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# Doing Business in Australia

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**Australia currently has one of the strongest economies in the world and offers many advantages for investors, exporters and global companies looking for a base in the Asia Pacific Region.**

Two decades of economic reforms have helped make Australia one of the strongest and most resilient economies in the world. This strength has been highlighted in recent years by the country's ability to withstand events like a major drought, a housing boom, the Asian financial crisis, and most recently the Global Financial Crisis (GFC).

Enjoying significant trade with China and having no bank problems, Australia was the only one of the 33 advanced economies to have recorded positive growth in 2009. 2010 data continues to confirm the relatively strong performance of the economy with low unemployment and consumer and business confidence at above average levels. Australia's mining sector is firmly anchored to the fast growing economies of China, India and Asia.

Other factors in Australia's favour include its affluent concentrated consumer markets, highly educated workforce, business-friendly regulatory environment, stable political environment, and sophisticated technology and professional support services.

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## 1. GENERAL DATA ON AUSTRALIA

Population:	Approximately 22,385,000 million <sup>1</sup>
GDP:	US\$1,193bn <sup>2</sup>
GDP Per Capita:	US\$53,862 <sup>3</sup>
Currency :	i) Australian dollars (approximately US\$1 = AUD1.25) ii) There is no foreign exchange control in Australia.

However, AUSTRAC<sup>4</sup> (Australia's anti-money laundering regulator and specialist financial intelligence unit) regulates and oversees compliance with the reporting requirements of the Financial Transaction Reports Act 1988 by relevant financial service providers, the gambling industry etc.

Land Area:	Approximately 7.7m sq. km
Pillar Industries:	<b>Mining</b> - Coal, aluminium, iron ore, gold, petroleum, natural gas, copper, nickel and other ores <b>Services</b> – Education, tourism, business services, finance and investment, property <b>Manufacturing</b> - Pharmaceuticals, information and communications technology, paper products, steel, chemicals and plastics, machinery, motor vehicles, processed food <b>Agriculture</b> - Meat, wheat, wine, wool
Government:	Australia enjoys political stability and has a federal system of government with powers generally distributed between the Federal Government and the State Governments. There are six states in Australia, i.e., New South Wales, South Australia, Queensland, Tasmania, Victoria, Western Australia. In addition, there are two territories within the federal jurisdiction, i.e., the Australian Capital Territory and the Northern Territory. The Commonwealth, States and Territories are governed by elected Parliaments.
Natural environment:	Australia has a remarkable diversity of life forms, unique compared to the rest of the world. Examples include Australia's native marsupials (such as the kangaroos and koalas), Australia's native fauna and flora (such as the eucalyptus tree, commonly known as the gum tree) and Australia's world renown marine life forming the Great Barrier Reef.
Way of life:	Australia's diverse culture and lifestyle reflects its liberal democratic traditions and the influences of the millions of migrants who have settled in Australia since World War II. Australians generally enjoy an easy-going outdoor lifestyle in their leisure time and are passionate about sports. Most are relatively informal socially and in their relationships with work colleagues.

The standard working hours in Australia are generally 37.5 to 40 hours per week. Australia's public holidays are similar to those in other Western countries.

<sup>1</sup> Australia Bureau of Statistics June 2010

<sup>2</sup> Based on the 2010 fact sheet issued by the Australian Department of Foreign Affairs and Trade.

<sup>3</sup> Ibid

<sup>4</sup> Further information regarding AUSTRAC can be found on <http://www.austrac.gov.au>

## 2. LEGAL SYSTEM

Briefly, the law in Australia consists of:

- Acts passed by the Federal Parliament;
- Acts passed by the State Parliaments and the Legislative Assemblies of the Northern Territory and the Australian Capital Territory;
- Ordinances made in respect of other Territories (such as Norfolk Island);
- So much of the common or statute law of the United Kingdom that is still applicable and relevant to Australia; and
- The Australian common law as is interpreted and modified by the Australian Courts.

The Federal Government and each state have its own court system, whilst numerous tribunals administer particular areas of law.

### 3. FOREIGN INVESTMENT

Australia's foreign investment policy is generally to encourage foreign investment that is consistent with community interests. However, the Government is empowered under the Foreign Acquisition and Takeovers Act 1975 to block proposals that are not in line with the national interest. In this regard, the Foreign Investment Review Board (FIRB) is the Federal Government agency that is responsible for making recommendations to the Government on foreign investment proposals.

Certain foreign investments are subject to review, requiring registration with or approval from the FIRB<sup>5</sup>. This includes generally the following:

#### 1. New businesses

Proposals to establish new businesses involving a total investment of \$10 million or more.

#### 2. Investment in sensitive sectors

Specific restrictions on foreign investment are in force in more sensitive sectors such as residential real estate, banking, telecommunications, shipping, civil aviation, airports and the media.

