HALL CHADWICK

Doing Business In Australia

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**Disclaimer: The information set forth in this publication is intended only as a general overview of doing business in Australia. The information presented is not intended to constitute tax advice as to any specific case or factual circumstance. Readers having questions or requiring tax advice on specific cases or circumstances should consult a tax advisor in Australia. This guide is based on the relevant law as at April 2025 and does not reflect any subsequent changes to the legislation after this date.*

Introduction

The Federal government raised $755.8 billion through taxes in the year 2022-23. Company taxes accounted for a significant portion, totalling 19%.

Individuals' income tax is the largest source of income for the Australian government, accounting for 39%. Other notable sources of income are Goods and Services Tax (GST) (12%) and State and local taxes (19%).

This publication summaries the main tax issues which may be relevant to a foreign entity that invests in Australia, either directly through a branch or indirectly through an interest in, or ownership of, an Australian incorporated company.

Individuals seek Australian tax advice should consult one of our Hall Chadwick advisors to obtain specific Australian tax advice regarding their personal circumstances.

Australia is a party to international double tax agreements which can materially impact the taxation treatment of income streams in many different ways.

Given the high-level nature of this publication, it is likely there will be many other taxation issues affecting a particular investment in Australia not highlighted in this summary (for example, a comprehensive consideration of Australian transfer pricing issues that arise in respect of international related parties' dealings are beyond the scope of this publication).

Taxes

Different forms of direct and indirect taxes are levied by both the Federal, State and Territory Governments which include the following:

Australian Federal Government

- Income tax;
- Fringe benefits tax;
- Superannuation;
- Customs and Excise Duty; and
- GST.

State and Territory Governments

- Payroll tax;
- Land tax; and
- Duty.

Taxation of Income and Gains

The general rule for Australian residents is they are taxed on their worldwide income, which includes both foreign and domestically earned income and capital gains.

Non-residents are generally only taxed on their Australian sourced income, excluding dividends, royalties and interest which are subject to withholding tax.

Non-residents are generally not taxed on their foreign income or on any capital gains from their assets that are not taxable Australian property.

Per the above, those who are planning to enter Australia should consult Hall Chadwick to obtain specific Australian tax advice regarding their personal circumstances.

Taxation Periods and Scales

A company is an Australian resident for tax purposes if:

a. It is incorporated in Australia; or
b. Carries on business in Australia; and
   i. Has its central management and control in Australia; or
   ii. Its voting power controlled by shareholders who are residents of Australia.

The standard fiscal year for income tax purposes is the 12-month period ending 30 June.

A company may obtain approval to substitute a different accounting period ending on another date. Typically, approval is given by the ATO where a foreign parent company has a tax year ending on another date.

Companies (resident and non-resident) are taxed at a flat rate, for both ordinary income and capital gains.

Generally speaking, the corporate tax rate is 30%.

Where a foreign enterprise has a branch office (permanent establishment) in Australia, and a double taxation agreement applies, profits are taxed as if the permanent establishment were a separate enterprise dealing independently with its head office and other parties. The foreign enterprise is taxed in Australia, in relation to the profits of its permanent establishment, at the general corporate rate. Gains on CGT assets used by a permanent establishment in conducting its business are also taxed in Australia.

Business Deductions

Taxable income for both residents and non-residents is generally calculated by deducting allowable deductions from assessable income.

Typically, an accruals basis of taxation will apply to business taxpayers, but in accordance with particular taxation principles, rather than the accounting principles of the enterprise.

Deductions are available to reduce income for expenses incurred in carrying on a business, including capital allowances for depreciating assets, and tax losses from previous years, which may be carried forward to be offset in later years.

However, a distinction is drawn between revenue losses and net capital losses.

Revenue losses may be carried forward for offset against later assessable income and gains, subject to satisfying the relevant utilisation tests.

A net capital loss carried forward may be offset only against later year capital gains. Special integrity rules or restrictions apply to the prior year tax losses of companies and trusts to prevent trafficking in losses.

