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Australia Tax Profile

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1 Corporate Income Tax

Corporate Income Tax	Corporate income tax.
Tax Rate	30 percent generally. Special rates apply to life insurance companies, non-profit companies and credit unions. In the 2014 Federal Budget, it was proposed that the corporate tax rate will be reduced to 28.5 percent from 1 July 2015. However, companies would be subject to a new paid parental scheme levy of 1.5 percent of taxable income in excess of AUD 5m. The corresponding legislation has not yet been enacted as at July 2014.
Residence	A company is regarded as a resident of Australia if it is incorporated in Australia, or if not incorporated in Australia but carrying on a business in Australia, and has either its central management and control in Australia or its voting power controlled by shareholders who are residents of Australia. As a general proposition, a resident company is liable to income tax on its worldwide income and capital gains. A non-resident company is only liable to income tax in Australia on 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'.
Compliance requirements	Companies are required to self-assess their tax obligations and income tax liability. An annual 'tax return' must be lodged by 15 January for companies with a 30 June year-end. 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. Income tax liability is collected throughout the year under a Pay-As-You-Go (PAYG) system. Companies with a 30 June year-end are required to pay quarterly instalments on 21 October, 21 January, 21 April and 21 July. The instalment amount is based on the company's previous year's income tax liability. A final payment is required by 1 December. From 1 January 2014, corporate tax entities with annual instalment income of at least AUD 1 billion will be required to make monthly PAYG instalments. This requirement will be gradually phased in by 1 January 2017 for all taxpayers in the PAYG instalment system that meet or exceed an AUD 20 million annual instalment income threshold.
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.

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. certain publicly offered debenture issues). 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.

Holding rules

Dividends received by a resident company from non-resident companies will be treated as non-assessable, non-exempt income if a non-portfolio (>10 percent) interest is held in the non-resident company. There is a proposed change for this foreign dividend exemption, which will apply to distributions and non-share dividends made after the day of Royal Assent of the legislative bill. According to the proposal, dividends received by a resident corporate tax entity that holds a participation interest of at least 10 percent in a non-resident company will be non-assessable, non-exempt income. This exemption will only apply to equity dividend distributions, and excludes debt interests such as redeemable preference shares. The corresponding legislation has not yet been enacted as at July 2014.

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.

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’. A capital gains tax asset is defined widely as any kind of property or legal or equitable right that is not property 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 ‘taxable Australian property’. Broadly, ‘taxable Australian property’ constitutes land and buildings in Australia and assets used in carrying on a business through a permanent establishment in Australia.

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.

Tax Losses

Generally, tax losses may be carried forward indefinitely and be offset against assessable 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 a same business test (SBT). Companies may choose the amount of prior year tax losses to be deducted in a particular year.

From 1 July 2013, revenue losses incurred in 2012-13 can be carried back and offset against tax paid in 2011-12. For 2013-14 and later years, tax losses can be carried back and offset against tax paid up to two years earlier. Loss carry-back is only available to resident companies and subject to a maximum of AUD 1 million losses per year. The loss carry-back is proposed to be repealed from the 2013-14 income year onwards. The corresponding legislation has not yet been enacted as at July 2014.

Tax Consolidation / Group relief

Australia has a system of consolidated income taxation (tax consolidation) for entities within a wholly owned group. 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.

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. 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 all Australian jurisdictions. Exemptions for GST may be available in certain circumstances such as for supplies of "going concerns".

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 five 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 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.

Transfer Pricing

The Commissioner has the power to review the pricing of international transactions between parties (in some cases, whether related or not) for tax purposes and:

- For international transactions between parties whether related or not – apply the arm’s length consideration where the consideration for the supply or acquisition of property (including services) is either less than (in the case of revenue), or greater than (in the case of expenses), the arm’s length consideration; and
- For international transactions with related parties situated in countries with which Australia has concluded a DTA – make transfer pricing adjustments where the actual profits (as opposed to consideration) are less than the arm’s length profits due to non-arm’s length conditions existing between the parties.

