Australia Tax Profile

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1 Corporate Income Tax

1.1 General Information

Corporate Income Tax

Corporate income tax is levied at the federal level only. It applies to the company's taxable income, which is the total of assessable income minus allowable deductions.

Tax Rate

30 percent to all companies that are not eligible for the lower company tax rate. Eligibility for the lower company tax rate depends on whether you are a 'base rate entity' from the 2017–18 income year.

Special rates apply to life insurance companies, non-profit companies and credit unions.

From the 2017–18 income year, companies that are base rate entities will be taxed at the lower company tax rate of 27.5 percent. A base rate entity is a company that is carrying on a business and has an aggregated turnover below the turnover threshold (AUD25 million for the 2017–18 income year).

The lower company tax rate will apply to base rate entities with a turnover less than AUD50 million in the 2018-19 income year. The rate will then reduce to 25 percent by the 2026-27 income year.

There are proposals to change the definition of a base rate entity from 2017–18 income year. Under the proposed law, the "carrying on a business" test would be replaced with a threshold of maximum 80 percent passive income. There are also proposals to gradually extend the lower company tax rate to all companies. The law for these changes has not yet passed.

To work out the company tax rate you use when franking your distributions, you need to assume the aggregated turnover will be the same as the previous year. For the 2017–18 income year, the company tax rate will be 27.5 percent if either: the aggregated turnover for the previous year was less than AUD25 million and you are carrying on a business; or this is the first year you are in business. Otherwise, the company tax rate you will use when franking your distributions is 30 percent.

Residence

A company is regarded as a resident of Australia if it is incorporated in Australia, or is carrying on a business in Australia, and either has its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia.

Basis of Taxation

As a general proposition, a resident company is liable to income tax on its worldwide income and capital gains. A non-resident company may only liable to income tax in Australia on certain Australian sourced income and on capital gains from the disposal of particular types of assets defined in the Australian tax law as 'taxable Australian property'.

Tax Losses

Generally, tax losses may be carried forward indefinitely and be offset against taxable income (including against capital gains). Capital losses may be offset against current and future capital gains only. If no capital gains are available, the capital loss may be carried forward indefinitely.

There are restrictions on the utilization of carried forward tax and capital losses incurred in prior years. The company must satisfy either a continuity of ownership ('COT') or, failing COT, a relatively strict same business test ('SBT'). A proposed new Similar Business Test, which would supplement the current SBT has not yet been enacted. Companies may choose the amount of prior year tax losses to be deducted in a particular year.

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Tax Consolidation/Group relief

Australia has a system of consolidated income taxation (tax consolidation) for entities within a wholly owned group (i.e. 100 percent owned). Under this regime, if a group elects to consolidate, the wholly-owned Australian resident entities in the group will generally be treated as a single entity for income tax purposes.

The identity of the head company is important for several reasons. Once consolidation is chosen, under the single entity theory the entities in the corporate group are regarded as divisions of the head company. The identity of the head company will therefore dictate the tax treatment of the group as a whole.

A consolidatable group requires a head company and at least one subsidiary. Once formed, the consolidated group exists so long as the head company exists. Generally, a subsidiary member is an entity that must be a company, trust or partnership but not one which is specifically precluded from being a member of a consolidated group.

If the entity is a company or a trust, it must meet the Australian residence requirements (i.e. it is an Australian resident and not a prescribed dual resident). Partnerships do not need to satisfy the residence criteria.

The normal membership rules for consolidated groups require a single resident head company and resident wholly-owned subsidiaries. The multiple entry consolidated ('MEC') group rules extend the ability to consolidate beyond groups that have a single resident Australian holding company and allow foreign wholly-owned Australian companies to group for income tax purposes.

Transfer of Shares

Transfers of shares are taxable events and the tax treatment of the transfer depends on whether the shares are held as revenue assets, capital assets or trading stock. Generally, where a foreign resident disposes of a non-portfolio interest (10 percent or greater) in a company that holds Australian real property, capital gains tax will apply.

A non-final withholding obligation is imposed where a certain type of Australian CGT asset is acquired from a foreign resident on or after 1 July 2016 (acquisition generally takes place when the relevant contract is entered into). The withholding obligation is imposed on the purchaser. Relevant assets subject to the foreign resident capital gains withholding rules are "taxable Australian property" (TAP), such as:

- real property situated in Australia
- assets used in carrying on a business through a permanent establishment in Australia;
- an indirect Australian real property interest (this includes shares in a company that owns land);
- an option or right to acquire such property or such an interest.

Where the rules apply, the purchaser is generally required to pay a certain percentage of the purchase price to the Australian Taxation Office ('ATO'). The withholding rate is 12.5 percent (10 percent where the sale contract was entered into before 1 July 2017). The amount must be paid on or before the day the purchaser becomes the asset's owner (usually the settlement date).

An Australian company's capital gain or loss on disposal of a foreign subsidiary may be disregarded based on the foreign subsidiary's proportion of 'active business assets'. Stamp duty may be imposed in some Australian jurisdictions on the transfer of shares in private companies.

Transfer of Assets

Transfers of tangible and intangible assets are generally subject to income tax with the determination of tax liability dependent on the nature of the holding — revenue assets, capital assets or trading stock. In certain cases (eg. transfer of land and buildings) stamp duty and goods and services tax ('GST') may also be payable. Stamp duty is levied on the transfer of land or fixtures (such as buildings) in most Australian state and territory jurisdictions. Exemptions from GST may be available in certain circumstances such as for supplies of "going concerns".

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CFC Rules

Australia has CFC provisions which tax certain income earned by foreign companies controlled by Australian residents on an accruals basis. A CFC will generally arise where a group of 5 or fewer Australian entities (together with their associates) holds a greater than 50 percent interest, or a single Australian entity together with associates holds a 40 percent or greater interest, or the entity is otherwise controlled by a group of Australian entities.