Capital Gains Tax (CGT)

Capital gains tax assets ("CGT assets") are subject to CGT where a CGT event occurs and a capital gain or loss is recognised.

Capital gains or losses are not recognised for CGT assets acquired before 20 September 1985.

Certain exemptions apply and there are various categories of CGT rollovers.

Double taxation is prevented by a rule that gives priority to ordinary income taxation if a transaction would otherwise be taxed under both regimes.

Capital gains (and losses) of foreign residents are only recognised in relation to certain Australian assets. The only categories of CGT assets relevant to foreign residents now are:

- Taxable Australian real property, and
- Indirect interests in Australian real property; and
- The business assets of an Australian permanent establishment; and
- Any options or rights to acquire such assets.

Indirect interests in real property are non-portfolio interests (10% or greater) in interposed entities whose assets are wholly or principally Australian real property, held directly or through other entities.

Capital gains are offset against any capital losses (current or prior year) and the net capital gain for the year is included in assessable income.

A net capital loss may be carried forward to a later tax year, but may be offset only against a capital gain in a later year.

The net capital gain of a corporate taxpayer is taxed at the general corporate tax rate.

Resident individuals may qualify for a 50% discount for assets held for at least 12 months. This discount does not apply to corporate taxpayers.

Various forms of CGT rollover relief are available. CGT rollover relief may defer or disregard a capital gain or loss with respect to a particular asset or replacement asset.

Certain rollovers facilitate corporate restructures that satisfy prescribed conditions, generally based on the economic continuity of the ownership interests held. Share for share and unit for unit exchanges, and demerger relief, are often important elements of corporate reorganisations.

A CGT withholding regime, effective from 1 July 2016, applies a 10% withholding obligation to disposals of taxable Australian real property (except residential property) by non-residents.

Australian multinational companies and their controlled foreign companies are, subject to certain conditions, entitled to CGT reduction in connection with the sale or disposal of non-portfolio (10% or more) share interests held in a foreign company with an active business.

Taxation of Business Entities

Companies

Companies (resident and non-resident) are generally taxed as separate taxpayers.

In Australia, a tax consolidation regime allows for certain 100%-owned Australian companies, partnerships and trusts to elect to be taxed for income tax purposes as a single consolidated entity.

Tax consolidation is also available for groups wholly owned by foreign parents where there is no single Australian resident holding company -- “multiple entry consolidated” (MEC) groups.

Where an election is made, all wholly-owned entities must be included in the consolidated group.

Complex rules deal with the formation of consolidated groups and the entry of new members, as well as the exit of members from the group. Tax losses in relation to a consolidated group are also governed by an elaborate regulatory regime.

The head company of a consolidated group is liable, in the first instance, for all group tax liabilities. In the event of default, however, subsidiary members may have a joint and several liability, but this may be prevented by the operation of a valid tax sharing agreement between group members that deals with the allocation of liabilities between group members.

A distinction exists for taxation purposes between private and public companies but the same general corporate rate of taxation applies to both.

How to setup a company in Australia

Choosing a relevant form of business structure that matches your business needs is essential to survive. A private company structure is most common for small business whereas a public company is apt for larger businesses intending to raise funds through public share issue. A public company must comply with ASX Listing considerations in order to be publicly listed and raise funds. Other types of companies include Not-For Profit or charitable organisations, Special Purpose Companies and Corporate Collective Investment Vehicles (CCIV).

ASIC is an independent government body which plays a regulatory role for investor protection. It lays down specific legal requirements to set up an Australian company.

To operate a company in Australia, it must be registered with ASIC.
ASIC requires the following information from companies:

- Registered office address;
- Details of directors (at least one Australian director is required); and
- Details of shareholders.

A Director Identification Number (DIN) is a unique 15-digit number issued by Australian Business Registry Services (ABRS) to directors of Australian companies, registered bodies, and foreign companies. It serves as a permanent identifier retained by directors across their directorships, regardless of any changes to their role.

