned by companies or other entities.

Deductions are all losses or outgoings incurred in gaining or producing the assessable income, or while carrying on a 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.

Capital gains or losses generally result from the disposal of assets acquired after 19 September 1985. The taxable amount is determined by deducting the cost of the asset, and any incidental costs associated with its purchase and disposal, from the net proceeds of the disposal. Various concessions are then usually available to reduce the capital gain that is included in the taxable income. Generally there is a 50% reduction on most capital gains and, with certain small businesses, further concessions.

Capital losses can only be deducted from taxable capital gains. They can be carried forward indefinitely but may only be used to offset particular capital gains. Dividends are almost any distribution from a company to shareholders apart from returned paid-up capital. Dividends, with an imputation credit paid out of after tax profits, are known as franked dividends and carry a tax credit. The recipient can offset this credit against the tax payable. No such offset is available for foreign dividends received.

## COMPANIES

For tax purposes all incorporated or unincorporated bodies or associations except partnerships are held to be companies. They are taxable under an imputation system, being assessed on their profits and usually taxed at a flat rate of 30%.

### RESIDENT COMPANIES

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

- maintains its central management control in Australia or
- the voting power in the company is controlled by shareholders who are resident in Australia.

Resident companies are required to disclose both Australian and non-Australian income.

### NON-RESIDENT COMPANIES

A non-resident company has to file a tax return disclosing its Australian-sourced income. Australian subsidiaries of a foreign parent company may apply to the tax authorities to change their tax year accounting period to coincide with the financial year-end reporting requirements of the parent company. This can be modified if the parent country is part of Australia's network of double tax treaties.

## PARTNERSHIPS

The partnership files a taxation return detailing the amount of taxable income distributed to each partner and outlining each partner's share of the income and

expenses. The partners then file returns on an individual basis including the whole of their individual share of the partnership's income or losses.

### TRUSTS

Depending on the trust structure, tax will either be paid by the trustee or the beneficiary. A trust will be a resident trust 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 and as such are taxed at a progressive or marginal rate of tax as detailed in Personal Taxes.

### DOUBLE TAX TREATIES

Australia has established Double Taxation Agreements with a number of other countries in order to avoid double taxation of income and tax evasion. These agreements vary slightly with the different countries. Generally, however, taxing rights over some classes of income only apply to the country of residence of the person deriving the income. All other income is able to be taxed in the country in which the income had its source. Countries with which Australia currently has Double Taxation agreements are listed in Appendix A.

### ANTI-AVOIDANCE PROVISIONS FOR FOREIGN ENTITIES

These regulations are extremely complex and apply to investment into and out of Australia.

### THIN CAPITALISATION

Thin capitalisation rules operate to prevent foreign controlled or multi-national corporations allocating a disproportionate amount of debt to their Australian operations thereby reducing their taxation liabilities. A foreign controller is defined as a foreign owned company with a 15% or greater interest in the Australian company.

### TRANSFER PRICING

In order to control arrangements by which profits are shifted out of Australia the Commissioner of Taxation may impose 'arm's length prices' 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.

## FEDERAL TAXES

### GST

The Good 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. The general exceptions include basic foods, education, health, charitable activities and some financial transactions.

GST is essentially a value added tax and is generally applied at each stage of the production/distribution chain. Businesses may incur GST liability at either the issue of an invoice or receipt of any payment.

All businesses must register for GST if they have a turnover of AUD 75,000 or more in

sales during the financial year. Businesses registered for the GST have to return a Business Activity Statement (BAS) at the end of each quarter reporting their business tax entitlements and obligations.

Such businesses can also claim a GST refund or 'input tax credit' for the GST component applying to goods and services paid for in the course of carrying on their business.

#### FRINGE BENEFITS TAX (FBT)

Businesses which provide non-cash benefits to their employees are generally subject to Fringe Benefits Tax (FBT). This is charged at 49% of the taxable value of the fringe benefit, and is deductible by the employer for income tax purposes.

