



# **Commencing Business in Australia**

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Whether you have made the decision to target the local market, are looking for a base to expand into the Asian Pacific market or want a change of lifestyle, Australia is widely recognised as an excellent country to do business in.

Lotus Accountants's has been providing advice to foreign start-up operations for many years and we have outlined in this document some of the key issues to consider when starting a business in Australia.

These include the following:-

- Understanding the Australian market (How are we different than your current market?)
- Commercial viability (Are you likely to make money?)
- Foreign investment guidelines (What rules are there for investing?)
- Immigration of key personnel involved in the business (Can your key people work here?)
- Business structure (What entity are you going to operate from?)
- Compliance with local laws including:-
  - Corporations Act 2001
  - Income Tax Assessment Act 1997
  - Industrial Relations Law
- Repatriation of profits (The presumption is you do make money so how are you going to get it home tax effectively?)

Our aim by compiling this information is to minimise your expenses in gaining an understanding of the so-called "basics" of Australian business so that your time and money are able to be better spent in establishing a successful business. We also hope that by including a few Aussie colloquial terms that you won't "stick out like a sore thumb!"



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## **Summary checklist**

### **Start up**

- **Register with Australian Securities and Investments Commission**

Business name

Decide on shareholding

Decide on company directors including the requirement for a local Australian director

Australian Company Number (ACN) – Proprietary Company/ subsidiary

Australian Registered Business Number (ARBN) – Branch

Apply for Audit relief if eligible

- **Register a .au domain name**

- **Register with Australian Taxation Office**

ABN

TFN

FBT

GST

PAYGW

PAYGI

BAS

IAS

Adopt a Substituted Accounting Period

- **Apply for State based taxes**

Payroll Tax

Land Tax

- **Ensure adequate insurance cover**

Workers Compensation

Business Insurance

Professional Indemnity

- **Open a bank account**

100 point ID check for signatories

- **Locate premises**

Funds for Rental Bond

## **Ongoing Compliance**

- **Australian Securities and Investments Commission**

Company Statement  
Annual application for Audit relief if eligible  
Notification of Change of Details  
Registered Office  
Proper Accounting Records

- **Australian Taxation Office**

Income Tax Return  
International Dealings Schedule  
Transfer Pricing and Thin Capitalisation Documentation  
Franking Account  
Dividend Statements  
Capital Allowance Schedule  
Research and Development Claim  
PAYG Withholding Summary Statement  
FBT Return  
Issuing Payment Summaries to Payees (Employees and Other Workers)  
Comply with Superannuation Guarantee Requirements - Quarterly  
Quarterly or Monthly BAS or IAS

- **Office of State Revenue**

Annual Payroll Tax Summary  
Land Tax Reconciliation and Reporting

- **Insurance**

Review Level of Coverage for Growth in Business  
Workers Compensation Audit or Review

## **Understanding the Australian Market**

Australia is considered a “cool” place to “hang out” around the “barbie” on a “stinkin” hot summer’s day. Locals head to the beach, have picnics, “get boozed”, “play footy” or stay indoors to keep away from the direct heat of the sun.

We like to think we have a “she’ll be right” attitude however in reality we need to “get real” and consider the facts. We are a young nation of 21 million people, living on the smallest continent in the world that is only slightly smaller than the United States mainland which supports a population of 304 million people.

Around 24% of Australia’s residents were born overseas resulting in a multicultural mix of religious denominations, specialised media, education and of course cuisine. Whilst the national language is a poor version of the Queen’s English we have a multilingual multi-skilled work force that makes Australia a convenient base for companies seeking to enter into other Asian markets.

A little known fact that will be extremely surprising for anyone who has met an Aussie backpacker compared to Australians in other countries is that they are not very heavy drinkers. The average Australian drinks 7% less alcohol than the average Briton, 25% less than the average German and 35% less than the average Irish person.

Why is the above fact important?

Because whilst we don’t have statistics to prove this a lot of Australian business deals are done over a drink or two at lunch, on the golf course or in a bar on a Friday night.