Under Australia’s transfer pricing regime, there is no requirement for the Commissioner to find a motive of tax avoidance.

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. In transfer pricing disputes with the tax authority, appropriate documentation assists in substantiating the taxpayer's position and mitigating the risk of penalties on adjustments.

New transfer pricing rules were enacted and came into effect for income years starting on or after 1 July 2013. The new rules enable the Commissioner to make transfer pricing adjustments where the actual profits are less than the arm’s length profits due to non-arm’s length conditions existing between the parties.

Under the new legislation:

- Taxpayers are required to self-assess their tax position with respect to transfer pricing;
- The Commissioner is given broad powers to reconstruct actual transactions in cases where the economic substance of an international transactions differs from its legal form and where independent parties acting independently would have entered into differently structured transactions

One method to comply with the self-assessment obligation is to prepare transfer pricing documentation - which documents how the new rules apply to the taxpayer’s business and quantify any required profit adjustments.

In addition, taxpayers that do not prepare their transfer pricing documentation prior to filing their tax returns may be deemed not to have a “reasonably arguable position” and thus may be subject to increased penalties.

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

Advance Pricing Agreements (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. APAs are prospective and typically cover a three to five year period.

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

Thin Capitalisation

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 control foreign operations (i.e. outbound investors). These rules may limit interest deductions and other costs associated with debt funding to the extent that certain prescribed gearing limits are breached.

Generally, the safe harbour limit to debt funding imposed on an Australian entity is 3:1 debt-to-equity ratio, however the exact threshold will depend on the type of entity in question (i.e. financial/non-financial entity). The ratio is proposed to be reduced to 1.5:1 for income years commencing on or after 1 July 2014. The corresponding legislation has not yet been enacted as at July 2014.

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

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.

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 (eg. 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.

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.

Intellectual Property Incentives

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

R&D Incentives

A new R&D tax incentive regime replaced the R&D tax concession for income years commencing on or after 1 July 2011. The R&D tax incentive provides the following benefits:

- 45 percent refundable tax credit for companies with a group turnover less than AUD 20 million per annum. If such companies are in a tax loss position they will be able to 'cash out' the R&D tax credit.
- 40 percent non-refundable tax credit for companies with a group turnover in excess of AUD 20 million per annum.

Special grouping rules apply for R&D tax incentive purposes.

It has been proposed that entities with turnover exceeding AUD 20 billion will lose the entitlement to the incentive from 1 July 2013. In the 2014 Federal Budget, it was proposed that the R&D tax incentive will be reduced by 1.5 percentage points from 1 July 2014, to match the cut in the corporate tax rate to 28.5 percent which is scheduled to come into effect 12 months later. These measures have not yet been enacted as at July 2014.

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; and
- Regional financial services centres.

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.
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. Trusts are typically taxed at the hands of the beneficiaries, with the exception of public trading trusts and corporate unit trusts, which will be taxed as a company. Specific rules apply to international hybrid entities. 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 becoming a foreign hybrid entity.
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.
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 for holding activities. Partnerships can be utilised however this is only in specific commercial situations. There are no capital requirements or other local requirements for establishing a legal entity in Australia. There are no foreign exchange control rules in Australia.

2 Income Tax Treaties for the Avoidance of Double Taxation

In Force	Argentina	Germany	Mexico	South Africa
	Austria	Hungary	The Netherlands	Spain
	Belgium	India	New Zealand	Sri Lanka
	Canada	Indonesia	Norway	Sweden
	Chile	Ireland	Papua New Guinea	Switzerland
	China	Italy	Philippines	Taiwan
	Czech Republic	Japan	Poland	Thailand
	Denmark	Kiribati	Romania	Turkey
	Fiji	Korea (Republic of)	Russian Federation	United Kingdom
	Finland	Malaysia	Singapore	United States
	France	Malta	Slovak Republic	Vietnam
	Source: Australia's Treasury			
Negotiated, not yet in force at time of publication	New treaties or amendment protocols have been negotiated with Belgium and Switzerland but are not in force yet as at July 2014.			