#### 3. Acquisition of assets or shares

- The acquisition of assets or shares in an existing Australian business in excess of the value of \$50 million
- The takeover of offshore companies whose Australian subsidiaries or assets are valued at more than \$50 million, or account for more than 50% of the target company's global assets
- Offshore takeover: Where a non-US foreign investor acquires an interest of \$200 million dollars, in an offshore company that holds Australian assets or conducts a business in Australia and the Australian assets or businesses of the target company are valued at less than 50 per cent of its total assets
- Any direct investments by foreign governments or their agencies (irrespective of investment size)
- The acquisition of shares in a company or trust that is regarded as an Urban Land Corporation or Trust<sup>6</sup> (irrespective of investment size).

#### 4. Real estate

- Acquisition of residential real estate (irrespective of value)
- Acquisition of developed commercial real estate valued at \$50 million or more
- Acquisition of heritage listed property valued at \$5 million or more
- Acquisition of accommodation facilities or vacant urban real estate (irrespective of value).

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<sup>5</sup> Further information regarding the FIRB can be found on <http://www.firb.gov.au>.

<sup>6</sup> A corporation or trust is deemed to be an urban land corporation or trust if it holds more than 50 per cent of its assets in urban land (vacant or developed).

## **4. MOST COMMON FORMS OF BUSINESS ENTITIES**

### **4.1 Companies Incorporated in Australia**

Companies in Australia are regulated by the Corporations Act 2001, which is administered by the Australian Securities and Investment Commission (ASIC). There are various types of companies, the most common being a company limited by shares (either a proprietary company requiring at least 1 director and 1 member but not exceeding 50 non-employee members, or, public company requiring at least 3 directors and 5 members).

All Australian companies must have a registered office in Australia (but not post box addresses). Companies are also required to lodge a return with ASIC on an annual basis.

Companies who intend to use Australia as regional headquarters ("RHQ") to provide regional support services can apply to the Treasurer to become a RHQ to avail themselves of certain incentives.

### **4.2 Registered Foreign Companies**

Foreign companies may carry on business in Australia directly as a branch office in Australia but must, amongst other things, be registered with ASIC, maintain a registered office in Australia and appoint a local agent.

### **4.3 Partnerships, including limited partnerships**

Partners may be individuals or companies (resident in Australia or otherwise) and are jointly and severally liable for all liabilities (unlimited) of the partnership.

However, partnerships may also take the form of a limited partnership, which consist of at least 1 general partner (unlimited liability) and at least one limited partner (a limited partner contributes to the capital of the partnership but does not take part in its management, cannot bind the firm and has limited liability to contribute to the debts or obligations of the partnership is limited).

### **4.4 Joint Ventures ("JV")**

JVs can generally take the form of an incorporated JV (i.e., a company incorporated to pursue the interests of the participants in the JV who are the shareholders of the company) or unincorporated JV (i.e., one where the participants have a contractual association which may or may not be a partnership for tax purposes). A JV can also take the form of a unit trust whereby the trust property is divided into units to be dealt with individually by the participants.

### **4.5 Trusts**

Generally, trusts used to carry on businesses are usually in the form of unit trusts or discretionary trusts. Unit trusts can be used when a beneficiary's entitlement to income of the trust is dependant upon the number of units held by the beneficiary.

Other than the above, businesses can also be conducted through sole proprietorships and other forms of representations (such as sales representatives, distributors, licensees or franchisees).

## 5. GRANTS AND INCENTIVES

Some of the incentives available in Australia include:

- Concessional rate of tax at 10% on offshore income of an authorized offshore banking unit operating in Australia.
- Special incentives in the form of a tax deduction in relation to the capital invested in specified scientific research and local manufacturing activities. Other incentives for such activities include reduced rate of payroll tax, discounted cost of industrial land, access to cheaper financing and the provision of Government guarantees.
- Various grants and tax rebates for developing export markets with the Export Development Grant Scheme. This is administered by Austrade.
- Various incentives (including tax deduction for certain relocation costs) for the set-up of RHQs in Australia.
- Tax deduction of 10% development allowance on applicable plant component for certain large scale investment projects that are approved by the Development Allowance Authority.
- A range of tax incentives to encourage research and development: Tax offset for research and development conducted in Australia: available to companies with an annual turnover of less than \$5 million and whose total aggregate R&D expenditure is more than \$20,000 and less than \$1 million per year. Similarly there is a tax concession which allows companies to deduct up to 125% of eligible expenditure incurred on Research & Development activities from their assessable income. To be eligible for this concession a company must spend more than \$20,000 on eligible R&D expenditure in the relevant year and a maximum of \$1 million.

## 6. TAXATION

Australia's taxation regime encompasses a vast variety of taxes including corporate income tax, individual income tax, withholding tax (WHT), fringe benefits tax (FBT), superannuation guarantee levy, goods and services tax (GST), excise tax and various state taxes (such as payroll tax and stamp duties).

### 6.1 Corporate income tax

Australian resident companies are subject to corporate income tax at 30% on income derived from all sources. In 2010 the Federal Government announced a reduction in the corporate tax rate to 29% for small businesses from 1<sup>st</sup> July 2012, and for other companies from 1 July 2013. Non-resident companies are subject to the same tax except that it is limited to income derived from Australian sources.