The amount of income of the CFC attributable to the Australian resident(s) depends on whether the CFC is resident in a listed or an unlisted country. Generally, for a CFC resident in a listed country, only passive or tainted income that is also Eligible Designated Concession Income (defined list of foreign country tax concessions) is attributable. For a CFC resident in an unlisted country, all passive income or tainted income is attributable. In both cases, income attribution may be eliminated where the CFC satisfies an active income test.

Thin Capitalization

Australia's thin capitalization regime seeks to limit tax deductions (debt deductions) on financing costs relating to all debt funding of a taxpayer's Australian operations. Under the current regime, debt deductions will generally be denied to the extent the relevant prescribed gearing limits are breached, irrespective of whether or not the debt is from related parties.

The thin capitalization rules affect Australian companies that are foreign controlled (i.e. inbound investors) and Australian companies which have control foreign operations (i.e. outbound investors).

Generally, the safe harbor limit to debt funding imposed on an Australian entity is 1.5:1 debt-to-equity ratio. The exact threshold will depend on the type of entity in question (i.e. financial/non-financial entity).

Debt deductions on financing costs can also be limited under Australia's transfer pricing or anti-avoidance rules in some cases, notwithstanding that safe harbor limits have been satisfied. Taxpayers should seek relevant transfer pricing advice if gearing levels are likely to approach the safe harbor limits.

Interest Deductibility Restrictions

See Thin Capitalization section above.

Amalgamations of Companies

In certain circumstances a "rollover" is permitted for capital gains purposes where equity-holders exchange their equity in "Target" for matching equity in the acquiring company. This allows the equity in the acquiring company to be treated as a continuation of the equity in Target for tax purposes.

When a company joins a tax-consolidated group there are rules which may allow a "step-up" in the cost base of the joining entity's capital gains tax assets, to recognize that an element of the acquisition price for the company relates to those assets.

General Anti-avoidance

General anti-avoidance provisions allow the Commissioner to cancel the effect of any tax benefit that a taxpayer derived from an arrangement if it could be concluded that a person (not necessarily the taxpayer) entered into or carried out the arrangement for the sole or dominant purpose of enabling the taxpayer, or the taxpayer and other persons, to obtain a tax benefit.

The Multinational Anti-Avoidance Law applies to multinational companies with annual global revenue of at least AUD1 billion and extends the general anti-avoidance rules to schemes that are intended to 'limit a taxable presence in Australia'.

The Diverted Profits Tax (DPT) targets businesses (with annual global revenue of at least AUD1 billion) that contrive to shift profits offshore from Australia. The DPT imposes an upfront 40 percent tax on the diverted profits, and the taxpayer then has 12 months to provide additional information if it wishes to challenge the DPT assessment as excessive.

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Anti-treaty Shopping

Australia's DTA with the United States contains a comprehensive limitation of benefits article while a number of Australia's other DTAs (e.g. with China, Vietnam, Russia and the United Kingdom) contain limited anti-treaty shopping provisions. In addition, the tax authority can apply the general anti-avoidance provisions to target treaty shopping.

Australia proposes to adopt the "principal purpose test" set out in the OECD Multilateral Instrument, and therefore those treaties which are eventually covered by the MLI will incorporate this anti-treaty shopping measure.

Other Specific Anti-avoidance Rules

There are a number of specific anti-avoidance provisions which should be considered. Due to the complexity of these rules, further advice should be sought prior to undertaking a transaction.

Rulings

The tax authority publishes general tax rulings ('public rulings') which can be relied on by any taxpayer falling within the scope of the ruling. Taxpayers can also apply to the tax authority for a private ruling on the taxpayer's particular circumstances or transaction. Public and private rulings are binding on the tax authority but not the taxpayer.

Hybrid Instruments

Specific debt-equity rules operate to classify hybrid instruments as solely debt or solely equity. Therefore, in some circumstances, the tax rules can produce a different result from the accounting treatment.

The Government has introduced legislation to Parliament that, if enacted, would adopt rules similar to the anti-hybrid mismatch rules in the OECD BEPS report for income years commencing on or after 1 January 2019.

Hybrid Entities

In general, Australian partnerships and trusts are treated as transparent for income tax purposes i.e. they are taxed at the membership level. Corporate limited partnerships are an exception however, and will be taxed as a company. Trust income is typically taxed in the hands of the beneficiaries who are entitled to it, or is otherwise taxed on the trustee if no beneficiary is entitled to it as of the end of the income year. There is an exception for public trading trusts and corporate unit trusts, which will be taxed as a company.

Specific rules apply to international hybrid entities. Certain qualifying foreign hybrid entities will be taxed as partnerships for Australian tax purposes. This tax treatment is irrespective of the fact that an entity may have been a corporate limited partnership (and therefore taxed as a company) prior to having foreign hybrid entity status.

Related Business Factors

The typical legal entities used for conducting business in Australia are a limited company (Ltd.) or a proprietary limited company (Pty Ltd). A company or trust may be used as a holding entity. Partnerships can also be utilized however this is typically only in specific commercial situations.

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1.2 Determination of Taxable Income and Deductible Expenses

1.2.1 *Income*

General

Assessable business income for an Australian resident company includes the sum of the taxpayer entity's ordinary and statutory income from sources in and outside Australia. Ordinary income includes trading and other income according to common law concepts, but excludes specific items of exempt and non-assessable income. Statutory income includes capital gains (see item below) and other items that are not ordinary income, but which the tax law treats as assessable.

Branch Income

A company which is not a resident of Australia is assessable on its Australian-sourced income. Certain categories of income, for example interest, royalties and dividends, may only be subject to a final withholding tax. For a company which is resident in a country with which Australia has a double taxation agreement, active business income may only be assessable to the extent that the income is attributable to a permanent establishment or branch that the company has in Australia.

Capital Gains

Income tax is payable on capital gains when defined 'capital gains tax events' (e.g. disposals) occur, in respect of a capital gains tax asset ("CGT asset"). A CGT asset is defined widely as any kind of property or legal or equitable right, and includes land and buildings, shares, goodwill, options, foreign currency, etc. Residents are subject to tax on all capital gains while non-residents are only subject to tax on capital gains arising from capital gains tax events involving TARP.