A company and business name must be unique. The ASIC Connect portal allows you to check whether a particular name is available and complies with ASIC naming rules.

A company may be required to register for the following:

- Australian Business Number ("ABN");
- Tax file number ("TFN");
- Goods & Services Tax ("GST");
- Pay-as-you-go Withholding ("PAYGW"); and
- Fringe benefits tax ("FBT").

You can apply for an ABN through the Australian Business Register ("ABR"). Tax registrations are obtained via the Australian Taxation Office ("ATO").

Trusts

Generally speaking, trusts are not treated as taxpayers and, although a trust income tax return is required, distributions of trust income to beneficiaries of the trust are taxed in the hands of the beneficiaries.

The attribution managed investment trust (AMIT) legislation has established an alternative mechanism for the taxation of certain trusts. This regime operates in parallel with the conventional "present entitlement" methodology.

Under the "present entitlement" approach, the trustee may be taxed on the net tax income where there are no beneficiaries presently entitled to trust income. A trustee may also be taxed on behalf of certain beneficiaries, including non-resident beneficiaries.

Pass through or flow through taxation applies to fixed trusts, discretionary trusts and unit trusts that fully distribute trust income.

Certain corporate unit trusts and public trading trusts are, however, taxed as companies.

An alternative approach established by the AMIT legislation applies only to managed investment trusts (MITs), as defined, that make an irrevocable election into the AMIT regime. This method does not depend on the beneficiaries' "present entitlement" and there is no requirement to make a distribution to the beneficiaries. Rather, if the beneficial entitlements to the income and capital of the trust are "clearly defined", the trustee will generally not be taxable, provided there has been a "fair and reasonable" allocation of the taxable income to the beneficiaries in any given income year.

MITs are subject to certain tax rules that do not apply to other types of trusts. Importantly, MITs are subject to a specific withholding regime (at potentially concessionary withholding tax rates) that applies when distributions are made to non-residents.

Superannuation Funds

Superannuation funds, approved deposit funds and pooled superannuation trusts are subject to special taxation provisions.

Partnerships

Partnerships are subject to pass through or look through taxation treatment (i.e. the shares of partnership profit or loss is taxed in the hands of the partners), although a partnership is required to file an income tax return.

Capital gains and losses in relation to partnership interests and CGT assets of a partnership are made by the partners individually.

Certain categories of foreign hybrid limited partnerships and limited liability companies may qualify for similar partnership treatment. Limited partnerships that are "corporate limited partnerships" are, however, taxed as companies.

Joint Ventures

A joint venture is an arrangement in which each participant contributes resources to the venture and shares in the resulting outputs.

Accordingly, participants in a joint venture who receive income jointly may be subject to taxation as tax partners. In other circumstances, joint venturers who separately derive their individual shares of the joint venture proceeds are, in all respects, treated as separate taxpayers.

Dividends Paid by a Company

Under the Australian imputation system, dividends paid by Australian resident companies may be franked with an imputation credit reflecting the tax paid at the corporate level on the profits distributed. Before payment, companies determine whether dividends are wholly or partly franked, depending on the level of franking credits available.

Individual shareholders who receive franked dividends are required to include both the cash dividend and the attached franking credits in their assessable income.

The shareholder is then entitled to a tax offset equal to the franking credit that reduces or eliminates the tax payable by them on the dividend.

Individual shareholders are generally entitled to refunds where the franking offset is greater than the tax payable.

Different rules apply depending on whether dividends are paid to individuals, trusts, partnerships, superannuation funds and related entities, life assurance companies or corporate shareholders.

Companies and other corporate tax entities that receive franked dividends are required to apply the same treatment as that which applies to individuals; i.e. the franked distribution must be grossed up by the attached franking credits and included in the company's assessable income and a tax offset is applied to reduce the corporate tax payable.