## **Commercial Viability**

We recently had a client with a huge successful presence in the US market start their restaurant chain here in Australia. They pulled out within three years because they hadn't thoroughly understood the difference in the Australian psyche. Starbucks is another example making the decision to close 61 of its 84 Australian stores. The American company admitting it had struggled in Australia's "very sophisticated coffee culture"

### ***How do you determine "Commercial Viability"?***

It is generally considered that there are three broad areas you should consider when deciding whether your product or services has the prospects for commercial success:-

- 1) The Market and your Potential Customers
- 2) The Idea and the Product or Service
- 3) Revenue, Finance and Skill needs

There are research companies and internet sites that will provide in-depth assistance and questionnaires for considering the above areas.

One last example: Fox Studios was relying on "Australia" being a hit in the US and the UK but weren't expecting it to do that well in Australia. With all the resources behind them they still couldn't get it right with the movie only taking USD 44.3 million in tickets sales in North America after five weekends. Its budget was USD 130 million. In Australia it has become the second highest grossing Australian film of all time.

However, sometimes you just have to "suck it and see"



## **Foreign Investment Guidelines**

The Australian Government welcomes foreign investment. It has helped build Australia's economy and will continue to enhance the wellbeing of Australians by supporting economic growth and prosperity.

Companies operating in Australia and Australian companies operating overseas are expected to act in accordance with the principles set out in the OECD Guidelines.

The Foreign Investment Review Board (the FIRB) examines proposals by foreign persons to invest in Australia and makes recommendations to the Treasurer on those subject to the *Foreign Acquisitions and Takeovers Act 1975* and Australia's foreign investment policy.

### **9 May 2017 changes**

If you are thinking of moving to Australia and buying property it is vitally important that you understand and comply with Australia's foreign investment framework as strict criminal and civil penalties may apply for breaches of the law, including disposal orders.

Current information can be found at [www.firb.gov.au](http://www.firb.gov.au) and is copied below as at 30 November 2017.

### **Monetary thresholds**

One of the tests in determining whether an action is a significant action under the [\*Foreign Acquisitions and Takeovers Act 2015\*](#) is whether the monetary screening threshold test is met.

Monetary screening thresholds are met when either the amount paid for an interest or the value of an entity or asset exceeds the threshold amount, depending on the type of action. The exception is for agricultural land, where the test is cumulative.

Monetary screening thresholds are indexed annually on 1 January using the GDP implicit price deflator (except for the \$15 million agricultural land threshold and the \$50 million land threshold for Singapore and Thailand investors, which are not indexed).

As the GDP implicit price deflator did not increase this year, the monetary thresholds in the table below will remain in place in 2017.

See the following for current threshold information <http://firb.gov.au/exemption-thresholds/monetary-thresholds/>

## **Immigration of key personnel involved in the business**

You would be “stark raving mad” if you sent some of your key people in your current business over 10,000 miles away to a totally different time zone to set up a business in a country they know little about if you didn’t ensure that they personally had very few migration “hassles”.

Whilst you do not need to use one, Registered Migration Agents assist with the visa and immigration process. They are required to have a sound knowledge of migration law and practice and abide by a Code of Conduct.

The following link to the Department of Immigration and Citizenship website [www.border.gov.au](http://www.border.gov.au) provides useful information for people moving to Australia.

Once your personnel have the required visa they will also need to attend to the following administrative matters:-

- 1) Apply for a personal Tax File Number
- 2) Register with Medicare or obtain a Medicare Levy exemption certificate if applicable
- 3) Consider the need for obtaining Private Health Insurance
- 4) Open a bank account
- 5) Enroll any children in school
- 6) Apply for a driver’s license
- 7) Find a place to live
- 8) Negotiate their salary package – consider their net income in the home country and equalise the salary paid from here

## **Business Structure**

Before paying for setting up an Australian legal entity, first you will need to consider whether you as the foreign investor carrying on business in Australia will have a sufficient level of presence in Australia to be treated as having a Permanent Establishment (PE).

The term "Permanent Establishment" generally means a place at or through which a person carries on any business. The facts for each investor will need to be reviewed and any tax advice required should be obtained.

If it is determined that they do have a PE, the business must operate through a recognised structure of some sort. The two most common structures are for the foreign company to operate through a branch or a subsidiary in Australia.

## **Branch or Subsidiary**

The following tables provide a comparison of the main taxation implications of adopting a branch or subsidiary structure and a broad summary of the corporate regulations governing each structure.