Capital gains are taxed at prevailing income tax rates but discounts may apply for qualifying capital gains of individuals, trusts, complying superannuation funds, approved deposit funds, pooled superannuation trusts and life insurance companies. Capital losses may only be deducted against capital gains. Capital gains arising from transactions between companies in the same tax consolidated group are disregarded for income tax purposes.

There are a number of special investment programs which are designed to encourage investment into innovative start-up companies. Where the qualifications for these programs are met, the normal capital gains tax is either greatly reduced or even waived. However by the same token, investments via these programs cannot be claimed as a capital loss either.

Where an Australian company realizes a capital gain on the disposal of shares in a subsidiary company, the assessable gain may be reduced to the extent that it is attributable to active business assets of the subsidiary. In order to qualify for this reduction, the parent must have held an interest of 10 percent or more in the subsidiary for at least a continuous 12 months out of the 24 months preceding the CGT event.

Where a company disposes of the assets of a foreign branch, an assessable capital gain or capital loss may arise depending on whether the assets being disposed of are CGT assets.

Dividend Income

Dividends received by a resident company from non-resident companies will be treated as non-assessable, non-exempt income if a participation interest of at least 10 percent is held in the non-resident company. This test applies at the time the dividend is paid. This exemption will only apply to equity dividend distributions, and excludes debt interests such as redeemable preference shares.

Dividends received by a resident company from other resident companies which are part of the same tax consolidated group are disregarded for income tax purposes. Outside the tax consolidation regime, the total dividend amount must be included in assessable income. Double taxation of dividends is avoided through the imputation system whereby companies attach 'franking credits' (representing corporate income tax paid) to dividends. The franking credit is generally permitted as a tax credit (i.e. a fully franked dividend will result in zero additional tax to pay by the recipient in respect of the dividend income).

Dividends paid to a non-resident parent are subject to withholding tax on the unfranked portion of the dividend at a rate of 30 percent (or lower if an applicable tax treaty applies). Conduit foreign income rules can apply to reduce the Australian tax liability on dividends paid to a foreign resident by an Australian holding company.

A number of anti-avoidance rules (e.g. dividend stripping; at risk holding period rules) apply to prevent profits being distributed as capital or vice versa and enable access to franking credits.

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Interest Income

Interest income is considered ordinary assessable income. Interest income from carrying on a banking business is generally treated as active income.

1.2.2 *Expenses*

General

Deductible expenses will be subtracted from assessable income in calculating a company's net taxable income.

Generally, company expenses will be deductible for tax purposes where they are necessarily incurred in carrying on a business for the purpose of earning assessable income, and are not capital in nature.

Australia's laws also provide for specific instances in which some expenses are deductible, supplementing these general principles.

Minimum Taxation Requirements for the Deductibility of Losses

If a company has a 'carried forward' tax loss, the loss can be deducted from the net taxable income of a later income year.

If a taxpayer in this position has also earned income that is exempt (i.e. that is deemed to be non-taxable under a particular provision) the tax loss will be deducted from this amount first, with any remaining loss then being deducted against net taxable income.

There is generally no ability to carry back tax losses to an earlier income year.

Capital Losses

Losses of a capital nature, however, are not deductible in this way. All realized capital gains and losses for a particular year are aggregated, with the resultant figure comprising either a net capital gain or net capital loss. Net capital gains are generally treated as income in the applicable year and net capital losses are carried forward, but are only used to reduce future net capital gains.

The allowable component of a capital loss on disposal of a foreign subsidiary may be reduced to the extent that the loss is attributable to active business assets of the subsidiary. This applies where the Australian parent has had at least a 10 percent interest in the subsidiary for a continuous 12 month period during the 24 months preceding the disposal.

Carry Forward

A net capital loss may be 'carried forward' to a subsequent income year and utilized against a net capital gain of a later year.

Carry Back

There is no provision for carrying back capital losses.

Bad Debts

Debts, or parts thereof, that are written off as bad in an income year will be deductible in that year if certain conditions are met.

Conditions include that the debt must genuinely be considered irrecoverable. The debt amount must previously have been included in the company's assessable income (except where the taxpayer is a moneylending business), or the debt must relate to money lent in the ordinary course of the company's business of money lending.

Depreciation/Capital Allowance

Capital expenses are expressly prohibited as deductions under the general deduction rules. Deductions are allowed for the annual decline in value of depreciating assets that are used wholly for the purposes of income production under Australia's Uniform Capital Allowances (UCA) regime.

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Double Deductions

Australia's provisions for general deductible expenses and specific deductions means that in some instances a deduction may be available under more than one provision. In such cases expenses will be deductible only under the most appropriate provision, avoiding double deductions.

Interest Expenses

Subject to previous comments in relation to thin capitalization, interest expenses are generally deductible if they are incurred in carrying on a business for producing assessable income.

Inventories

For the purpose of calculating the cost of goods sold, the valuation of inventories at the end of each fiscal year must be made in accordance with one of the approved methods specified by the tax authority.

Other Significant Items

Entertainment expenditure is generally non-deductible unless it is incurred in providing a taxable fringe benefit to an employee of the company. A company may elect to treat 50 percent of its meal entertainment expenditure as giving rise to taxable fringe benefits.

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1.3 Tax Compliance

Compliance Requirements

Companies are required to self-assess their tax obligations and income tax liability. Companies with the standard 30 June year end must lodge an annual tax return by 15 January.

Tax accounting periods other than 30 June are allowed in certain circumstances. A company with a 31 December year end will be required to lodge an annual return by 15 July. It is presumed that the information contained in the tax return is correct and companies may be subject to a tax audit. The tax authority uses data matching and tax risk reviews in determining which companies to audit.

Mandatory Electronic Filing

Electronic filing is a widespread practice, but it is not mandatory. Returns can be filed online, or in writing via post.

