Australia

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1.0 OVERVIEW

The Australian tax year for most businesses ends on June 30. However, it is possible to apply for a substituted accounting period (SAP) that varies the year-end to coincide with the financial year of a foreign parent company.

Australian tax laws are amended frequently in response to changes both at the domestic level, such as changes in government, and at the international level, such as the Organisation for Economic Co-operation and Development's (OECD) recent Base Erosion and Profit Shifting (BEPS) initiative. Careful consideration should be given to the nature of the business to be conducted in Australia and any resulting tax implications.

The federal government levies income tax, goods and services tax (GST), fringe benefits tax and capital gains tax, among others. State and territorial governments levy payroll tax, land tax and stamp duty, among others.

2.0 LEGAL SYSTEM

Australia, its six states and its two territories operate under common law. Both the federal government and state governments have lawmaking power. However, the federal government's legislative power is limited to the exclusive heads of power set out in section 51 of the Australian Constitution. State governments are able to legislate on all other matters.

New country-by-country reporting rules affect significant global entities, which includes Australian-headquartered groups and Australian subsidiaries of foreign groups with global turnover exceeding A$1 billion. Unless exempted, affected groups may have additional "risk identification" reporting obligations with the Australian Taxation Office (ATO), including obligations to file a country-by-country report, a master file and a local file.

Australian tax laws contain various anti-avoidance rules that purport to cancel certain tax benefits or alter the way the tax law is applied to a particular taxpayer in certain circumstances. Australian tax legislation also contains a number of specific anti-avoidance rules as well as general anti-avoidance law.

There have been recent specific avoidance measures for global groups. There is the Multinational Anti-Avoidance Law (MAAL), which aims to prevent multinationals using contrived arrangements to avoid the consequence of a permanent establishment in Australia. There is the diverted profits tax (DPT), which affects significant global entities by targeting arrangements that artificially divert profits overseas through related entities if the arrangements result in foreign tax of less than 80% of that which would otherwise have been paid in Australia. Where the DPT is invoked, the special levy is imposed on the diverted profits at a rate of 40%.

The Australian government has also signed a multilateral convention to implement tax treaty related measures to prevent BEPS.

3.0 TAXATION AUTHORITIES

The ATO is the federal body responsible for overseeing and enforcing federally imposed taxes. The federal Commissioner of Taxation makes decisions and gives opinions on federal tax laws.

Each state and territory also has its own taxation oversight body:

State	Taxation Body
New South Wales	Revenue NSW
Queensland	Office of State Revenue Queensland
Victoria	State Revenue Office Victoria
Western Australia	Office of State Revenue Western Australia
South Australia	Revenue SA
Tasmania	State Revenue Office of Tasmania
Northern Territory	Territory Revenue Office
Australian Capital Territory	ACT Revenue Office

The principal direct tax is income tax, which is levied by the federal government and administered by the Federal Commissioner of Taxation, who is responsible for the operation of the ATO. The main laws governing income tax are the Income Tax Assessment Act 1936 (Cth), the Income Tax Assessment Act 1997 (Cth) and the Taxation Administration Act 1953 (Cth).

4.0 BUSINESS VEHICLES

Determining the residency status of a business vehicle is essential in understanding how Australian taxation law will apply to that individual or entity. A non-resident can carry out business in Australia through an Australian resident entity or a foreign entity, though different processes for registration and reporting will apply depending on the choice.

4.1 Companies

A company is an Australian resident for tax purposes if it is incorporated in Australia, or carries on business in Australia, where its central management and control is in Australia or its voting power is controlled by shareholders resident in Australia.

As a general rule, if the company's directors usually carry on business and make decisions in Australia, the residence test will be satisfied. Again, residency is a question of fact decided in each case by reviewing the company's business or trading activities.

Companies can either be proprietary or public companies. The types of companies that can be established include those limited by guarantee, limited by shares, unlimited with share capital or having no liability (this last only applies to certain mining companies).

Alternatively, a foreign entity can also register an Australian branch, rather than incorporating an Australian subsidiary company.

4.2 Partnerships

A partnership is an association of people who carry on business together, and can be with up to 20 people. Partnerships can be either general or limited, and are governed by state or territory legislation. Members of the partnership are personally liable for the debts of the partnership.

The residence of a general partnership is determined by the individual partners' residency status. A limited partnership will be a resident of Australia if the partnership was formed in Australia, if it carries on business in Australia or if it has central management located in Australia.

4.3 Trusts

Trust structures are also commonly used as business and investment vehicles. Trusts may be characterized as residents for tax purposes if, during a financial year, the trustee of the trust is a resident or the trust's central management and control is in Australia.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Debt finance

In Australia, companies can be financed using debt, where the company borrows from external lenders. If a company uses debt financing, they are able to retain full control of their business, and typically, the interest paid on repayments is tax deductible.