Companies and other corporate tax entities are not, however, entitled to a refund for excess franking offsets (but in certain circumstances, the excess franking offsets may be converted into a carry forward tax loss). Where the recipient company is a franking entity, the franking credits provide a franking credit of an equivalent amount in the franking account of the recipient company, enabling it to similarly frank distributions made by it.

Australian dividend withholding tax is potentially payable in respect of any part of a dividend paid by a resident company to a non-resident shareholder, to the extent the dividend is unfranked.

Non-resident shareholders do not qualify for imputation credits or franking rebates, but a dividend paid to a non-resident shareholder is exempt from dividend withholding tax to the extent the dividend is franked.

Australian withholding tax is imposed on the gross amount of the unfranked dividend.

The general dividend withholding tax rate is 30% but, for dividends paid to residents of double tax treaty countries, the rate provided in the treaty applies (generally 15% or lower).

Taxation of Financial Arrangements

Generally speaking, a “financial arrangement” is an arrangement pursuant to which a taxpayer has a right to receive, or an obligation to provide, a financial benefit of a monetary nature.

Broadly, under the Australian Taxation of Financial Arrangement rules, the overall gain from a financial arrangement will be assessable and the overall loss from a financial arrangement will be deductible (subject to certain exceptions).

The gain or loss from a financial arrangement will be spread over the term of the financial arrangement in accordance with one of the methods set out in the provisions.

The rules mandatorily apply to all financial arrangements that certain taxpayers start to hold in an income year and to certain financial arrangements that are “qualifying securities”. There are a number of exceptions to the application of these rules.

Debt and Equity Classification

Shares and debt interests in companies, and debt interests in entities, are subject to debt/equity classification rules that apply for various taxation purposes.

The Debt and Equity rules include an “equity test”, for the purpose of identifying interests that are equity interests, and a “debt test” for the purpose of identifying interests that are debt interests. If a particular instrument or interest satisfies both tests, characterisation as a debt interest prevails.

An interest in a company that is not a share may nevertheless be treated as equity and an interest that has the legal form of a share may be classified as a debt interest rather than an equity interest.

The Debt and Equity rules have particular Australian income tax significance in respect of the classification of hybrid instruments, whether convertible notes or otherwise.

Classification as a debt interest or an equity interest has practical application in relation to the treatment of the return on the instrument as an amount that is either interest or a dividend for tax purposes.

Such matters impact the Australian income tax treatment of the assessability of the return of the debt interest or the equity interest:

“For example if an interest is classified as a debt interest,” the portion percentage of distributions from the debt interest is frankable, the interest expense may be deductible, thin capitalisation measures require consideration (refer below) and any interest paid to a non-resident lender may be subject to Australian interest withholding tax.

Debt Funding of an Australia Company

Interest Withholding Tax (“IWT”)

Australian interest withholding tax is typically imposed on interest paid by an Australian resident to a non-resident lender that does not have a permanent establishment in Australia.

Thin Capitalisation – from 1 July 2023

From 1 July 2023, the thin capitalisation rules impose certain limitations on deductions for interest and other debt expenses, based on a new Fixed Ratio Test (default test) and is based on a business’s earnings. An entity’s deductible interest expenses is limited to 30% of it’s “tax EBITDA”.

Prior to 2024, generally speaking, the Australian thin capitalisation rules were based on acceptable levels of debt and equity (gearing). The rules prevented excessive reliance by Australian businesses on the taxation treatment of debt funding, relative to the treatment of equity funding. After 2024, entities that are Authorised Deposit-taking Institutions are still required to consider the gearing ratio of debt and equity.

The measures apply to foreign entities investing directly in Australia (through a branch), foreign-controlled Australian entities, as well as Australian enterprises with controlled foreign investments. Where the Australian thin capitalisation rules apply, the rules disallow debt deductions that an entity can claim against Australian assessable income where the entity’s debt used to fund Australian assets exceeds the limit prescribed.

The provisions apply only where the debt deductions of an entity (with associates) are greater than $2 million.

Where a consolidated group is involved, the thin capitalisation rules apply to the head company of the consolidated or MEC group.