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

#### CUSTOMS AND EXCISE

Customs duty is payable on certain goods at the time they enter Australia. The amount of duty payable is generally levied on the customs value of the goods which may differ from the sale price.

Excise is imposed on the local production of a number of goods including tobacco products, alcoholic beverages and petroleum.

#### STATE TAXES

Whilst Western Australia is used in the example below for indicative purposes, rates applicable for each state do differ and should be checked with each jurisdiction separately.

#### PAYROLL TAX

Each State or Territory individually levies payroll tax on gross monthly wages, salaries and certain non-cash benefits paid by employers. As an example, the current payroll tax rates for Western Australia are set out below:

**TABLE 3**

*Payroll tax rates, Western Australia*

ANNUAL WAGES (AUD)	TAX RATE %
AUD 0 – 800,000	Nil
Over 800,000	5.50

#### TRANSFER 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, the following is the Western Australian rate for the acquisition of the goodwill and plant and equipment component of a business as at 1 July 2014.

TABLE 4

*Transfer duty rates, Western Australia***TRANSFER BANDS (AUD) RATES AT JULY 2015**

0– \$80,000	\$1.90 per \$100 or part thereof
\$80,001 – \$100,000	\$1,520 + \$2.85 per \$100 or part thereof above \$80,000
\$100,001 – \$250,000	\$2,090 + \$3.80 per \$100 or part thereof above \$100,000
\$250,001 – \$500,000	\$7,790 + \$4.75 per \$100 or part thereof above \$250,000
\$500,001 and upwards	\$19,665 + \$5.15 per \$100 or part thereof above \$500,000

Transfer duty rates on residential property for June 2014 is as follows:

TABLE 5

*Transfer duty rates on residential property***TRANSFER BANDS (AUD) RATES AT JUNE 2015**

\$0 – \$120,000	\$1.90 per \$100 or part thereof
\$120,001 – \$150,000	\$2,280 + \$2.85 per \$100 or part thereof above \$120,000
\$150,001 – \$360,000	\$3,135 + \$3.80 per \$100 or part thereof above \$150,000
\$360,001 – \$725,000	\$11,115 + \$4.75 per \$100 or part thereof above \$360,000
\$725,001 and upwards	\$28,453 + \$5.15 per \$100 or part thereof above \$725,000

Transfer duty concessions apply to first home buyers.

**LAND TAX**

Land Tax is imposed by each State or Territory, is paid annually and is based upon on the unimproved value of land owned by the taxpayer. Generally the rate of tax varies according to the value of the property. This tax may be deductible for income tax purposes if the land is used in the production of assessable income. There are various exemptions available to land holders depending upon the use of the land, including an exemption (in most cases) for an individual's principal residence.

**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.

**EMPLOYERS OBLIGATIONS**

Employers must withhold appropriate amounts of withholding tax (PAYG) from their employees' earnings and pay this directly to the ATO.

Employers are also obliged to contribute a minimum level of superannuation for each employee into a recognised superannuation (pension) fund. In addition, they may be obliged to pay a workers compensation levy in accordance with the differing regulations of the individual States and Territories.

## 7 – ACCOUNTING & REPORTING

---

The *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.

The *Corporations Act* sets out the circumstances when a company is required to be audited.

Disclosing entities are those entities, including companies and other unincorporated bodies, which have raised funds from the public. These can include both listed and unlisted entities.

### ACCOUNTING STANDARDS

The Australian Accounting Standards Board is responsible for issuing Australian Accounting Standards (AASBs). These standards apply to varying degrees depending on the disclosing requirements of various entities.

Australian Accounting Standards follow the International Accounting Standards developed by the International Accounting Standards Board. More information about specific standards can be found at <http://www.aasb.com.au>.

### COMPLIANCE WITH REGULATIONS

The *Corporations Act* sets out a number of requirements for public companies and disclosing entities, including:

- maintenance and retention of accounting records
- maintenance of registers and minutes relating to directors and shareholders and their meetings
- the form and content of annual accounts
- publication to shareholders and the public filing of annual accounts
- requirements for annual accounts to be audited.