Care should be taken to identify the specific entity from which the funding is sourced, as tax consequences for finance provided by an individual acting in their own right is very different to one acting as trustee or as director of a company.

5.2 Equity finance

Companies can also be financed through equity. Common ways that equity financing can be achieved include private equity investors, venture capitalists and an initial public offering on the Australian Stock Exchange.

The tax treatment of raising capital through equity financing will depend on the nature of the transaction.

5.3 Tests for debt and equity

Australia has tests for debt and equity interests, which determine whether a particular arrangement gives rise to a debt interest or an equity interest. These tests are set out in Division 974 of the Income Tax Assessment Act 1997 (Cth). Whether an interest is debt or equity is relevant in determining if returns are subject to interest or dividend withholding tax.

5.4 Investment income and royalties paid to foreign residents

Companies, whether Australian residents or foreign residents with a permanent establishment in Australia, may be required to withhold tax from investment income and royalties paid to non-residents.

5.5 Taxation of financial arrangements (TOFA)

The TOFA rules determine the tax treatment of gains and losses on financial arrangements, which usually only apply to large taxpayers. The TOFA arrangements are aimed at reducing the influence of tax consideration on how financial arrangements are structured.

6.0 DIRECT TAXES

Income tax is assessed on individuals, companies and trusts. Federal income tax returns must be filed annually. The income tax system is based on self-assessment, with the ATO conducting random or systematic audits as a way of monitoring and verifying the self-assessments. Some large businesses choose to participate in voluntary compliance programs with the ATO.
Partnerships are subject to pass through tax treatment. Participants in joint ventures who take a share in the product of the venture are generally taxed as separate taxpayers.

Australian residents are subject to tax on worldwide income, but tax credits may be available where

foreign tax is paid by an resident taxpayer for income derived from a foreign source. Non-residents are normally taxed on income derived from Australian sources only.

6.1 Corporate income tax

The general income tax rate for companies is currently 30%, although a reduced rate is available for small businesses. Most businesses are required to pay quarterly "pay as you go" (PAYG) installments throughout the year based on their estimated tax liability, although it is necessary to file an annual tax return to determine their actual income tax liability for the year.

Income tax is payable on "taxable income," which is calculated by deducting allowable deductions from assessable income. Allowable deductions include certain deductions for expenses incurred in carrying on business and capital allowances for depreciating assets. Deductions may also be allowed for losses carried forward from previous years.

Where allowable deductions exceed the amount of assessable income for a particular financial year, the taxpayer incurs a tax loss. Generally, tax losses can be carried forward indefinitely (subject to certain continuity rules). When determining the future taxable income of a company, a tax loss may only be deducted against future taxable income if the company satisfies the "continuity of ownership" test, or in some instances, the "same business" test. Capital losses can be set off against capital gains arising in the same for future tax years, but cannot be applied to past financial years.

6.2 Capital gains tax (CGT)

Tax is also payable on capital gains derived from the disposal of most capital assets, although foreign residents are generally only taxed on transactions involving Australian real property. The net capital gains of the taxpayer (reduced by capital losses) are included in the taxpayer's total assessable income in the same way as other items of assessable income. A net capital loss may be carried forward and offset against future capital gains.

CGT applies to a wide range of events, such as an asset disposal, which affects most forms of property or enforceable rights. In broad terms, the CGT liability is determined by subtracting the cost base of the asset from the capital proceeds for the event. Gains are assessed on realization or another specified event (such as ceasing to be an Australian resident), and are not generally assessed on an accruals basis.

The ordinary income tax rates apply to capital gains. However, individuals (and certain trust structures) may be eligible for a 50% discount on

CGT if they have held the asset for at least 12 months. There are a range of concessions and deferral mechanisms for businesses and individuals. Non-residents are generally taxed only on capital gains derived from "taxable Australian property," such as land, indirect interests in land and mining or prospecting rights.

6.3 Imputation system

Dividends paid by Australian resident companies may be franked (wholly or partly) with imputation credits that reflect the tax paid by the company on the profits distributed to members. Special rules ensure uniformity of franking on distributions during a franking period. Non-resident shareholders are not eligible for credits or rebates on franked distributions. Dividends paid to non-resident shareholders may be subject to withholding tax if the distributions are not franked.

7.0 TRANSFER PRICING

7.1 Transfer pricing rules

Transfer pricing rules seek to counter international profit-shifting techniques by ensuring that related parties to international transactions determine their pricing based on arm's length methodologies.

These rules allow the Tax Commissioner to reallocate income or adjust deductions to reflect an arm's length arrangement. The rules extend to branches or divisions of the same enterprise, where non-arm's length transactions are made between an Australian permanent establishment and an overseas permanent establishment of the same enterprise.

7.2 Thin capitalization

Australia's thin capitalization rules are designed to prevent entities with cross-border operations from funding their operations with excessive levels of debt to procure a more favorable Australian tax result.