## Comparison of Taxation Issues

Branch	Subsidiary
<p><i>How is it Taxed in Australia?</i></p> <p>Subject to Australian income tax on income sourced in Australia (apart from income with tax withheld)</p>	<p>Subject to Australian income tax on world wide income.</p>
<p><i>Applicable Rate of Australian Tax?</i></p> <p>Corporate tax rate is 27.5 or 30% depending on aggregated turnover</p>	<p>Corporate tax rate is 27.5 or 30% depending on aggregated turnover</p>
<p><i>How are Repatriated Profits Taxed?</i></p> <p>Distribution of profit does not constitute a dividend therefore no withholding tax applicable.</p>	<p>Distribution of profit will constitute a dividend; however withholding tax will only apply if paid out of untaxed profits.</p>
<p><i>How are Losses Treated?</i></p> <p>Available to carry forward indefinitely, provided continuous ownership or same business.</p> <p>Unavailable for offset against profits of related Australian entities.</p>	<p>Available to carry forward indefinitely, provided continuous ownership or same business.</p> <p>Available for offset against profits of resident Australian companies in consolidated group.</p>
<p><i>How are Capital Gains Treated?</i></p> <p>Assets defined as having a "necessary connection to Australia" acquired after 19 September 1985, are subject to Capital Gains Tax provisions. This will include the assets of the branch.</p>	<p>Assets, wherever located, acquired (or deemed acquired) after 19 September 1985, are subject to Capital Gains Tax provisions.</p>

## Comparison of Corporate Regulations

Branch	Subsidiary
Parent Company must register as a foreign corporation carrying on business in Australia.	Must register as an Australian company.
Australian Registered Body number (ARBN). Parent company must lodge the prescribed Australian Securities Investment Commission (ASIC) Form 402 to obtain an ARBN.	Australian Company Number (ACN). Must lodge ASIC Form 201 in order to obtain ACN.
Registration of Body's name. To register a business name the foreign corporation must lodge an ASIC Form 410.	Registration of Company Name. The company may register its name through an ASIC form 201, or reserve a name for up to two months Form 410.
No additional shareholders.	Shareholders (Minimum one).
Officers: No additional officers required. Appointment of local agent required.	Officers: Minimum 1 director and 1 secretary who are a resident of Australia.
Company statement required. ASIC Form 406.	Company statement required for subsidiary.
Liability extends to foreign operation.	Liability is generally limited to the Australian subsidiary.
Worldwide accounts for the company of which the Australian branch is a part, must be lodged for public access in Australia.	For small companies, no accounts need to be lodged, provided appropriate elections are made at the appropriate times.
Statutory audit: A statutory audit is not required for a Branch. <b>NB:</b> The annual accounts of the foreign company must be lodged with the annual return (as discussed above).	Statutory audit: The foreign controlled company is required to prepare and lodge audited accounts, unless it takes advantage of an exemption and lodges an ASIC Form 384 in the three month period prior to commencement of the financial year to be audited, or three months after incorporation.

## **Comparison Summary**

In general terms, the income tax treatment of both of these structures is substantially similar. At present, the choice of branch or subsidiary is generally decided on the basis of other commercial factors. Such factors may include legal liability, compliance requirements with the Australian Securities and Investments Commission and compliance costs on establishment.

In general terms, the financial reporting requirements of these structures' statutory reporting requirements for a proprietary company depend on whether the company is classified as large or small and whether it is foreign controlled or not. If an Australian company is foreign controlled and is classified as small, it would be required to prepare and lodge audited accounts with the Australian Securities and Investments Commission (ASIC), unless it takes advantage of a Class Order exemption (lodging a Form 384 in the three month period prior to commencement of the financial year to be audited, or within three months after incorporation).

A statutory audit is not required for a branch. The branch is, however, required to review its company statement each year together with the consolidated financial statements of the foreign company. The financial statements must include the financial results of the branch.

## **Incorporating a Company in Australia**

Companies are usually acquired 'off the shelf' with a standardised Constitution, which can be easily amended as required. A company can be acquired in two days and initial tax registrations completed within a few weeks (the company can normally trade whilst these registrations are progressing).

### **What to Do**

Ask us for a Company Order Form' which sets out all the information required to incorporate a company in Australia.