Other business structures, such as sole traders, partnerships and trusts, not governed by the *Corporations Act* still have to comply with the following requirements for tax and other purposes:

- maintenance of reliable records showing a true and fair view of their circumstances
- retention of relevant records and documents for seven years to support tax claims.

Certain structures may be required, by their governing documents, to produce their financial statements in accordance with the *Corporations Act*.

## FINANCIAL REPORTING

The *Corporations Act* requires directors of Australian public companies, large proprietary companies, disclosing entities and registered schemes to prepare an annual financial report and a directors' report.

The financial reports must provide a true and fair view of the company's financial position and performance and must comply with the accounting standards.

Annual financial reports include:

- a directors' report
- an auditor's report
- a profit and loss statement for the year
- a balance sheet as at the end of the year
- cash flow statement for the year
- comprehensive notes to the financial report and other disclosures
- directors' declaration.

Listed companies must make their annual financial report available to shareholders if requested. They may choose, however, to present their shareholders with a concise financial report instead of the full report. This must include the directors' and auditor's report, balance sheet, cash flow and profit and loss statements. In addition it must include a discussion and analysis of each statement as well as include information relating to earnings per share, dividends, details about extraordinary items, segment information and subsequent events.

## REPORTING REQUIREMENTS

The different reporting requirements for the different entities are as follows:

### PUBLIC COMPANIES

- to hold an annual general meeting within five months of the end of the financial year
- to distribute its annual financial report, or concise financial report, to shareholders at least 21 days prior to the annual general meeting.

### PROPRIETARY COMPANIES

- no requirement to hold an annual general meeting
- if an annual financial report is required, this must be distributed and lodged within five months of the end of the financial year.

### DISCLOSING ENTITIES

- to prepare both half-year and annual financial reports
- to file information which, if generally available, could materially affect the price and value of its securities—in accordance with the *Corporations Act's* continuous disclosing provisions
- all disclosing entities must file this information with ASIC
- listed entities must also file this information with the ASX.

### AUDIT REQUIREMENTS

The *Corporations Act* requires an audited report to be obtained on the following:

- all disclosing entities

- all public companies
- all registered schemes
- small proprietary companies under certain circumstances
- large proprietary companies.

The auditor of a public company or disclosing entity is generally appointed at an annual general meeting of the shareholders, and generally by the directors for a proprietary company.

Auditors must report to members as to whether, in their opinion, the financial report is materially correct and in accordance with the *Corporations Act* and Australian Accounting Standards. The auditor must additionally report cases where proper financial records have not been maintained and where they were unable to obtain all the necessary information to properly conduct the audit.

Accounts required to be filed on a half-yearly basis may be either audited or reviewed. If reviewed, the auditor must state whether or not the accounts comply with relevant requirements.

#### FILING OF ACCOUNTS

Companies are obliged to file an Annual Company Statement with ASIC on the annual review date, which is the anniversary of the company's registration date.

This statement must be signed by a director or the company secretary and include details of the company's share capital, list the shareholders, provide the directors' and secretary's particulars, as well as any other pertinent information.

Public companies and audited private companies have to file their financial statements annually with ASIC. These must be filed within 90 days of the end of the financial year.

Disclosing entities are obliged to file an additional half-year report, which must be lodged within 75 days of the end of the half-year period.

Companies listed on the Australian Stock Exchange must also submit their financial statements to the ASX within 75 days of the end of the year or half-year period.

A foreign company operating in Australia generally has to file its financial statements annually with ASIC. These statements are those required by the regulations of the country in which the company was incorporated.

#### ACCOUNTING PROFESSION

In Australia accountants in public practice or senior accountants in business will generally belong to either the Institute of Chartered Accountants in Australia or CPA Australia.