Taxation of Foreign Exchange Gains and Losses

A comprehensive regime applies to the taxation of foreign exchange gains and losses on transactions for most taxpayers. These measures deal with the inclusion in assessable income of gains from "forex realisation events", and allowable deductions for losses arising from a forex realisation event.

The regime also provides a general translation rule under which foreign currency denominated amounts are converted into Australian dollars, or an applicable functional currency, for tax purposes.

Royalties Payable to a Foreign Company

If royalties are paid by an Australian company to a foreign resident, the royalties will be subject to royalty withholding tax, at the general rate of 30%, but at a reduced rate (generally 5% to 15%) under an applicable double tax treaty.

Other Payments to Foreign Residents

A withholding tax regime applies to certain other categories of foreign resident payments. The object of these measures is to bring particular categories of assessable income of foreign residents outside the existing withholding tax categories, within a withholding regime.

The categories of payments to foreign resident entities are prescribed by regulations, which also set the rate of withholding. The first three categories are payments for promoting casino gaming junkets (3%), payments for entertainment and sports activities (ordinary tax rates) and payments under contracts for the construction, installation and upgrading of buildings, plant and fixtures (5%).

Transfer Pricing

International transfer pricing occurs when taxable profits are shifted outside the scope of Australian tax through the use of non-arm's length prices for goods or services passing between foreign entities and Australian entities or branches.

Australian tax may be reduced where the prices charged by a foreign parent or entity to an Australian company, or charged between an overseas head office and a local branch, are excessive, or if payments received are inadequate. Low or no-interest loans may also have the effect of redirecting profits. In certain circumstances, the Commissioner of Taxation may substitute arm's length prices for tax purposes in relation to the supply or acquisition of property or services under an international agreement

Australian taxpayers with overseas related party transactions should create contemporaneous documentation (documentation that is in place when the relevant tax return is lodged) that supports an acceptable transfer pricing methodology for related party transactions. This means that prices payable by an Australian entity or branch for goods or services acquired from a non-resident should be substantiated with documentation which demonstrates that the prices have been established on an arm's length basis, in accordance with an acceptable pricing methodology.

Multinational Tax Avoidance

Multinational tax avoidance has become a major focus area for Government. In 2015, the Federal Government introduced the Multinational Anti-Avoidance Law (MAAL). MAAL is designed to prevent multinationals from avoiding their taxable presence in Australia and is intended to ensure that they pay tax on the profits sourced from their economic activities in Australia.

MAAL only applies to "significant global entities" (foreign entities or entities which are part of a global group that have an annual global income in excess of $1 billion) where:

- A foreign entity makes certain supplies to an Australian customer;
- Activities are undertaken in Australia directly in connection with the supply;
- Some or all of those activities are undertaken by an Australian entity (or Australian permanent establishment) that is associated with or commercially dependent on the foreign entity;
- The foreign entity derives income from the supply;
- Some or all of that income is not attributable to an Australian permanent establishment of the foreign entity;
- Where it is reasonable to conclude that the arrangement is designed to secure a tax reduction; and
- That do not have sufficient economic substance.

Pillar Two

In October 2021, the Organisation for Economic Co-operation and Development ("OECD") - as part of its Base Erosion and Profit Shifting (BEPS) project - proposed a 'two-pillar' approach to tackle tax challenges arising from the digitalisation of the economy. Pillar One addresses cross-border digital transactions and reallocates taxing rights to the jurisdiction in which profits are derived, as opposed to the jurisdiction in which the multinational enterprise (MNE) is physically located. Pillar Two, also known as the Global Anti-Base Erosion (GloBE) proposal, sets a global minimum tax rate for MNEs with the objective of addressing concerns related to artificial shifting of profits to low-tax jurisdictions.

Pillar Two establishes a global minimum effective tax rate of 15% for MNE groups with over €750m $1.2 billion) in consolidated revenue. The proposed minimum tax rate is intended to discourage profit shifting and maintain a level playing field for businesses worldwide, effectively 'hitting the brakes' in the competition for corporate income tax rates.