Requirement to Prepare Tax Computation / Return in Functional Currency

Australia's currency translation (conversion) rules require that all foreign currency amounts necessary for the calculation of a company's tax liability are converted into Australian currency

Documents to File with Tax Return

This will depend on the specific circumstances of the company. Generally, documents supporting the return must be retained by the company.

Companies' annual tax return lodgments will be accompanied by several schedules, including the International Dealings Schedule (IDS) and the Reportable Tax Positions Schedule (RTP Schedule).

An IDS will need to be lodged by companies with international dealings of more than AUD2 million, and will be required to detail international related-party interests, dealings and branches among other matters.

There is a requirement to lodge an RTP Schedule for companies in economic groups with a turnover of greater than AUD250 million, where the company has been notified by the ATO. The RTP Schedule will need to disclose uncertain tax positions in a company's tax return and financial statements, among other details.

Language to File Return, Computation and Supporting Documentation(s)

Records kept for tax purposes must be kept in the English language or if the records are not in written form, in a form which is readily accessible and convertible into writing in English.

Filing Extension Availability and Details

Extensions may be granted where a request is made in writing before the original lodgment due date. Requests should explain why an extension is needed and propose a new date for lodgment.

Whether or not an extension is granted is a matter of administrative practice. Generally, it must be shown that on-time lodgment has been prevented by circumstances beyond a taxpayer's control.

Payment of Estimated Tax

Following the lodgment of a return, a taxpayer is issued with a Notice of Assessment that formally creates the requirement for them to pay their exact liability. A company can only be liable to pay an amount of tax established by an assessment. Once a notice of assessment is served to a company, it can either be formally challenged (via an objection) or will need to be settled.

Companies will generally be paying tax throughout the income year on a Pay-as-You-Go (PAYG) basis (discussed further below). If tax is over-, or under-paid as a result of these PAYG instalments, then the taxpayer will be refunded or liable for the balance.

Interim Tax Returns

N/A

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Payment of Tax

Income tax liability is collected throughout the year under a PAYG system. Companies with a 30 June year end are generally required to pay quarterly instalments on 21 October, 21 January, 21 April and 21 July. Corporate tax entities with annual instalment income of at least AUD20 million will be required to make monthly PAYG instalments.

The instalment amount is based on the company's previous year's income tax liability.

A final payment is required by 1 December for companies with a 30 June year-end. PAYG instalments are paid via the Business Activity Statements (BAS) a company is required to lodge when they register for Goods and Services Tax ('GST'). BAS lodgments are required in line with a company's GST obligations (GST is discussed further below).

Penalties for Non-compliance

A Failure to Lodge Penalty (FTL) will be payable where a return is not lodged. Taxpayer's can also be prosecuted for failure to lodge returns, in which case FTL penalty will not be payable.

A Significant Global Entities (SGE) — a global parent entity with annual global income of AUD1 billion or more, or a member of a consolidated accounting group whose global parent entity has annual global income of AUD1 billion or more — are liable for significantly increased non-compliance penalties.

Penalties and/or Interest for Underpayment of Taxes

Shortfall penalties will apply if it is determined that an entity has a greater liability than they calculated under self-assessment. These penalties apply on a sliding scale subject to the seriousness of the behavior underlying the mis-reporting, as well as the level of cooperation shown in responding to the review undertaken by the ATO.

The Shortfall Interest Charge (SIC) and General Interest Charge (GIC) may be payable as a result of underpaid, or unpaid taxes. The SIC applies to shortfalls arising as a result of amended assessments and is levied at the 90-day Bank Accepted Bill Rate set by the central bank plus an uplift factor of 3 percent . The GIC is applied to payments after they fall due and is levied at the 90-day Bank Accepted Bill Rate set by the central bank plus an uplift factor of 7 percent.

Statute of Limitation

The ATO can amend an assessment within the permissible time period. Generally, a 4 year amendment period applies for taxpayers with complex tax affairs.

The amendment period is unlimited, however, in cases where the ATO believes there has been tax evasion or fraud on the part of the taxpayer.

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1.4 Financial Statements/Accounting

Details of Local Accountant Requirements

Statutory financial statements are prepared in accordance with the principles set out in standards developed by the Australian Accounting Standards Board (AASB), which meet the requirements of International Financial Reporting Standards (IFRS) and contains some Australia-specific standards.

Australian and certain multinational taxpayer groups with annual global revenue of AUD1 billion or more are required to lodge general purpose financial statements with the tax authority, if they do not lodge them with the Australian Securities and Investments Commission.

Fiscal Year

Not specified, typically the year ending 30 June.

Periodicity of Local Books to be Closed

Generally all entities annually, disclosing entities six-monthly.

Retention Period for Statutory Financial Statements / Working papers

At least seven years.

Requirements to Retain Physical Copies Locally/Electronically Stored Data to Reside on in-country server

Records may be electronic but must be able to be converted to hard copy.

If financial records are kept outside of Australia, sufficient written information must be kept in Australia to enable true and fair financial statements to be prepared.

Requirements to Prepare Financial Statements in Local currency

No requirement to prepare in local currency. Required to be prepared in accordance with accounting standards. Accounting standards require presentation in a presentation currency defined in AASB 121 *The effects of Changes in Foreign Exchange Rates.*

What GAAP must the Financial Statements be Prepared Under?

Australian Accounting Standards (AASBs) — Australia's equivalent to the IFRS.

Prescribed Format and Details for Financial Statements

Prescribed under Corporations Act and the Australian Accounting Standards.

Filing Due Date

Generally within 3 months of end of financial year for a disclosing entity, or 4 months of end of financial year for all other entities. Listed disclosing entities must also lodge a preliminary financial report with the Australian Stock Exchange within 2 months of end of financial year.

Filing Format of Financial Statements

Electronic lodgment in either .tif, .pdf or .rtf format, also XML and paper lodgment.

Filing Extension Availability and Details

General application under Section 340 of the Corporations Act. Refer also to ASIC Regulatory Guide 51 *Applications for relief.*

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1.5 Incentives

Intellectual Property Incentives

Incentives exist for R&D (below) and venture capital.