Membership to either the Institute or CPA Australia is obtained if the applicant is over the age of 21, has completed three years full-time employment with a member firm and passed written examinations. Accountants who have qualified overseas generally need to complete some further examinations to obtain membership of the above accounting bodies.

Auditors of companies have to be registered with ASIC.

## 8 – BUSINESS MIGRATION TO AUSTRALIA

---

Australia has a strongly controlled migration regime with migration mainly regulated by the *Migration Act 1958* and the *Migration Regulations 1994*.

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

### VISA REQUIREMENTS

Australia actively encourages skilled and business migrants who make up the largest proportion of migrants. Skilled migrant visas are normally based on a points system with most points being awarded for occupation, education, age 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.

From 1 July 2012, a new program for business skills was introduced, known as the Business Innovation and Investment Program. There are a number of business visas, each having particular requirements and all of which are state sponsored. A permanent residence visa, known as a '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

Applications are by invitation only and require the applicant to lodge an Expression of Interest (EOI).

In addition:

- the business must have attained a minimum level of assets and turnover
- the applicant must be under 55 years of age
- the applicant must be able to bring to Australia at least AUD 1.5 million or have obtained at least AUD 1 million in funding from an Australian venture capital firm.

The other business visas, however, are provisional. They are granted to prospective business migrants not able to meet the Business Talent Visa requirements. Instead the migrant is required to meet a reduced set of criteria both before arriving and once in Australia. This usually includes bringing a certain amount of capital into Australia, and starting or purchasing a business. Once these criteria have been met, the migrant can then apply for a permanent visa with lower requirement than the Business Talent Visa.

The Significant Investor visa was enhanced from July 2015 and requires the migrant to make a complying investment of at least AUD 5 million over four years

Business visa requirements are complicated and the choice of business structure and how it is applied may have a critical impact on residency, taxation and commercial issues.



### STATE AND TERRITORY SPONSORSHIP

The criteria and requirements vary from state to state with some states' requirements more onerous than others.

The areas that will impact most on the business migrant 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.

Prospective migrants should be aware of the employment requirements as they may well determine the migrant's ability to conduct a successful business.

UHY Haines Norton, being a national association, is able to determine the requirements of each state in which it is situated. Prospective business migrants should investigate the requirements of the state they intend migrating to.

### UHY HAINES NORTON

UHY Haines Norton is regarded as a leading accountancy and business advisory firm for business migrants. There are partners and staff in each of the offices 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 businesses, conducting due diligences, as well as arranging introductions with 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 visa applications themselves. However, 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 (MARA). This body was appointed to regulate the migration advice industry.

UHY Haines Norton would be pleased to recommend reputable registered migration agents.

## 9 – UHY HAINES NORTON

UHY Haines Norton is a national association of independent Chartered Accounting firms dating back to 1915. The National Association was formed in 1984.

It is ranked in the top 25 accounting groups (2013 BRW Top 100 Survey) in Australia with 30 partners and approximately 300 staff. We have offices in five major cities and three regional locations.



We offer the following services:

- Assistance to business migrants.
- Business development and strategic planning.
- Corporate finance advice.
- Accounting and accounting software advice.
- Audit and assurance.
- Tax planning and compliance.
- Retirement and estate planning.
- Due diligence, business appraisal and valuations.
- Financial reporting.
- Liquidations.

### OUR OFFICES

#### ADELAIDE

25 Peel Street, Adelaide, SA 5000

Tel: 61 8 8110 0999

Fax: 61 8 8110 0900

#### BRISBANE

Level 11, 42–60 Albert Street, Brisbane, QLD 4000

Tel: 61 7 3210 5500

Fax : 61 7 3229 6174

#### BUSSELTON

Suite 3, 46 Albert Street, Busselton, WA 6280

Tel: 61 8 9752 3222

Fax: 61 8 9752 2374

**DUNSBOROUGH**

Shop 2, 33 Dunn Bay Road, Dunsborough, WA 6281

Tel: 61 8 9752 3222

Fax: 61 8 9752 2374

**SUNSHINE COAST**

Regatta 1 Business Centre, 2 Innovation Parkway, Birtinya, QLD 4575

Tel : 61 7 5413 9204

Fax : 61 7 5413 9299

**SYDNEY**

Level 11, 1 York Street, Sydney, NSW 2000

Tel: 61 2 9256 6600

Fax: 61 2 9256 6611

**For more information on UHY Haines Norton and our people and services please see our website: [www.uhyhn.com](http://www.uhyhn.com)**

