

Australia

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I MAIN LEGAL FORMS

Legal form Characteristics	Partner- ship	Limited partnership	Private company	Public company	Trust
Partners/ Shareholders	Two or more	At least one general partner, at least one limited partner	One or more	One or more	One or more trustees
Number	20	20	None	None	None
Restrictions	None	None	None	None	None
Directors	Management by partners		One or more	Three or more	One or more trustees
Foundation	Partnership deed		Constitution		Trust deed
Registration	None		ASIC	ASIC	None
Minimum capital	None	None	None	None	None
Liability	Unlimited to all partners	Unlimited for general partner, limited to capital for limited partner	Limited to capital for all shareholders	Generally limited to capital for all shareholders Companies limited by guarantee limited to members' respective contributions	Trust property
Governance	Partners' meetings	Partners' meetings	Directors' meetings Shareholders' meetings		Trustees' meetings

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Audit requirements	None	None	None – if over any two of following must audit: • consolidated revenue \$25m • consolidated gross assets \$12.5m • the company and any controlled companies have 50 employees	Yes	None
Taxation	Pass-through entity	Corporate limited partnerships effectively treated as companies for tax purposes. Partners' drawings deemed to be dividends Foreign limited partnerships – such as a US LLC or UK LLP, can be treated as 'flow-throughs' in Australia in certain circumstances Venture capital limited partnerships treated as ordinary partnerships	Subject to company tax, but can pay franked dividends to shareholders	Subject to company tax, but can pay franked dividends to shareholders	Subject to trustee resolution, is a pass-through entity

II CORPORATION TAX

	Resident corporations	Non-resident corporations
General	30% federal tax	Australian permanent establishment (PE) and sale of Australian property
Other	No state income taxes or trade taxes	
Taxation in Australia	Incorporated in Australia, or management and control in Australia – worldwide income	Australian PE or management and control in Australia
Calculation of taxation income	Accounting profit X Plus/Minus Tax timing differences Y Plus/Minus Tax permanent differences Z Australian taxation income I	
Interest payments	Thin capitalisation rules: De minimis exemption: <u>\$250,000 or less</u> <i>Debt deductions are disallowed where the maximum amount of debt exceeds that determined under either a Safe Harbour test or an arm's length debt test</i>	
Related party transactions	Strict adherence to the arm's length principle Very detailed transfer pricing methodologies, procedures and requirements	
Tax year and tax payments	• Tax year = 1 July to 30 June • Annual federal tax return • Quarterly prepayments, final payment or refund after tax assessment	
Capital gains	Taxable at regular company tax rate (30%) (no concessions as for individuals and trusts)	Since December 2006 capital gains are now limited to Australian land, shares in land-rich companies, sale of Australian branch assets and Australian mining/prospecting rights
Losses	• No carry back allowed • Must satisfy Continuity of Ownership (COT) (generally greater than 50% underlying individual ownership) • Concessions on COT test for public companies or • Same Business Test (SBT)	
Tax group – prerequisites	Tax consolidation rules for 100% wholly owned Australian entities – Head entity must be a company	Special rules for PEs and Australian tax consolidation
Company tax rate	30%	
Wealth tax	No wealth tax in Australia	

	Resident corporations	Non-resident corporations
Real Estate Taxes		
1. Stamp duty on transfer of real property	Yes – levied by Australian states – range of 1.25%–5.5% of value of real property	
2. Annual land tax levied by states on commercial and investment properties	Land tax levied by Australian states with tax-free thresholds ranging from \$25,000–\$599,000 and tax rates ranging from 0.02–2.5% per annum	

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III TAXES FOR INDIVIDUALS

	Residents	Non-residents																						
General	Australian resident – worldwide income	Australian source income																						
Calculation of income	Generally cash for salaried employees – accruals if running a business																							
Tax year	• Tax year = 1 July to 30 June • Sole individual annual return • Quarterly prepayments																							
Capital gains	• Starting point – same as other income • 50% reduction in gain if asset held for more than 12 months	Since December 2006 capital gains are now limited to Australian land, shares in land-rich companies, sale of Australian branch assets and Australian mining/prospecting rights																						
Losses	• No carry back • Unlimited time in which to utilise																							
Tax rates as at 1 July 2009	<table><thead><tr><th>Income (\$)</th><th>Tax (%)</th></tr></thead><tbody><tr><td>0–6,000</td><td>Nil</td></tr><tr><td>6,001–35,000</td><td>15</td></tr><tr><td>35,001–80,000</td><td>30</td></tr><tr><td>80,001–180,000</td><td>38</td></tr><tr><td>180,001+</td><td>45</td></tr></tbody></table>	Income (\$)	Tax (%)	0–6,000	Nil	6,001–35,000	15	35,001–80,000	30	80,001–180,000	38	180,001+	45	<table><thead><tr><th>Income (\$)</th><th>Tax (%)</th></tr></thead><tbody><tr><td>0–35,000</td><td>29</td></tr><tr><td>35,001–80,000</td><td>30</td></tr><tr><td>80,001–180,000</td><td>38</td></tr><tr><td>180,001+</td><td>45</td></tr></tbody></table>	Income (\$)	Tax (%)	0–35,000	29	35,001–80,000	30	80,001–180,000	38	180,001+	45
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Other	No wealth tax and no inheritance tax in Australia (but there are CGT issues on the death of an individual). However, note also there are minimum superannuation requirements for Australian employees																							

IV WITHHOLDING TAXES

	Non-residents
Employment income	Same for employment in Australia
Dividends	• Nil if fully franked • 30% to non-treaty country • 5%–15% for treaty country and depending on number of shares held
Interest	Generally 10% for treaty and non-treaty
Royalties	• Between 5% and 15% for treaty countries • 15% for non-treaty countries
Payments to artists and sportsmen	• Company tax rate for payments to companies • Foreign resident marginal rates if paid to individuals • Need to also consider relevant Double Taxation Agreement (DTA) article (where appropriate)

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V INDIRECT TAXES

		Residents	Non-residents
Value Added Tax (VAT)	General description	Goods and services tax (GST) on the supply of goods and services	
	Entities obliged to levy GST	Federal tax levied by way of GST at all levels of the production/ service chain with right to tax credit	
	Taxable activities	All types of services and goods	
	Taxable activities – zero rated (examples)	A zero rate applies to the export of goods and services	
	GST free supplies (examples)	Food, health, education, exports, charitable activities, going concerns, farmland, precious metals	
	Refund of GST	By way of tax credit in the chain of entrepreneurial activity	
	Tax liability	Strict liability with entity rendering service or effecting sale	
	Tax rates	10%	
	Administrative obligations	Precise accounting and documentation required	
Real Property Taxes		Levied at state level on land used in business – subject to minimum threshold values	
Stamp Duty		Imposed on various transactions and conveyances at either a fixed rate or at ad valorem rates	