Pillar Two consists of three interlocking rules:

1. An **Income Inclusion Rule (IIR)**, which imposes top-up tax on a parent entity in respect of the low taxed income of a constituent entity;
2. An **Undertaxed Payment Rule (UTPR)**, which denies deductions or requires an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under an IIR; and
3. A **Qualified Domestic Minimum Top-Up Tax (QDMTT)**, which will apply ahead of the IIR and UTPR to allow the local jurisdiction first priority to collect and retain all revenue from the top up tax.

On 10 December 2024, the Pillar Two rules received royal assent in Australia. The Domestic Minimum Tax (DMT) and Income Inclusion Rule (IIR) apply to income years starting on or after 1 January 2024. The Undertaxed Profits Rule will apply to income years starting on or after 1 January 2025. In-scope taxpayers will be required to file a GloBE Information Return (GIR), Australian IIR/UTPR Tax Return and Australian DMT Tax Return.

Public Country-by-Country (CBC) Reporting

To boost global financial and tax transparency, many countries, especially within the EU and OECD, are implementing or planning to implement public CBCR requirements.

From 1st July 2024 onwards, certain reporting parent companies (large MNEs) are required and encouraged to publish selected tax information (on a CBC or an aggregated basis) on an Australian government website in an approved form to the Commissioner. The Public CBC report is electronically due within 12 months after the end of the relevant reporting period unless an extension is applied to the Commissioner.

Under section 3D of the Tax Administration Act 1953 (Cth), the CBC reporting obligation will apply to an entity where all of the following conditions are satisfied:

1. The entity is either:
   - A constitutional corporation; or
   - A partnership in which each of the partners is a constitutional corporation; or
   - A trust of which each of the trustees is a constitutional corporation;
2. The entity was a country-by-country parent (as defined by s 815-375 of the ITAA97) for a period that includes the whole or part of the preceding reporting period;
3. The entity is a member of a country-by-country reporting group (as defined by s 815-380 of ITAA97) at any time during the reporting period;
4. At any point during the reporting period, they, or a member of their country-by-country reporting group, is an Australian resident or foreign resident with an Australian permanent establishment;
5. $10 million or more of their aggregated turnover (as defined by s 328-115 of ITAA97) for the income year is Australian-sourced; and
6. They are not an exempt entity or included in a class of exempt entities.

These rules require certain multinational entities to publicly disclose their approach to tax, along with key commercial details about their operations in other jurisdictions. The reporting requirements are extensive.

The explanatory materials for the bill introducing the regime explicitly state the purpose of the CBCR rules is to improve information flows to help the public, including investors, to compare entity tax disclosures, in order to better assess whether an entity's economic presence in a jurisdiction aligns with the amount of tax they pay in that jurisdiction.

In an event of a reporting error, the parent is required to provide the correct information to the Commissioner within 28 days of being aware of such material error to avoid penalties.

The goal of Public CBCR is to provide greater transparency about how MNEs allocate profits and taxes across different jurisdictions, helping to deter tax avoidance and increase accountability. This information is made publicly available, allowing governments, investors, and the public to scrutinise the tax practices of large companies.

Fringe Benefits Tax

Fringe benefits tax (FBT) is a tax liability imposed on the employer, in relation to a wide range of fringe benefits provided by the employer to an employee (for example the provision of a motor vehicle under an employment contract).

FBT is imposed on the relevant taxable amounts of the particular benefit, grossed-up under a formula intended to result in a level of tax that equates with the cash equivalent of the fringe benefit. The FBT rate applied to the grossed-up amount is 47% for the 2024-25 FBT year.

Generally, employers are entitled to income tax deductions for the cost of providing fringe benefits and the amount of FBT paid.

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

Payroll Tax

Payroll tax is a State or Territory tax levied at specified rates by reference to annual wages and salaries of employees that exceed prescribed threshold amounts in each State or Territory.