Please complete the information and return it to us and provided there are no conflict issues with the name required it will be completed within 24 hours.

### **Hints**

Use the search facility on the website of the Australian Securities & Investments Commission to see whether the proposed name is being used or similar to an existing one. The website is [www.asic.gov.au](http://www.asic.gov.au)

A proprietary limited company in Australia must have at least one resident director and one resident company secretary. NB: It can be the same person.

A public company must have at least three directors, two of which are required to be residents of Australia. A public company must also have a company secretary, who is a resident of Australia.

A public officer should also be appointed as the person responsible to the Australian Taxation Office for the company's affairs. Such a person should also be a resident of Australia.

Once the company has been incorporated it is important to ensure all the necessary minutes, resolutions, consents and documents have been signed and either lodged with the appropriate authority or filed in the company register.

We charge an annual fee of \$400 for the use of our office as the registered office / principal place of business. This excludes payment of the annual ASIC filing fee of \$243.

We are able to recommend a resident director, company secretary and public officer (subject to independence and risk considerations) if required. See Appendix 8 for a list of retired partners and independent business people who can provide office holder services.

## Registering a Branch in Australia

A foreign company that carries on business through a branch is required to register as a foreign company with the Australian Securities & Investments Commission, upon which it will be issued an Australian Registered Body Number (ARBN). The branch can normally trade whilst registration is progressing. Significantly more documentation and information is required for the establishment of a branch, as compared to the establishment of a company.

### Documentation Required

- A certified copy of the current Certificate of Incorporation or Registration, or equivalent document.

This certification must be by the respective Government Body responsible for company registrations and must not be certified more than three months before it is lodged with ASIC.

- A certified copy of the company's constitution (or its equivalent) in English.

This can be certified by the company secretary or director, or by Affidavit.

- **NB:** Where a foreign company applying for registration under the Act does not have a constitution, ASIC will accept a letter from its equivalent in that company's place of incorporation stating that the company is not governed by, or is not required to have, its own written constitution.
- If the list of directors on the application form includes directors who are: resident in Australia; and members of a local board of directors, you must lodge a memorandum executed by or on behalf of the foreign company stating the powers of those directors.
- A memorandum of appointment of the local agent or power of attorney in favour of the local agent.

This document must be executed by or on behalf of the foreign company and state the name and address of the local agent, who is:

- A natural person or company;
- Resident in Australia; and
- Is authorised to accept, on behalf of the foreign company, service of process and notices.

**NB:** Any document not in English must be translated into English and certified in writing to be a correct translation.

See <http://asic.gov.au/for-business/registering-a-company/steps-to-register-a-company/foreign-companies/> for further details.



## **Taxation Obligations**

### **Taxation Administration – Federal**

An entity conducting business in Australia will need to apply to the Australian Taxation Office (ATO) for an Australian Business Number (ABN). Depending on the domicile of the entity there may also be a need to obtain a Tax File Number (TFN)

### **Goods and Services Tax**

The GST is a broad based consumption tax imposed at the rate of 10% on the supply of most goods and services consumed in Australia. As the legislation regarding GST is complex and continually evolving, it would be prudent for us to review the impact of the GST on specific transactions within your business.

A review of all current and future contractual arrangements may be undertaken. We can also assist in ensuring all income and expenses are appropriately treated for GST purposes to minimise the administration of accounting for and reporting the GST.

### **Business Activity Statements**

The business will need to complete and lodge a Business Activity Statement (BAS) with the ATO monthly or quarterly depending on cashflow, size of activities and type of business. The BAS amalgamates all your tax obligations for the relevant period and will be the means by which you make payments to the ATO and claim back the GST component of any business expenses. The BAS reporting requirements are quite onerous in terms of timing (each BAS is due 21 days after month end or 28 days for quarterly statements). We can assist in preparing the monthly BAS and ensure lodgement by the due dates.

### **Income Tax Return**

An entity conducting business in Australia is generally required to lodge an income tax return in Australia for each financial year. The lodgement date for the income tax return is dependent on the size of the entity's actual or expected income tax liability.

The standard annual balance date for Australian entities for income taxation purposes is 30 June. There are provisions however under the Australian taxation system to apply for a Substituted Accounting Period (SAP) on the grounds that the parent entity has a balance date other than 30 June. Should you wish to apply for an annual balance date other than 30 June, we can facilitate the application process with the ATO on your behalf.