R&D Incentives

The R&D tax incentive currently provides the following benefits:

- 43.5 percent refundable tax credit for companies with aggregated turnover less than AUD20 million per annum. If such companies are in a tax loss position they are able to 'cash out' the R&D tax offset against the tax losses.
- 38.5 percent non-refundable tax credit for companies with an aggregated turnover of AUD20 million or more per annum.

There is an AUD100 million cap on R&D expenditure which is eligible for tax incentive entitlement at the above rates; excess amounts are entitled to a R&D tax offset equal to the applicable corporate tax rate.

The 2018 Federal Budget contained a number of proposed measures which will impact the R&D tax incentive if implemented for income years commencing on or after 1 July 2018. In broad terms, the proposed changes would have little impact on smaller companies and would reduce the benefit for companies with an aggregated turnover of AUD20 million or more per annum.

Special Tax Regimes For Specific Industries or Sectors

Specific tax rules apply for a number of industries including the mining and resources sector (see 'other taxes'); superannuation funds; managed investment trusts; investment manager regime; pooled development funds and primary production.

Other Incentives

Australia has a 'Regional Headquarter' (RHQ) incentive regime, in which certain costs incurred in relation to the setup of a RHQ are specifically deductible. Additionally, an RHQ will benefit from the general exemption from dividend withholding tax available to companies in Australia for certain foreign sourced dividends passed through an Australian resident company to a foreign resident shareholder.

In addition, tax incentives are available in Australia for:

- Offshore banking units;
- Venture capital investment;
- Shipping industry;
- Film and television production;
- Regional financial services centres; and
- Early stage investor tax incentives

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1.6 International Taxation

Double Taxation Relief

Relief from double taxation is available in the form of the foreign income tax offset (FITO), which can reduce the amount of Australian tax payable by a company with an Australian tax liability.

To be eligible for the FITO, a taxpayer must have actually paid foreign tax, and must have included the income or gain on which they paid this tax in their assessable Australian income.

The FITO is granted on an overall basis rather than a basket basis. It is limited to the larger of:

1. the difference between the Australian tax payable (disregarding the FITO) and the tax that would be payable but for: any tax offsets, any amounts in respect of which foreign income tax was paid, any other amounts of foreign-sourced income, any debt deductions attributable to a foreign PE and any deductions, other than debt deductions, relating to foreign income, or;
2. AUD1,000.

Foreign-exchange Controls

There are no foreign exchange control rules in Australia.

International Withholding Tax Rates

Dividends paid to non-residents (except for foreign-owned Australian branches) are subject to withholding tax on the unfranked (i.e. untaxed) portion of dividends received. The dividend withholding tax rate is 30 percent. The withholding rate may be reduced by an applicable income tax treaty between Australia and the recipient country, typically to 15 percent or less.

For example, under Australia's income tax treaty with the UK, dividends will generally be taxable at 15 percent in Australia. However, they will be taxable at 5 percent if the beneficial owner of the dividends is a company which directly holds directly at least 10 percent of the voting power in the company paying the dividends; and 0 percent, if the beneficial owner of the dividends is a company that has owned shares representing 80 percent or more of the voting power of the company paying the dividends for a 12 month period ending on the date the dividend is declared and the company that is the beneficial owner of the dividends meets certain listing requirements.

Australia's anti-avoidance rules may apply to schemes contrived to avoid withholding tax. If applicable, these rules could result in the requirement to pay withholding tax being imposed, as well as penalties.

Specific exemptions to dividend withholding tax also apply under Australia's domestic law, including in circumstances where unfranked dividends are declared to be conduit foreign income, and where dividends are paid to the Australian branch of a non-resident

Generally, **royalties** paid to a non-resident are subject to withholding tax at 30 percent and is a final tax. However, where the recipient is a resident of a country with which Australia has concluded a tax treaty, the rate of royalty withholding tax is generally reduced, unless the royalties are effectively connected with a branch in Australia.

Interest paid by a resident of Australia to a non-resident, is normally subject to a final withholding tax of 10 percent on the gross interest payment. A number of interest withholding exemptions exist (e.g. in the case of certain publicly-offered debenture issues and debt interests). In addition, there are a growing number of tax treaties (e.g. USA, UK, Japan, France, Finland and Norway) which provide for a withholding tax exemption on interest paid to certain Government bodies and unrelated financial institutions.

Payments made to non-residents that dispose of certain TARP are subject to a non-final withholding tax of 10 percent on the purchase price. Vendors can apply to the Australian Taxation Office for a variation of the withholding rate if believed that 10 percent is inappropriate.

Fees for technical services paid to non-residents are subject to tax in Australia. Whether or not a non-resident is required to pay tax for service fees received will depend on whether the fee is deemed to be sourced from Australia.

Dividends paid to a non-resident's local Australian branch are exempt from withholding tax, unless the non-resident is a trust.

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Withholding Tax Rates Under the Income Tax Treaties

Australia — Treaty Withholding Rates Table				
	Dividends		Interest	Royalties
	Individuals, companies (%)	Qualifying companies (%)	(%)	(%)
Domestic Rates				
Companies:	30 (27.5)	30 (27.5)	30 (27.5)	30 (27.5)
Individuals:	Individual's marginal tax rate	Individual's marginal tax rate	Individual's marginal tax rate	Individual's marginal tax rate
Treaty Rates				
Argentina	15	10	12	15
Austria	15	-	10	10
Belgium	15	-	10	10
Canada	15	5	10	10
Chile	15	5	10	10
China	15	-	10	10
Czech Republic	15	5	10	10
Denmark	15	-	10	10
Fiji	20	-	10	15
Finland	15	5	10	5
France	15	5	10	5
Germany	15	5	10	5
Hungary	10	-	10	10
India	15	-	15	10
Indonesia	15	-	10	15
Ireland	15	-	10	10
Italy	15	-	10	10
Japan	10	5	10	5
Kiribati	20	-	10	15