**The association is also a member of UHY International a global network of auditing, accounting, tax and consulting firms with over 7,600 professionals in more than 300 business centres in over 90 countries. For more information on UHY International please visit: [www.uhy.com](http://www.uhy.com)**

Individual firms within UHY Haines Norton in Australia and New Zealand ('the Firms'), carry on business separately and independently from other UHY Haines Norton member firms around Australia and New Zealand and UHY member firms worldwide.

UHY Haines Norton is a member of Urbach Hacker Young International Limited, a UK company, and forms part of the international UHY network of legally independent accounting and consulting firms.

UHY is the brand name for the UHY international network. The services described herein are provided by the Firms individually and not by UHY or any other member firm of UHY. Neither UHY nor any member of UHY has any liability for service provided by other members.

**APPENDIX A – DOUBLE TAX TREATY COUNTRIES**

Australia currently has a comprehensive double tax agreement with the following countries:

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

## APPENDIX B – SOURCES OF INFORMATION AND HELPFUL WEBSITES

### AUSTRALIA IN GENERAL

Australian Bureau of Statistics	<a href="http://www.abs.gov.au">www.abs.gov.au</a>
Australian Embassies, Consulates and Missions around the world	<a href="http://www.embassy.gov.au">www.embassy.gov.au</a>
Australian Stock Exchange	<a href="http://www.asx.com.au">www.asx.com.au</a>
Department of Industry, Tourism & Resources	<a href="http://www.industry.gov.au">www.industry.gov.au</a>
Main website for Australian Federal, State, Territory & Local Governments	<a href="http://www.gov.au">www.gov.au</a>
Reserve Bank of Australia	<a href="http://www.rba.gov.au">www.rba.gov.au</a>

### BUSINESS ENVIRONMENT

Attorney-General's Department	<a href="http://www.law.gov.au">www.law.gov.au</a>
Austrade - Australian Trade Commission	<a href="http://www.austrade.gov.au">www.austrade.gov.au</a>
Australian Competition & Consumer Commission	<a href="http://www.accc.gov.au">www.accc.gov.au</a>
Australian Department of Foreign Affairs & Trade	<a href="http://www.dfat.gov.au">www.dfat.gov.au</a>
Australian Prudential Regulation Authority	<a href="http://www.apra.gov.au">www.apra.gov.au</a>
Australian Securities & Investments Commission	<a href="http://www.asic.gov.au">www.asic.gov.au</a>
Australian Stock Exchange	<a href="http://www.asx.com.au">www.asx.com.au</a>
Australia Unlimited	<a href="http://www.austrade.gov.au">www.austrade.gov.au</a>
Financial Review	<a href="http://www.afr.com">www.afr.com</a>
Foreign Investment Review Board	<a href="http://www.firb.gov.au">www.firb.gov.au</a>
Standards Australia	<a href="http://www.standards.com.au">www.standards.com.au</a>

### FOREIGN INVESTMENT

Australia Unlimited	<a href="http://www.austrade.gov.au">www.austrade.gov.au</a>
Export Finance and Insurance Commission	<a href="http://www.efic.gov.au">www.efic.gov.au</a>
Foreign Investment Review Board	<a href="http://www.firb.gov.au">www.firb.gov.au</a>