### **Fringe Benefits Tax**

Fringe Benefits Tax (FBT) is payable by an employer where certain benefits are provided to employees such as motor vehicles, car parking, entertainment and expense payments. A "benefit" is widely defined to include any right (including any property, right, privilege, service or facility.)

Accordingly, you may need to register for FBT and prepare an annual FBT return for the year ending 31 March each year. We can assist you by preparing the annual FBT return on your behalf if required.

## **Taxation Administration - State**

### **Stamp Duty**

Stamp Duty is a tax imposed by each Australian State or Territory. Depending on the particular head of duty, Stamp Duty is charged either at a fixed rate or on an increasing scale having regard to the value of the property or the consideration (whichever is greater).

### **Land Tax**

Land tax is an annual State tax based on the "ownership" of land, and in some States on the usage of land. Broadly, land tax is levied on the unimproved value of land held by the owner at a specified date.

### **Payroll Tax**

Payroll tax is a State based tax payable by an employer whose total salaries and wages exceed a specified threshold. The payroll tax rate and the threshold vary from State to State. If you employ persons in different States it may be necessary to register in each State and report pay-roll tax accordingly.

Where one employer is related to another employer and certain other conditions are satisfied, the two employers may be grouped for payroll tax purposes; such that payroll tax is calculated on the aggregate amount of wages paid by the group employers and the general exemption may be claimed only once, by the nominated member of the group.

### **NSW rates**

- From 1 July 2017 to 30 June 2018 is \$750,000.

The rate of payroll tax is 5.45%

### **Monthly threshold**

- 28 days = \$57,534
- 30 days = \$61,644
- 31 days = \$63,699

Each monthly payment or 'nil' remittance is due seven days after the end of each month or the next business day if the seventh day is a weekend or public holiday (i.e. August payment is due by 7 September). The annual reconciliation and payment or 'nil' remittance is due by 21 July.

## **Other Tax Considerations**

### **Thin Capitalisation**

The thin capitalisation rules affect both Australian and foreign entities that have multinational investments. This means they apply to:

Australian entities with specified overseas investments - these entities are called outward investing entities  
foreign entities with certain investments in Australia, regardless of whether they hold the investments directly or through Australian entities - these entities are called inward investing entities.

There are two threshold tests that ensure entities with relatively small debt deductions or small overseas investments are not subject to the thin capitalisation rules. There is also a third test for certain entities established to manage certain risks.

You will not be affected by the thin capitalisation rules for any given income year if you satisfy one of the following tests:

- you are an Australian resident entity that is not an inward investing entity nor an outward investing entity
- you are a foreign entity that has no investments (such as assets) or permanent establishment in Australia
- you meet any of the three threshold tests
  - your debt deductions, together with those of any associate entities, are \$250,000 or less for the income year
  - you are an outward investing entity that is not also foreign controlled and you meet the assets threshold test
  - you are a special purpose entity established to manage certain risks.

### **Debt/Equity Rules**

The Debt and Equity Rules are used to determine what equity in a company is and what debt in an entity for taxation purposes is. The rules are based on the economic substance of the arrangement under which the instrument is used rather than the legal form of the instrument.

The Debt and Equity Tests determine whether a return on an interest in an entity may be non-deductible and frankable (like a dividend) or may be deductible to the entity and not frankable (like interest). The rules are used to determine debt for thin capitalisation purposes.

In determining what a debt interest is, the rules use a single organising principle – the effective obligation of an issuer to return to the investor an amount at least equal to the amount invested.

The Debt Test is used to work out if an interest is treated as debt at the time it is issued. There are five essential elements required to satisfy the Debt Test:

- There must be a scheme;
- The scheme must be a financing arrangement;

- There must be a financial benefit received;
- The issuing entity must have an effectively non-contingent obligation to provide a future financial benefit; and
- It must be substantially more likely than not that the value of the financial benefit to be provided will be at least equal to or exceed the financial benefit received.

In determining what an equity interest is, the rules contain a table that lists schemes that, as a general rule, are equity interests.

There is a tiebreaker test that applies to hybrid interests that are both debt and equity interests. Where both the debt and equity tests can be met, the interest is a debt interest.