3 Indirect Tax e.g. VAT/GST

Indirect Tax(es)	Goods and Services Tax (GST)
Standard Rate	The standard rate of GST in Australia is 10 percent. Certain supplies of goods and services are zero-rated or exempt from GST.
Further information	For more detailed information regarding GST in Australia, refer to: KPMG's VAT/GST essentials

4 Personal taxation

Income Tax	Personal income tax
Top Rate	The top marginal tax rate in Australia is 45 percent (applies to income AUD 180,001 onwards). From 1 July 2014 until 30 June 2017, a temporary Budget Repair Levy of 2 percent applies to personal income in excess of AUD 180,000. Australia operates a pay-as-you-go (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.
Further information	For more detailed personal taxation information, refer to: KPMG's Thinking Beyond Borders

International Social Security Agreements

Australia has agreed Social Security Treaties with:

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

Source: Australia's Department of Human Services

5 Other Taxes

Fringe benefit 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 46.5 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.

Customs duty

All goods imported into Australia must be reported to the Australian Customs and Border Protection Service (Customs) 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, textiles, clothing and footwear which have significantly higher rates of customs duty.

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.

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) has applied to offshore petroleum projects except for the North West Shelf project and the Joint Petroleum Development Area since 1987. From 1 July 2012, the PRRT regime was expanded to apply 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 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.

The **Minerals Resource Rent Tax** (MRRT) is a project based tax and applies from 1 July 2012 to new and existing iron ore and coal projects in Australia. The MRRT has a headline rate of 30 percent but is imposed at an effective rate of 22.5 percent. A MRRT liability will exist for a project where mining profit (mining revenue less mining expenditure, at the valuation point) exceeds MRRT allowances. MRRT allowances effectively reduce MRRT payable and, in broad terms, arise in relation to prior year or transferred losses, State and Territory mining royalties paid and from the starting base for a project - which essentially recognises past investment in the project. Where group mining profits are less than AUD 75 million no MRRT liability arises. The MRRT is deductible for income tax. A number of issues need to be considered in assessing the impact of the MRRT including project definition, determining the starting base (market value vs book value), determining appropriate valuation points and valuation methods, transfer pricing analysis in valuing the resource at the valuation point and deductibility of mining expenditure, as well as ensuring appropriate due diligence is undertaken when acquiring mining projects subject to MRRT.

The MRRT is proposed to be repealed from 1 July 2014. The corresponding legislation has not yet been enacted as at July 2014.

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 equalisation tax; fuel tax credits; luxury car tax; carbon tax.

6 Free Trade Agreements (FTA)

In Force FTAs

- ASEAN - Australia-New Zealand
- Chile
- Malaysia
- New Zealand
- Singapore
- Thailand
- United States

Under negotiation / concluded or signed but not yet in force

- China
- Gulf Cooperation Council (GCC)
- India
- Indonesia
- Japan
- Korea
- Pacific Agreement on Closer Economic Relations (PACER) Plus
- Regional Comprehensive Economic Partnership
- Trade in Services Agreement
- Trans-Pacific Partnership Agreement

Source: Australia's Department of Foreign Affairs and Trade

7 Tax Authority

Tax Authority

Australian Taxation Office (ATO)

Link to Australian Tax Office Website

Tax audit activity

The tax authority primarily adopts a risk based approach to the selection of returns for audit. Returns are selected for audit on the basis of data matching; industry benchmarks; statistical sampling and/or risk reviews (including tax advisor risk). The tax authority generally conducts specific issue audits and only a small number of comprehensive audits are conducted each year.

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 interview. 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 will 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.

A review or audit must commence 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 three 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 courts through 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 and deterrent measures and the full force of the law are used to achieve compliance.

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