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Treaty Rates				
Korea (Republic of)	15	-	15	15
Malaysia	15	0	15	15
Malta	15	-	15	10
Mexico	15	0	15	10
The Netherlands	15	-	10	10
New Zealand	15	5	10	5
Norway	15	5	10	5
Papua New Guinea	15	-	10	10
Philippines	25	15	15	15/25
Poland	15	-	10	10
Romania	15	5	10	10
Russia Federation	15	5	10	10
Singapore	15	-	10	10
Slovakia Republic	15	-	10	10
South Africa	15	0	10	10
Spain	15	-	10	10
Sri Lanka	15	-	10	10
Sweden	15	-	10	10
Switzerland	15	5	10	5
Taiwan	15	10	10	12.5
Thailand	20	15	25	15
Turkey	15	5	10	10
United Kingdom	15	5	10	5
United States of America	15	-	10	5
Vietnam	15	-	10	10

Notes:

1. Please refer to section 1.1 which explains when the corporate tax rate of 27.5 percent applies.
2. Please note, the maximum rates of withholding under each treaty have been included in the table, however in certain cases an alternative rate, or nil rate, may apply depending on whether certain criteria are met. In this regard, the table should be used as a guide and not relied upon in isolation.

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Other Agreements

Australia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting in June 2017. It is expected that 31 of Australia's bilateral tax treaties will be ultimately modified as a result of the convention, however this outcome is pending the enactment of relevant legislation in Australia and the other signatories of the Convention.

Argentina	Finland	Malaysia	Russia
Belgium	France	Malta	Singapore
Canada	Hungary	Mexico	Slovak Republic
Chile	India	Netherlands	South Africa
China	Indonesia	New Zealand	Spain
The Czech Republic	Ireland	Norway	Turkey
Denmark	Italy	Poland	United Kingdom
Fiji	Japan	Romania	

Income Tax Treaties for the Avoidance of Double Taxation (Negotiated, not yet in force at time of publication)

A new amendment protocol has been negotiated with Belgium but is not in force yet as at June 2018.

Agreements for the Exchange of Information

In force:

Andorra	Brunei	Jersey	Samoa
Anguilla	Cayman Islands	Liberia	San Marino
Antigua & Barbuda	Cook Islands	Liechtenstein	St. Kitts and Nevis
Aruba	Costa Rica	Macao	St. Lucia
Bahamas	Dominica	Marshall Islands	St. Vincent & the Grenadines
Bahrain	Gibraltar	Mauritius	Turks and Caicos Islands
Belize	Grenada	Monaco	Uruguay
Bermuda	Guernsey	Montserrat	Vanuatu
British Virgin Islands	Isle of Man	Netherlands Antilles	

Indirect Offshore Disposal Rules

Where a non-resident's interest in an offshore company represents "taxable Australian property" due to the nature of that offshore company's assets, then Australian capital gains tax rules may apply when a CGT event occurs in relation to that interest.

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2 Transfer Pricing

Requirements

Australia's transfer pricing legislation is contained in Division 815 of the Income Tax Assessment Act 1997 (ITAA 1997). Subdivision 815-A applies to years of income commencing on or after 1 July 2004 and for all subsequent years up to years of income commencing before 29 June 2013.

For income years commencing on after 29 June 2013 Subdivisions 815-B to 815-D apply. The key features of the transfer pricing legislation are set out below:

Subdivision 815-B

Subdivision 815-B applies to cross-border dealings between separate legal entities and seeks to replace the actual conditions with the arm's length conditions where an entity has obtained a transfer pricing benefit. A transfer pricing benefit for the purposes of Subdivision 815-B is obtained where the actual conditions differ from the arm's length conditions and had the arm's length conditions operated (instead of the actual conditions) then either:

- The amount of the entity's taxable income for an income year would be greater.
- The amount of the entity's loss for an income year would be less.
- The amount of the entity's tax offsets for an income year would be less.
- An amount of withholding tax payable in respect of interest or royalties by the entity would be greater.

Subdivision 815-C

Subdivision 815-C applies to cross-border dealings within a single legal entity (i.e. branch dealings) and deems arm's length profits to replace the actual amount of profits where an entity gets a transfer pricing benefit.

A transfer pricing benefit for purposes of Subdivision 815-C arises where the actual profits differ from the arm's length profits and as a result the entity has received a tax advantage in Australia.

Self-assessment basis

The application of the transfer pricing legislation is determined by the taxpayer on a self-assessment basis and they do not require the Commissioner to make a determination before they apply.

Relevant guidance

In applying Subdivisions 815-B and 815-C, the identification of "arm's length conditions" should be done in a manner so as to best achieve consistency with: (1) the 2010 OECD Guidelines; and (2) from income years commencing on or after 1 July 2016, the 2015 OECD BEPS Actions 8-10 Final Report.

Limitation period

Transfer pricing adjustments under the new rules can only be made within seven years of the original assessment. Previously there was no time limit.

Documentation requirements

While there is currently no formal legislative requirement to prepare transfer pricing documentation, taxpayers are strongly advised by the tax authority to prepare contemporaneous transfer pricing documentation, due to self-assessment regime of Australian transfer pricing legislation.

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Furthermore, taxpayers are not eligible for penalty mitigation if they do not have a "reasonably arguable position" (RAP) in connection with their transfer pricing arrangements. To have a RAP, the entity must have certain prescribed records (or documentation) that are set out in Subdivision 284-E to Schedule 1 of the Taxation Administration Act 1953 (Cth). These records need to be prepared before the time the taxpayer lodges its tax return, explain the way in which Subdivision 815-B or 815-C applies to the particular arrangement and explain why the application of the relevant subdivision in that way best achieves consistency with the OECD Guidelines and (where relevant) the BEPS Actions 8-10 Final Report.

Advanced Pricing Agreements ('APAs') and Mutual Agreement Procedure ('MAP')

APAs are viewed by the tax authority as an efficient means of resolving transfer pricing issues before they turn into disputes as they provide long-term certainty in relation to a taxpayer's International Related Party Dealings ('IRPDs'). APAs are prospective and typically cover a 3 to 5 year period. More recently, ATO has been focusing on the cost-benefit approach before accepting the taxpayer's application for an APA and all APA applicants must go through a Triage process before being accepted into the APA program.