### **Non-Resident Withholding Tax**

Non-residents of Australia are not generally liable for income tax in respect of interest, royalties and dividends derived in Australia. Rather, the Australian Government requires tax to be withheld on interest, unfranked dividends and royalties paid or deemed paid to non-residents of Australia.

### **Double Taxation Agreements (DTAs)**

Australia has entered into agreements with various countries for the purposes of avoiding double taxation of income. Double Taxation Agreements (DTAs) deal with the taxation of dividends, interest and royalties as well as other income such as business profits, real property income, shipping and air transport income, professional service income, and certain wages, annuities and pensions.

The general effect of a DTA is to limit Australia's taxing rights in respect of certain types of income derived by a resident of the other country and vice versa.

The DTAs with different countries are all similar but not identical. Similar payments may lead to different Australian tax consequences, depending on the country of residence of the taxpayer.

For residents of countries with which Australia does not have a DTA, Australia will generally tax Australian source income derived by such a person in accordance with Australia's domestic source rules. Passive income (e.g.: dividends, interest, royalties) is subjected to withholding tax.

### **Transfer Pricing**

Australia's transfer pricing rules seek to prevent related international parties from achieving tax advantages by not dealing at arm's length. The rules enable the Commissioner to determine and substitute in an international transaction an arm's length price for Australian tax purposes if the Commissioner is concerned that the parties are not dealing at arm's length in relation to that transaction

It is advisable to establish the basis upon which you will be transacting with any related overseas entities from the outset and to be able to prove to the ATO that an arm's length result will be achieved

A taxpayer which has engaged in international dealings with associated enterprises during a year of income is required to complete an International Dealings Schedule and lodge it with their income tax return. The current International Dealings Schedule imposes obligations on taxpayers to disclose information on its associated enterprise international dealings, including:

- The nature and amount of certain categories of transactions;
- Details of interest free loans;
- Receipts or payments of non-monetary consideration;
- Details of arm's length methodologies used;
- The level of documentation held to support the selection and application of the most appropriate arm's length methodologies; and
- Details of disposals of any interest in an asset of a capital nature.

Failure to complete the International Dealings Schedule where it is required may attract penalties or prosecution action.

## **Financial Reporting Requirements**

### **Accounting Function**

We can assist in providing a day-to-day accounting function to allow you to concentrate on the primary operations of the business. This function may include, though is not limited to:

- Receipt of vendor invoices, confirmation of validity of invoices received, maintenance of an aged creditors ledger and payment of invoices received;
- Preparing and issuing invoices to customers, maintenance of an aged debtors ledger and collection of customer receipts on your behalf;
- Banking services including setting up an Australian bank account, providing resident signatories and a basic treasury function; and
- Implementing of an appropriate accounting software package, structuring the chart of accounts and ensuring the internal processes operate effectively and with a degree of internal control.

### **Interim Management Accounts**

Although there is no statutory requirement to do so, we would recommend preparing monthly or quarterly management accounts to monitor cash flows, maintain control over the use of capital and for BAS preparation.

We can assist in structuring the financial data to suit your financial information needs.

### **Preparation of Annual Financial Statements**

Depending on the corporate structure which you elect to establish, there may be a requirement to prepare, audit and lodge financial statements with the Australian Securities and Investments Commission ("ASIC"). The need for audited financial statements may also be driven by the information needs of investors and the interests of maintaining good corporate governance.

We note that a "small" foreign controlled company is required to prepare and lodge audited financial statements with the ASIC however relief may be available from this requirement under an ASIC Class Order.

A "large" foreign controlled company has the same financial reporting requirements as an Australian owned large proprietary company, that is, they must lodge audited financial statements with ASIC within 4 months after the financial year-end. Again there may be relief from the requirement of an audit under an ASIC Class Order subject to satisfying various requirements.

A branch is required to lodge financial statements each year. We note that the foreign entity's financial statements can be lodged as long as it incorporates the branch's Australian operations.

### **Budgeting and Cashflows**

We can assist in preparing budgets and cash flow projections to assist your business formulate and monitor its growth plans within Australia. This reporting can be tailored to meet your needs as your business grows.