### SETTING UP A BUSINESS IN AUSTRALIA

AusIndustry	<a href="http://www.ausindustry.gov.au">www.ausindustry.gov.au</a>
Australian Customs Service	<a href="http://www.customs.gov.au">www.customs.gov.au</a>
Australian Business Register	<a href="http://www.abr.business.gov.au">www.abr.business.gov.au</a>
Australian Retailers Association	<a href="http://www.retail.org.au">www.retail.org.au</a>
Australian Securities & Investments Commission	<a href="http://www.asic.gov.au">www.asic.gov.au</a>
Australian Stock Exchange	<a href="http://www.asx.com.au">www.asx.com.au</a>
Australian Taxation Office	<a href="http://www.ato.gov.au">www.ato.gov.au</a>
Australia Unlimited	<a href="http://www.austrade.gov.au">www.austrade.gov.au</a>
Business Entry Point	<a href="http://www.business.gov.au">www.business.gov.au</a>
Business Licence Information	<a href="http://www.bli.net.au">www.bli.net.au</a>
Federal Government	<a href="http://www.australia.gov.au">www.australia.gov.au</a>
IP Australia	<a href="http://www.ipaustralia.gov.au">www.ipaustralia.gov.au</a>

### SMALL BUSINESS ADVISORY SERVICES

ACT	<a href="http://www.business.gov.au">www.business.gov.au</a>
New South Wales	<a href="http://www.smallbiz.nsw.gov.au">www.smallbiz.nsw.gov.au</a>
Northern Territory	<a href="http://www.nt.gov.au">www.nt.gov.au</a>
South Australia	<a href="http://www.cbs.sa.gov.au">www.cbs.sa.gov.au</a>
Tasmania	<a href="http://www.tmd.tas.gov.au">www.tmd.tas.gov.au</a>

Victoria	<a href="http://www.business.vic.gov.au">www.business.vic.gov.au</a>
Western Australia	<a href="http://www.sbdc.com.au">www.sbdc.com.au</a>
Queensland	<a href="http://www.business.qld.gov.au">www.business.qld.gov.au</a>

#### MIGRATION TO AUSTRALIA

Migration Agents Registration Authority	<a href="http://www.themara.com.au">www.themara.com.au</a>
Migration Institute of Australia	<a href="http://www.mia.org.au">www.mia.org.au</a>
Department of Immigration & Border Protection	<a href="http://www.border.gov.au">www.border.gov.au</a>

#### EMPLOYMENT

Australian Chamber of Commerce and Industry	<a href="http://www.acci.asn.au">www.acci.asn.au</a>
Australian Council of Trade Unions	<a href="http://www.actu.asn.au">www.actu.asn.au</a>
Australian Industrial Relations Commission	<a href="http://www.airc.gov.au">www.airc.gov.au</a>
Fair Work Ombudsman	<a href="http://www.fairwork.gov.au">www.fairwork.gov.au</a>
Centrelink	<a href="http://www.centrelink.gov.au">www.centrelink.gov.au</a>
Department of Education, Employment and Workplace Relations	<a href="http://www.deewr.gov.au">www.deewr.gov.au</a>
Safe Work Australia	<a href="http://www.safeworkaustralia.gov.au">www.safeworkaustralia.gov.au</a>

#### TAXATION

Australian Taxation Office	<a href="http://www.ato.gov.au">www.ato.gov.au</a>
Medicare	<a href="http://www.hic.gov.au">www.hic.gov.au</a>
Australian Capital Territory revenue Office	<a href="http://www.revenue.act.gov.au">www.revenue.act.gov.au</a>
New South Wales Office of State Revenue	<a href="http://www.osr.nsw.gov.au">www.osr.nsw.gov.au</a>
Northern Territory Revenue Office	<a href="http://www.revenue.nt.gov.au">www.revenue.nt.gov.au</a>
Queensland Office of state Revenue	<a href="http://www.osr.qld.gov.au">www.osr.qld.gov.au</a>
Revenue South Australia	<a href="http://www.revenuesa.sa.gov.au">www.revenuesa.sa.gov.au</a>
Tasmania State Revenue Office	<a href="http://www.sro.tas.gov.au">www.sro.tas.gov.au</a>
Victoria State Revenue Office	<a href="http://www.sro.vic.gov.au">www.sro.vic.gov.au</a>
Western Australia Office of State Revenue	<a href="http://www.osr.wa.gov.au">www.osr.wa.gov.au</a>