All of Australia's DTAs have a MAP article. Taxpayer's are generally required to present their case to the tax authority of the country where they are resident and generally within 3 years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTA.

Division 13 applies to assessments in respect of the year of income in which 28 May 1981 occurred and for all subsequent years up to its date of repeal on 29 June 2013.

Country-By-Country Reporting

Australian has enacted legislation to adopt Country-by-Country ('CbC') reporting from 1 January 2016, which requires taxpayers who are "significant global entities" (SGE, i.e. part of a MNE Group with annual global income of AUD1 billion or more) to lodge with the ATO the following information within 12 months of the end of the income year:

— a Country-by-Country Report ('CbCR') showing information on the global activities of the MNE Group, including the location of its income and taxes paid. The CbCR in Australia is consistent with the BEPS Action 13 Final Report. For Australian subsidiaries or branches of foreign MNE groups, the primary obligation to lodge the CbCR can be satisfied if the UPE or surrogate parent lodges the CbCR with the revenue authority in its tax jurisdiction and that revenue authority shares the CbCR with the ATO through the MCAA or bilateral treaty arrangements;
— a master file containing an overview of the multinational's global business, its organization structure and its transfer pricing policies, which is consistent with the Action 13; and
— a(n) (Australian) local file that provides detailed information about the local taxpayer's intercompany transactions (see below).

From 1 July 2017 onwards, administrative penalties with respect to lodgments of tax documents to the ATO for SGEs have increased by a factor of 100 and the value of the Commonwealth penalty unit has also been increased from AUD180 to AUD210. These 2 factors have raised the maximum administrative penalty from AUD4,500 to AUD525,000 (for tax documents lodged late by 16 weeks) for late lodgment or failure to lodge the CbCR, Master File or Australian Local File (ALF).

The ATO might grant exemption for filing for CbCR and/or Master File upon written requests in certain specific cases.

Master and Local Files Reporting

The Master File and ALF must be lodged electronically with the ATO in an approved form within 12 months of the end of the income year. The ALF is not consistent with the OECD Local File in the Action 13 Report. The ALF must be prepared in an XML Schema format and is required to be e-filed. There are 4 parts to the ALF, which are as follows:

— ALF - General: This part serves as the notification tool for the ATO in relation to who is lodging the CbCR (which can be filed overseas) and Master File (which must be filed in Australia). All SGE taxpayers must lodge this part of the ALF.
— Short Form Local File: This part requires qualitative information regarding the Australian entity and includes details such as: organizational structure, description of business and strategy, details of business restructure (along with its significance) and transfer of intangibles (along with its significance) and list of competitors. All SGE taxpayers must lodge this part of the ALF.

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- Part A of the ALF: This part requires, which specific, granular transactional information for IRPDs, including transaction category and quantum, transfer pricing method used, level of transfer pricing documentation maintained and others. All SGE taxpayers, other than those with sufficiently small and low risk IRPDs, must lodge this part of the ALF.
- Part B of the ALF: With respect to material IRPDs, the taxpayers will also have to provide details of the method used by counterparty (if different), agreements for the IRPD, tax rulings or unilateral APAs obtained by the counterparty to the IRPD (where available) and financial accounts. All SGE taxpayers, other than those with sufficiently small and low risk IRPDs, must lodge this section of the ALF.

The ALF does not contain any transfer pricing analyses and does not replace existing Australian transfer pricing documentation rules. To mitigate (doubled) penalties, transfer pricing documentation according to existing rules will need to be maintained.

Common Reporting Standard

From 1 July 2017 onwards, Australian Financial Institutions are subject to Common Reporting Standard (‘CRS’) due diligence and reporting requirements. Australian Financial Institutions are required to collect data on non-residents’ accounts, which includes basic account information, balances, and income generated. Australian Financial Institutions will report this data to the ATO annually, and keep the relevant records for at least 5 years. The reported data will be automatically exchanged with the non-resident account holder’s home jurisdiction if that jurisdiction a member of the relevant multinational competent authority agreement or has ratified a double tax treaty or tax information exchange agreement with Australia. Likewise, Australians with non-resident financial accounts will have equivalent data automatically exchanged with the Australian government through the same process.

The first reporting period is the six months ending 31 December 2017, and reports are due to be lodged by Australian Financial Institutions on 31 July 2018. Subsequent reporting periods will be consistent with the calendar year, and must be lodged by 31 July of the following year.

This legislation is consistent with the OECD's Common Standard on Reporting and Due Diligence for Financial Account Information.

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3 Indirect Tax

Indirect Tax

Goods and Services Tax — GST

Standard Rate

The standard rate of GST in Australia is 10 percent.

Certain supplies of goods and services are 0 rated or exempt from GST.

Further Information

For more detailed information regarding GST in Australia, refer to:

KPMG's 2017 Asia Pacific Indirect Tax Country Guide

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4 Personal Taxation

Income Tax

Personal income tax is payable by individuals on an annual basis (generally the tax year ends 30 June for individuals).

The Australian Federal Budget released in May 2018 announced several proposals that would affect personal taxation, but which have not yet been enacted. These include changes to rates, brackets and offsets that would lower tax for individual taxpayers.

Top Rate

The top marginal tax rate in Australia is 45 percent (applies to income AUD180,001 onwards). Australia operates a PAYG system of deducting tax from salaries which covers both resident and non-resident employees. Tax withheld under the PAYG system is credited against the employee's tax liability for the year when it is finally assessed.

Social Security

Generally a Medicare levy of 2 percent is also imposed on the taxable income of a resident individual. The Medicare levy is not payable or is reduced where taxable income or family income is below certain thresholds.