### **Company Secretarial Matters**

Should your business operate through a company or branch structure, there are a number of initial and on-going company secretarial requirements that need to be attended to. The main requirements are set out below:

#### **Registered Office**

The Australian Securities & Investments Commission (ASIC) forwards all correspondence to a company or branch's registered office. The office of Lotus Accountants may be used as the registered office to ensure all matters are complied with on a timely basis.

#### **Company Statement**

A company incorporated in Australia is required to review its company statement each calendar year to maintain its registration. The company statement sets out the details of the company, the officeholders and the shareholders. We can prepare and lodge this statement on your behalf.

#### **Director / Secretary / Public Officer/ Local Agent**

A proprietary limited company in Australia must have at least one resident director and one resident company secretary.

A public officer should also be appointed as the person responsible to the Australian Taxation Office for the company's affairs; such a person should also be an Australian resident.

A branch must appoint an 'agent' who is a resident of Australia.

#### **Audit Relief**

Please review Class Order and Revocation 98/0098 to see if the company is eligible for Audit Relief and ensure compliance with the ASIC guidelines in lodging Form 384.

## **Employee Matters**

### **Expatriate Advice**

There are many tax implications to be considered when transferring employees between countries. Planning can involve structuring remuneration packages to take advantage of special tax concessions in Australia, exit and entrance interviews for executives embarking on expatriate engagements and tax minimisation through effective preparation of host country tax returns. Effective tax planning and compliance should minimise the assignment costs to your business and its employees.

### **Immigration to Australia**

Foreign persons may reside in Australia as temporary or permanent residents through various migration programs administered by the Department of Immigration and Multicultural and Indigenous Affairs.

### **Payroll Function**

Our specialist payroll staff can assist in providing a payroll function for employees of your business. This function would include, though not be limited to:

- Calculation of the appropriate periodic payment amounts, taxation withheld and superannuation obligations for each employee;
- Preparation and distribution of pay-slips for employees;
- Calculation and recording of annual leave, sick leave and other leave entitlements for your employees;
- Incorporation of pay changes or bonuses into regular pay calculations;
- Periodic payment of tax withheld from employee salaries to the ATO on your behalf;
- Maintaining all appropriate employer registrations and reporting requirements with the ATO and other statutory bodies; and
- Maintenance of appropriate worker's compensation insurance to cover personnel employed in Australia in the case of workplace injuries or misadventure as required by relevant State law.

### **Workers Compensation**

Employers are obliged by legislation in each State and Territory to take out insurance for their liability to pay workers compensation unless, in exceptional cases, they qualify as a self insurer.

The workers compensation systems in each State and Territory provide benefits to employees who are injured in the course of their employment.

### **Employment Contracts / Offers of Employment**

Advice should be sought on the nature and type of salary packages being offered to prospective employees and the wording of any employment document. We can assist you with this or put you in contact with a recruitment specialist.



### **Superannuation (Pension Funds)**

Each employer in Australia is required to pay superannuation contributions on behalf of each employee with a salary up to and including \$52,760 per quarter. For the year ending 30 June 2018, employers are required to contribute 9.50% of the employee's salaries and wages into a complying superannuation fund.

### **Unfair Dismissals**

Termination of employment is extensively regulated by legislation. Employers must comply with various specific rules when dismissing an employee.

### **Occupational Health and Safety**

Safety management needs to form an integral part of business and management processes to ensure legal compliance.

### **Discrimination**

Discrimination in employment and employment related activities are regulated by anti discrimination legislation.

### **Salary Packaging**

There are provisions under Australian taxation law for employees to "sacrifice" a portion of their gross salary before tax toward certain personal expenses such as additional superannuation payments, maintenance of a motor vehicle, education expenses and private health insurance. We can assist in preparing all the necessary advice and calculations regarding salary packaging for your employees.

### **Employee Share and Share Option Schemes**

Legislation in respect of "Employee Share Schemes" is complex so we recommend you obtain professional advice in regard to any proposed share scheme.

## **Repatriation of Profits**

### **Dividends**

Dividends paid by an Australian resident company to its foreign parent are free from dividend withholding tax to the extent that they are "franked". In broad terms, a dividend can be franked to the extent that it is paid out of profits that have been subject to tax in the hands of the paying company. Thus, if an Australian subsidiary derives \$100 in taxable income during the year ended 30 June 2018, and pays \$30 in company tax it can pay the balance of \$70 as a franked dividend.