Employers are required to register with the relevant State or Territory revenue authority.

Although the taxes are similar in each State or Territory, there are differences in each jurisdiction.

State or Territory payroll tax rates range from 4.75% to 6.85%.

Payroll tax liabilities also arise in connection with the very broad rules applicable to payments to contractors, and the rules relating to the grouping of employer companies for the purposes of the aggregation of wages and salaries of group employees.

Duty

Duty is charged in all Australian States and Territories on the transfer of real property and certain of other types of property (which differs between jurisdictions).

The rates of duty vary by jurisdiction and are imposed on a sliding scale. The rates are applied to the greater of the consideration paid for the property and the value of the property that is subject to duty.

The maximum rate of transfer duty ranges between 4.5% to 7% depending on the jurisdiction.

For certain individuals who are foreign persons, a 7%–9% foreign purchaser surcharge duty applies to foreign purchasers of residential property on top of standard transfer duty.

Landholder Duty may apply at the same rates where shares in an Australian company are transferred and the company owns land in a particular State or Territory. Land is defined differently between jurisdictions and may extend to items which are not common law fixtures.

Given duty or foreign purchaser duty applies at different rates in each Australian State or Territory jurisdiction, the above summary is intended to provide a very brief overview and we recommend any business should seek specialist state tax advice prior to entering any legal agreement in respect of the acquisition of an interest or lease of real property in Australia.

Land Tax

Land tax is a State or Territory tax levied at specified rates by reference to land holdings in each State or Territory.

Land tax is payable each year on Australian land holdings. The taxing point varies across the Australian States or Territories – and may be 30 June or 31 December.

The maximum rate of land tax ranges between 2% to 3% on the unimproved value of the land, depending on the jurisdiction.

Land tax is payable based on the unimproved value of land which should be generally less than the market value of the land.

For certain individuals who are foreign persons or corporations who are not incorporated in Australia, in addition to the above land tax, an additional 1%–4% surcharge land tax may apply to land holdings.

Customs and Excise Duty

Australian customs duty is payable at the time goods enter Australia. The payment of customs duty is generally handled by an Australian customs broker who will be familiar with the Australian customs duty applicable to the relevant products, and who will deal with the Australian Customs Service for the release of the goods once duty is paid.

Customs duty is generally levied on the customs value of goods. The customs value is determined in accordance with Australian law and may not necessarily be the same as the sale price of the goods.

The precise amount of customs duty which may be payable will turn on a detailed classification of the goods for customs duty purposes by the Australian Customs Service. Excise duty is a tax imposed on certain goods (including tobacco, petroleum and alcohol) that are produced or manufactured in Australia.

Goods and Services Tax (GST)

The Australian GST is a broad-based consumption tax similar to GSTs and VATs in many jurisdictions throughout the world.

Australian GST is imposed at the standard rate of 10% on:

- The supply of goods, the supply of services, information, rights and real property; and
- The importation of certain goods.

GST on a Taxable Supply

Generally, GST will be payable where the entity makes a taxable supply. You make a taxable supply if:

a. You make the supply for consideration; and
b. The supply is made in the course or furtherance of an enterprise that you carry on; and
c. The supply is connected with the indirect tax zone; and
d. You are registered, or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST - free or input taxed.

The GST payable on the taxable supply will be calculated as 1/11th of the total consideration that the entity receives for making the taxable supply (for example, in relation to a $1,100 sale price for services, the GST liability on the taxable supply is $100). Generally, the GST on a taxable supply must be paid to the ATO by the entity making the taxable supply.

There are a number of exceptions, including GST-free supplies (e.g. sale of a going concern), input taxed supplies (e.g. financial supplies), supplies that are "reverse charged" and supplies made to non-residents.

An entity is not liable to remit GST on supplies it makes that are not "connected with the ITZ". In certain circumstances, however, GST on supplies that are not "connected with the ITZ", but are made to registered recipients in Australia, may be "reverse charged" to the recipient.