Deductions for interest incurred by inbound investment vehicles (which can include an Australian company where 40% or more of its total share capital is owned by a non-resident) and outbound investment vehicles (Australian entities investing overseas) may be limited under the thin capitalization rules.

Tax deductions on interest payments are limited by reference to a statutory debt/equity ratio assessed on the total debt of the Australian operations.

Generally, the thin capitalization rules apply to:

- Australian entities that are foreign controlled and foreign entities that either invest directly into Australia or operate a business through and Australian permanent establishment
- Australian entities that control foreign entities or operate a business through overseas permanent establishments and associate entities.

There are two exceptions from the thin capitalization rules:

- Taxpayers and their associates claiming annual debt deductions of A$2 million or less
  Outward investing Australian entities, if at least 90% of their assets (excluding those of private or domestic nature) are Australian

7.3 Principles of consolidation

The consolidation regime allows qualifying groups of entities (companies, trusts and partnerships, but excluding branches) to be treated as a single entity for income tax purposes. This is a "one-in-all-in" election, meaning that each wholly owned subsidiary will automatically and irrevocably become a member of the group for Australian tax purposes.
An important benefit of choosing to consolidate is are that the consolidated group will generally be required to file only one income tax return and one franking account for the consolidated group.

Once part of a consolidated group, intra-group transactions will be ignored for tax purposes. Examples of such intra-group transactions include asset transfers, loans, payments of dividends and returns of capital. Losses attributable to the operations of a group member are able to effectively offset against income generated by other group members.

7.4 Multiple-entry consolidated groups

The consolidations regime includes rules for foreign-owned groups with entry points into Australia via multiple Australian holding companies. These rules allow flexibility in defining the consolidated group. Such groups are known as multiple-entry consolidated groups.

7.5 Administration of consolidated groups

The entity responsible for filing the group's tax return (referred to as the head company) is the entity that is also responsible for ensuring the group's income tax liability is paid.

However, it is important to note that the other members of the group may be jointly and severally liable for the total income tax liability of the group if the head company defaults on its payment obligations to the ATO.

One way the group members may mitigate the risk of joint and several liabilities arising (which is particularly relevant if a member has or may eventually exit the group) is for each group member to enter into a valid tax-sharing agreement that allocates the tax liabilities of the group to each of its members. Where tax-sharing arrangements are in place, in the event of a default by the head company, an individual member's liability may be limited to its allocation of income tax provided under the agreement.

7.6 Withholding tax

The general rule that non-residents are liable for Australian tax on all Australian-source income is modified in relation to dividends, interest and royalties.

Payers are required to withhold tax from interest, dividends and royalties paid to non-residents. Trustees, agents or others who receive interest, dividends or royalties on behalf of a non-resident, where withholding tax has not been withheld by the payer, are also required to withhold tax.

The tax rates of withholding tax vary, depending on whether a double taxation treaty applies, among other things. The dividend, interest or royalty does not need to be actually paid to the non-resident to be subject to withholding tax. The liability can also arise where the income is reinvested, accumulated, capitalized or otherwise dealt with on behalf of the non-resident.

Certain other payments to non-residents by a resident business are subject to foreign-resident withholding tax rules. However, the recipient of a payment subject to withholding under the foreign-resident withholding tax rules is generally entitled to a credit for that amount, once it is determined that no income tax is payable.

A purchaser of "taxable Australian real property" (and interests in such) from foreign vendors may be required to withhold an amount as a non-final withholding tax obligation to be offset against the vendor's CGT liability on the transaction.

7.7 Managed investment trusts

Certain distributions made by a managed investment trust (MIT) to its foreign investors are subject to a concessional tax rate of withholding tax.

The rate of withholding depends on whether the investor's address is in a jurisdiction with which Australia has an effective exchange of information (EIO) agreement: the UK, the US and New Zealand.

Jurisdiction	Tax rate
EIO jurisdiction	15%
Non-EIO jurisdiction	30%

The concessional tax rate only applies to distributions from a MIT of Australian-source net income other than dividends, interest and royalties.

A new regime for attribution managed investments trusts (AMIT regime) applies from July 1, 2016. Generally, under the AMIT regime, qualifying MITs will (among other things) be treated as a fixed trust for the purposes of income tax and will be able to "flow through" taxable income to their unitholders on an "attribution" basis, and for that taxable income to retain its character for tax purposes as it flows through the trusts. This regime increases certainty and provides greater flexibility while reducing compliance costs for MITs.

7.8 Stamp duty

Each state and territory imposes its own stamp duties. Stamp duty is a tax on transactions and certain instruments (including conveyances of real property and business assets). The rates and duties payable vary among the states and territories and depend on the nature of the transaction. The duty is generally payable by the purchaser or transferee.