#### ACCOUNTING AND REPORTING

Australian Accounting Standards Board	<a href="http://www.aasb.com.au">www.aasb.com.au</a>
Australian Securities & Investments Commission	<a href="http://www.asic.gov.au">www.asic.gov.au</a>
Australian Society of Certified Practising Accountant	<a href="http://www.cpaaustralia.com.au">www.cpaaustralia.com.au</a>
Australian Stock Exchange	<a href="http://www.asx.com.au">www.asx.com.au</a>
Chartered Accountants Australia and New Zealand	<a href="http://www.charteredaccountants.com.au">www.charteredaccountants.com.au</a>

#### REAL ESTATE

Real Estate Institute of Australia (REIA)	<a href="http://www.reiaustralia.com.au">www.reiaustralia.com.au</a>
---	--

The following websites can be accessed via the REIA website:

Real Estate Institute of New South Wales (REINSW)	<a href="http://www.reinsw.com.au">www.reinsw.com.au</a>
Real Estate Institute of Queensland (REIQ)	<a href="http://www.reiq.com.au">www.reiq.com.au</a>
Real Estate Institute of South Australia (REISA)	<a href="http://www.reisa.com.au">www.reisa.com.au</a>
Real Estate Institute of Western Australia (REIWA)	<a href="http://www.reiwa.com.au">www.reiwa.com.au</a>

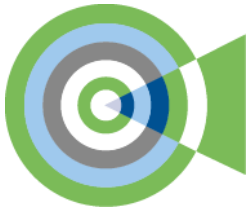
## APPENDIX C – UHY HAINES NORTON MIGRATION INTERVIEW CHECKLIST

In your initial interview UHY Haines Norton will take the time to get to know you, finding out about your visa status, financial position, background and your expectations. Issues discussed generally include:

- Visa obligations and how they interact with business
- Business opportunities
  - Introduction to business brokers
  - Business reviews (due diligences)
  - General advice on business in Australia
- Business structuring
  - The correct business structure is extremely important for migrants as it may impact on visa, taxation and commercial requirements
- Taxation issues
  - Deciding whether to sell or transfer ownership of assets prior to entry into Australia
  - Understanding the point at which you will be treated as a resident of Australia for tax purposes and how this will impact on the taxation of your income and assets
  - Ensuring that your international assets receive the most favourable tax treatment once you are treated as an Australian resident for tax purposes
  - Making the most of available tax concessions during your entry into Australia
  - State Taxes and Stamp Duties on funding business and property
- Banking
  - Assistance with opening accounts
  - Lending limits and requirements for loans
  - Other Australian banking issues
  - Currency transfers
- Accounting and taxation requirements for setting up a business
  - Accounting software and training
  - Ongoing tax issues – eg PAYG, quarterly or monthly business activity statements
- Foreign Investment Review Board (FIRB)
  - Restrictions (if any) imposed on migrants wishing to purchase property in Australia
- Insurance and life assurance (if required, migrants are referred to appropriate professionals)
  - Life cover
  - General and other assurance matters
  - Wills.

Interviews generally take around one and-a-half to two hours.

If a company or trust is formed during or subsequent to this interview, the interview fee will be offset against the company/trust formation fee.



---

## 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](http://www.uhy.com) to find contact details for all of our offices, or email us at [info@uhy.com](mailto: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.

UHY Haines Norton (the "Firm") is a member of Urbach Hacker Young International Limited, a UK company, and forms part of the international UHY network of legally independent accounting and consulting firms. UHY is the brand name for the UHY international network. The services described herein are provided by the Firm and not by UHY or any other member firm of UHY. Neither UHY nor any member of UHY has any liability for services provided by other members.

© 2015 UHY International Ltd