In certain cases, an entity that acquires a taxable supply may be entitled to claim an input tax credit for the GST included in the price of that acquisition.

An input tax credit will be available where the entity makes a creditable acquisition. You make a creditable acquisition if:

a. You acquire anything solely or partly for a creditable purpose; and
b. The supply of the thing to you is a taxable supply; and
c. You provide, or are liable to provide, consideration for the supply; and
d. You are registered, or required to be registered.

You acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise. However, you do not acquire a thing for a creditable purpose to the extent that the acquisition relates to making supplies that would be input taxed, or the acquisition is of a private or domestic nature.

Generally speaking, registered entities remit the GST liabilities for their supplies to the ATO on a monthly or quarterly basis and it is reported in their BAS. At the same time, registered entities may claim back from the ATO any input tax credits for the GST included in the price of their business purchases.

From 2017, GST applies to sales made by businesses outside Australia to Australian consumers who purchase imported services, digital services and digital products. Under these rules, foreign suppliers exceeding the GST registration turnover threshold will be required to register for GST in Australia and remit GST on such digital/intangible supplies, although in some circumstances the responsibility for the GST liability may be shifted to the operator of an "electronic distribution platform" (e.g. an online store or portal).

Some supplies are classified as zero-rated or "GST-free" (including certain health, food and education supplies, exports and sales of businesses as going concerns).

No GST is payable on GST-free supplies. Most exports of goods or services from Australia will be GST-free. GST-free treatment may also apply to certain supplies relating to international transport (of both people and goods).

Other supplies may be exempt from GST or "input taxed" (including those relating to financial services (but not general insurance), and the sale or leasing of existing residential property).

No GST is payable on "input taxed" supplies. An entity will, however, generally be precluded from claiming an input tax credit for any acquisition it makes that relates to making "input taxed" supplies.

GST on Imports

An entity will make a "taxable importation" and be liable to pay GST where it imports goods into the ITZ and "enters those goods for home consumption"; i.e. it identifies itself as the "owner" of the goods to Australian Customs.

In most cases, registered importers are entitled to recover an input tax credit for a taxable importation equal to the GST liability. Where a foreign company exports goods to Australia and does not expect to register or be required to be registered for Australian GST purposes, care should be taken to ensure that the person who enters the goods for home consumption is entitled to this input tax credit.

From 2018, a non-resident business that sells goods into Australia with a customs value of $1,000 or less, GST applies to the sale and the vendor will have to collect the GST from the purchaser and send the GST to the ATO.

Alternative Arrangements for GST

In certain circumstances, various arrangements can be made to significantly reduce the compliance burden of GST on foreign companies. In particular, it may be possible to eliminate the need for a foreign company to:

- Register for Australian GST purposes;
- Meet the compliance obligations associated with any GST liability;
- Be exposed to an additional creditor risk in respect of GST.

For example, provided certain conditions are met, where a non-resident not carrying on an enterprise in Australia makes a taxable supply, the non-resident supplier and the Australian recipient of that supply may agree that the GST on that taxable supply will be "reverse charged" to the Australian recipient.

In these circumstances, the Australian recipient will only need to pay an amount to the ATO if the GST on that supply is greater than the input tax credit to which it is entitled for its acquisition. Such agreements can be very beneficial to non-resident suppliers. Other arrangements relate to the terms on which goods that are imported will be delivered.

CONTACT US

Reach out to one of Hall Chadwick's Corporate Tax experts to discuss your business's unique circumstances and the complexities of doing business in Australia.

Rick Hopkins
Director - Taxation
+ 61 8 9426 0666
rhopkins@hallchawickwa.com.au

Jason Chute
Senior Analyst - Corporate Tax
+ 61 8 9426 0666
jchute@hallchawickwa.com.au

Shana Soares
Senior Analyst - Corporate Tax
+ 61 8 9426 0666
ssoares@hallchawickwa.com.au

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