To the extent that dividends are unfranked, they will prima facie be subject to dividend withholding tax at 30% - each DTA will need to be reviewed to determine the exact rate.

### **Interest**

Interest paid by an Australian subsidiary to a non-resident, or by an Australian branch to a non-resident, will normally be subject to interest withholding tax, at a rate of 10%.

### **Royalties**

Royalties paid by an Australian resident to a non-resident, or by an Australian branch to a non-resident, will prima facie be subject to royalty withholding tax at a rate between 5-30% depending on the relevant countries double tax treaty with Australia.

### **Management Fees**

Management fees paid to a non-resident are not subject to any withholding tax. The only restriction to this is with regard to the fact that some management fees may actually represent royalties or dividends, in which case the rules discussed above apply. The payment of management fees may also be subject to transfer pricing issues.

### **Establishment Related Expenses**

The general rule in relation to the deductibility of expenditures is that all losses or outgoings are allowable deductions to the extent to which they are incurred in gaining or producing assessable income, except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature.

Generally, the costs associated with the acquisition or establishment of a business are not deductible as they are of a capital nature. This is the case even where the loss or outgoing is necessarily incurred for the purposes of gaining or producing assessable income.

The exceptions to this general rule are as follows:-

- Direct costs of obtaining finance (e.g., bank fees or charges) are normally deductible. Deductions for such costs are spread over the life of the relevant borrowings or 5 years, whichever is the shorter; and
- ITAA 1997 sec 40-880(1) allows taxpayers to deduct the cost to create a legal entity or create a legal relationship. Other than the normal payment to the "shelf company" provider, any fees predominantly relating to the establishment of the structure may qualify for write-off. For instance, capital expenditure incurred to obtain professional advice about adopting a constitution for the purpose of forming a company would qualify. Again this is spread over a 5 year period.

### A very short dictionary of Australian slang

Word/Phrase	Meaning
awesome, mad, crazy, wicked, choice	Really good
barbie	Barbecue (noun)
cool	Describes something very fashionable, "up to the minute." Can also signal approval/agreement.  <i>A. Is that OK? B. Cool.</i>
crap	Worthless, no good
get boozed	A drinking spree
get real	Be realistic, understand what's going on, as in <i>You think you'll win the lottery if you buy one ticket a week? Get real!</i>
gross	Describes something unpleasant, awful or bad.  <i>This tastes gross - ugh!</i>
hang out	Keep company with, appear in public with
hassles	A troublesome situation
hyper	Over-stimulated, nervous (hyperactive)
play footy	Australian Rules football
she'll be right	Australian for "it will be ok", reflective of their supposed generally relaxed attitude to life.
sick, fully sick	good, really good, the best

slack	Describes someone who is lazy. <i>He's incredibly slack.</i>
stark raving mad	Completely mad; delirious.
stick out like a sore thumb	Different to the normal, average
stinkin	Having a foul smell; fetid.
suck it and see	Describes just giving something a go as you won't know until you try it.
suss	Short for suspicious. Describes something not reliable, or questionable in value. <i>I think the whole idea's a bit suss.</i>
unreal, ace, sweet	Describes something highly enjoyable/attractive. <i>It was an ace film.</i>

## **USEFUL WEBSITES**

Australia's foreign investment policy

<https://www.austrade.gov.au/international/invest>

[www.firb.gov.au](http://www.firb.gov.au)

Corporate regulation

[www.asic.gov.au](http://www.asic.gov.au)

Government information

[www.gov.au](http://www.gov.au)

<https://www.business.gov.au/>

Australian Stock Exchange

[www.asx.com.au](http://www.asx.com.au)

Taxation

[www.ato.gov.au](http://www.ato.gov.au)

Australian customs service

[www.border.gov.au](http://www.border.gov.au)

Protection of Intellectual Property

[www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

Immigration

[www.border.gov.au](http://www.border.gov.au)

Australian Bureau of Statistics

[www.abs.gov.au](http://www.abs.gov.au)

Commercial real estate

[www.commercialrealestate.com.au](http://www.commercialrealestate.com.au)

**And of course**

[www.lotusaccountants.com.au](http://www.lotusaccountants.com.au)