A company is generally taken to be an Australian tax resident if it is incorporated in Australia, or, if it is not incorporated in Australia, it carries on business in Australia and has either its central management and control in Australia or its voting power controlled by Australian resident shareholders.

Generally, companies are required to lodge an income tax return for the period of 1 July to 30 June each year (or any 12 months period to be agreed upon with the tax authorities). With effect from 1 July 2002, a wholly owned group of companies may make an irrevocable election to lodge a consolidated income tax return for the group.

Limited partnerships, public unit trusts and corporate unit trusts are generally taxed as companies.

If you employ a full-time, part-time or casual worker or a contractor wholly or principally for labour in Australia, you may have Australian superannuation obligations and pay as you go (PAYG) withholding obligations.

If you provide benefits to them or their associates (typically family members) in place of, or in addition to, salary or wages, you may have fringe benefits tax (FBT) obligations.

### 6.2 Individual income tax

Australian resident individuals are subject to income tax at progressive tax rate (maximum of 47% + 1.5% medicare levy<sup>7</sup>) on their worldwide income. Non-resident individuals are subject to progressive tax rate (maximum of 47%) on their Australian sourced income.

An individual is generally taken to be an Australian tax resident if the individual resides in Australia within its ordinary meaning. However, there are also statutory tests to determine whether an individual is an Australian tax resident. This includes where an individual is in Australia (continuously or intermittently) for more than one half of the year of income commencing 1 July to 30 June the following year (i.e., 183 days during that period), unless the Commissioner is satisfied that the individual's usual place of abode is outside Australia and that individual does not intend to take up residence in Australia

Generally, individuals are required to lodge an income tax return each year for the income year of 1 July to 30 June.

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<sup>7</sup> High income earners who are not covered by private health insurance which provides basic hospital cover are generally subject to an additional surcharge of 1% medicare levy.

### **6.3 WHT**

Generally, certain payments (such as interest and royalties) sourced in Australia made to non-residents of Australia are subject to WHT to be deducted at source. The rate of WHT on interest and royalties is 10% and 30% respectively, with both rates subject to reductions based on applicable Double Tax Agreements.

As Australian companies are generally subject to an imputation system for the distribution of dividends, only unfranked dividends paid to non-residents are generally subject to WHT at 30%, subject to reductions based on applicable Double Tax Agreements.

### **6.4 FBT**

Generally, employers are subject to fringe benefit tax at 46.5% on non-cash employment-related benefits provided (such as motor vehicles made available for private use of an employee, certain residential accommodation and interest-free or low interest loans provided to an employee). However, the cost of such benefits and the fringe benefit tax is deductible for income tax purposes to the employer.

### **6.5 Superannuation**

Employers are required to make superannuation contribution for the benefit of all its employees (the levy is currently at the minimum of 9% of the employee's payroll).

### **6.6 GST**

Generally the consumption based value added tax is at the rate of 10% and is levied on transactions relating to the provision of most goods and services supplied in Australia.

### **6.7 Excise tax**

Selected items such as cigarettes and alcoholic beverages are subject to excise taxes.

### **6.6 Payroll tax**

Generally, payrolls exceeding specified amounts are subject to payroll tax which is imposed on employers by the state governments. The rates and threshold depends on the particular state.

### **6.7 Stamp duty**

Generally, stamp duties are levied by the state governments on certain documents and transactions.

## 7. EMPLOYMENT

Written employment contracts between employers and employees generally govern the terms of employment in Australia which is subject to various Federal, State and Territory legislation and the common law.

Minimum terms and conditions of employment are generally covered by the Federal Workplace Relations Act 1996, with the majority of employees in Australia being subject to the provision of Federal or State Industrial Awards or Agreements. However, some managerial and professional employees fall outside the ambit of such awards.

Discrimination is generally not tolerated in the Australian workplace and equal opportunity legislation prevents discrimination on such grounds as sex and race. Other than this, employers generally have a free-hand in hiring any employees of their choice. However, unfair termination of employment is prohibited and employees who have been terminated unfairly can seek damages or reinstatement.

## 8. ABOUT ACCRU FELSERS

Accru Felsers is a medium sized firm of Chartered Accountants with seven partners and two consultants. Established in Sydney in 1941, we presently employ more than 60 professional staff in Sydney. We have a wide range of commercial and public sector clients for whom we provide audit, taxation, management, accounting, secretarial, consulting and advisory services.

Our clients include ASX listed public companies, retailers, manufacturers, local subsidiaries of (predominantly German) foreign companies, importers, distributors, prominent Sydney Hotels, private schools, charitable associations, registered investment schemes, Australian Financial Service Licensees, and government grant recipient organisations.

Intellectual capital is the key to our success. Our commitment to employee selection, training and career development has ensured that we continue to attract and retain talented employees to provide clients with a consistent professional service.

Accru has offices situated in Adelaide, Brisbane, Melbourne, Perth, Hobart and Auckland. We also have representation in 140 firms in 41 countries firms around the world as part of our membership of CPA Associates International Inc.

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