International Social Security Agreements

Austria	Finland	Korea (Republic of)	Norway
Belgium	Germany	Latvia	Poland
Canada	Greece	Macedonia	Portugal
Chile	Hungary	Malta	Slovak Republic
Croatia	India	Macedonia	Slovenia
Cyprus	Ireland	Malta	Spain
Czech Republic	Italy	Netherlands	Switzerland
Denmark	Japan	New Zealand	United States
Estonia			

Source: Australia's Department of Human Services

Visa Requirements

Employers who wish to offer employment in Australia to foreign nationals should obtain advice on the appropriate visa requirements, based on the nature and duration of the role.

Further Information

For more detailed personal taxation information, refer to:

KPMG's Thinking Beyond Borders

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5 Other Taxes

Fringe benefits tax (FBT)

FBT is a separate tax payable by employers on the value of certain benefits that have been provided to their employees (or to associates of these employees) in respect of their employment. The tax, which is deductible in calculating the employer's taxable income, is imposed at the rate of 47 percent on the total grossed-up value of fringe benefits provided to employees or associates. The gross-up is intended to eliminate any difference in the overall tax burden on cash salary and wages versus fringe benefits.

FBT is typically levied on benefits such as employer-provided cars, free or low interest loans, free or subsidized residential accommodation or board, free or discounted goods and services, meals and expenses paid on behalf of an employee.

Stamp Duty

Each State and Territory of Australia imposes duty on certain types of transactions and instruments. Each State and Territory has its own legislation with different provisions, rates of duty and exemptions.

Transactions and instruments which are subject to duty (although this varies significantly by State) typically include those affecting:

- Land;
- Certain types of personal property, goodwill and intellectual property;
- Shares in companies and units in unit trusts;
- Insurance policies; and
- Motor vehicles.

Resource Taxes

The **Petroleum Resource Rent Tax** ('PRRT') applies to all Australian onshore and offshore petroleum projects including the North West Shelf project (but not to the Joint Petroleum Development Area in the Timor Sea) and certain coal seam gas projects. The PRRT is a profit based tax levied at 40 percent on the taxable profits derived from the petroleum project (broadly, the excess of assessable receipts over deductible expenditure and transferred exploration expenditure). State and Territory petroleum royalties may also apply to projects. The PRRT is deductible for income tax.

Property Taxes

Land tax is imposed by each State and the Australian Capital Territory. The Northern Territory does not impose land tax. Each jurisdiction has its own legislation with different provisions, rates of land tax and exemptions.

Exemptions from land tax are typically available for land used and occupied as the owner's principal place of residence or land used for primary production.

Inheritance / Gift tax

There is no death, estate, inheritance or gift duties in Australia. However, certain capital gains tax rules may apply.

Others

Superannuation guarantee scheme; wine equalization tax; fuel tax credits; luxury car tax; carbon tax.

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6 Trade & Customs

6.1 Customs

Customs Duty

All goods imported into Australia must be reported to the Australian Border Force and are subject to customs duties. Customs duty is generally calculated as an ad valorem (percentage) rate of the customs value of the goods.

Most imported goods attract a duty rate of between 0 percent -5 percent of the customs value. The exception to this is goods such as alcohol, tobacco products which have significantly higher rates of customs duty based on volume of product imported.

Excise Duty

Excise duty is levied on a number of commodities manufactured or produced in Australia. Broadly, this includes fuel and tobacco products and certain alcoholic beverages. The rates of excise duty vary between products and are based on volume of product manufactured.

6.2 Free Trade Agreements (FTA)

In Force

ASEAN — Australia — New Zealand	Korea (Republic of)	New Zealand	United States
China	Japan	Singapore	
Chile	Malaysia	Thailand	

Concluded / Signed (pending domestic ratification)

- Comprehensive and Progressive Trans-Pacific Partnership
- Peru
- Pacific Agreement on Closer Economic Relations

In Negotiation

- Regional and Comprehensive Economic Partnership
- Gulf Cooperation Council
- Hong Kong (SAR)
- India
- Indonesia
- Pacific Alliance

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7 Tax Authority

Tax Authority

Australian Taxation Office — ATO

www.ato.gov.au

Tax Audit Activity

The tax authority generally adopts a risk based approach to the selection of returns for audit. In addition, the tax authority has an ongoing compliance assurance program for the Top 100 corporate taxpayers, and a relatively streamlined program for the next 1,000 largest taxpayers. These programs are part of the tax authority's objective of enabling the community to have "justified trust" that taxpayers are paying the right amount of tax.

A typical review or audit commences with the tax authority providing a letter requesting further information or documentation. A review may end at that stage or may proceed to an audit. The tax authority will provide the taxpayer with the findings of the review in writing. After a request for information, an audit will usually proceed with an interview and sometimes a site visit by the tax authority. The tax authority will provide the taxpayer with a draft audit management plan. After conducting investigations, the tax authority may provide the taxpayer with a draft position paper and the taxpayer can provide comments which will be considered in making the final decision. The tax authority will advise the taxpayer of the final position in writing, and subsequently amend the taxpayer's tax assessment accordingly.

An amendment to a tax assessment must occur within a particular time period which depends on the type of taxpayer and the nature of the non-compliance. The tax authority expects to complete a review or short-turnaround audit within 3 months and a more complex audit within 540 days.

Appeals

A taxpayer who is dissatisfied with an assessment can object to the tax authority. The decision is reviewed by an independent member within the tax authority, not associated with the taxpayer's case. Alternatively, or following an unsuccessful objection, the taxpayer can appeal to the Administrative Appeals Tribunal or Federal Court of Australia. Differing costs and evidentiary rules generally govern the choice of forum to appeal. An appeal must be lodged within a particular time period which varies depending on the type of taxpayer.

Tax Governance

The tax authority adopts the approach that the large majority of taxpayers want to comply with their tax obligations and the tax authority provides assistance to those taxpayers to comply through volunteer programs, free software, rulings, etc. The tax authority uses a risk differentiation framework to identify those taxpayers who are unlikely to comply with their tax obligations, deterrent measures and the full force of the law are used to achieve compliance.

Current Topics for Focus by Tax Authorities

International related-party dealings, including borrowings, restructures, transfer pricing of goods and services, migration of intellectual property.

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