8.0 PAYROLL TAXES

Each state and territory has payroll tax legislation under which an employer is liable to pay tax on the employer's payroll. The tax is only payable where the employer's payroll exceeds a minimum threshold. The payroll tax rates and thresholds vary by state/territory.

The threshold level is determined in respect of the total wages an employer pays to all employees in Australia, and it varies between states and territories. In some instances, payments to contractors may be considered wages and subject to payroll tax.

8.1 Fringe benefits tax (FBT)

FBT is payable by employers on the value of certain benefits that have been provided to their employees or to associates of their employees. It typically applies to in-kind benefits and is payable at the top personal tax rate based on the taxable value of the benefit.

The FBT year is from April 1 to March 31. The FBT rate for the year commencing April 1, 2018, is 47%. FBT is calculated on the grossed-up value of fringe benefits (the calculation of which differs depending on the type of benefit and availability of input tax credits for GST).

Employers may claim a deduction for the payment of FBT. This results in the similar tax treatment of salary and wage income and fringe benefit remuneration provided to employees on the top marginal tax rate, except for certain concessionally taxed benefits.

There are a number of FBT exemptions and concessions, meaning benefits that are exempt from FBT. A concession is a reduction in the taxable value of a fringe benefit, which results in a reduced amount of fringe benefits tax payable (or in some cases, no FBT being payable at all). For example, concessions will be allowed for Remote Area Reductions, Transport Reductions and Relocation Reductions paid to employees. Some specific concessions also apply to some nonprofits, such as public benevolent institutions, charitable institutions, health promotion charities and religious institutions.

8.2 Superannuation guarantee levy

All employers must make superannuation contributions for the benefit of all their employees. The minimum contribution is currently 9.5% and will remain at this rate until July 1, 2021, when the levy will increase to 10%, with incremental increases of 0.5% over the following four years to 12% from July 1, 2025.

Superannuation contributions are tax-deductible to the employer making the contributions if they are made to a fund that complies with federal legislation and if they do not exceed a maximum threshold. Income derived by a complying fund, including the contributions it receives, is taxable at the rate of 15%.

Under the Superannuation Guarantee Charge scheme, a charge is imposed on all employers who fail to provide a prescribed minimum of superannuation for their employees, including certain foreign events, which can have significant tax implications.

9.0 INDIRECT TAXES

9.1 State and local taxes

State taxes mainly include payroll tax, levied on the gross payroll of a business; land tax, levied on the unimproved value of land; and stamp duties, levied on certain transactions and documents.

Local taxes are usually comprised of rates, which are generally levied by reference to the value of land.

9.2 Goods and services tax (GST)

The principal indirect tax assessed and imposed by the federal government is the 10% GST, which is levied on most supplies of goods and services by businesses at the rate of 10%. There are also excise duties imposed on certain commodities and customs duties on imported goods.

The GST is a multi-stage tax payable by suppliers (similar to a value-added tax), where each stage in a supply chain is potentially taxable, but with registered entities being entitled to refunds of GST incurred on their business inputs, referred to as input tax credits. GST is not applied to most exports of goods and services.

Businesses must register for GST if they make taxable supplies of more than A$75,000 per year, regardless of whether the business in Australia is conducted through an Australian company or an Australian branch. The liability to pay GST is generally imposed on the supplier. Most registered entities are required to account for GST either monthly or quarterly.

Some supplies are classified as GST-free. These include certain supplies relating to health, aged care, education and food, as well as sales of farm land and supplies of businesses as going concerns.

Other supplies may be exempt so that no GST liability arises, but the supplier may be denied input tax credits on business inputs relating to that supply. Exempt supplies may include certain financial supplies (such as loans, currency and derivative transactions and share transfers), residential rents and sales of established residential premises.

Groups of related entities may be eligible to form a GST group and nominate a "representative member" to be responsible for recognizing the GST liabilities and input tax credits in respect of supplies and acquisitions to and from entities outside the GST group. The representative member is the entity primarily responsible for the group's GST liability.

It is important to note, however, that the other members of the group can he held jointly and severally liable for the GST liability of the group should the representative member default in its payment obligations to the ATO. One way group companies may mitigate the risk of joint and several liabilities arising (which is particularly relevant for members exiting from the group) is for each group member to enter into a valid indirect tax-sharing agreement that allocates the GST liabilities of the group to each of its members. Where indirect tax-sharing arrangements are in place, in the event of a default by the group representative, an individual member's liability may be limited to its allocation of GST provided under the agreement.

The Australian government introduced GST on all low value imported goods with a value under A$1,000 on July 1, 2018. These GST changes also affected Australian GST-registered suppliers, including Australian retailers who 'drop ship' (i.e., sell goods that are located overseas at the time of sale, and sent directly to consumers in Australia from an overseas source). Imported goods valued above A$1,000, as well as tobacco products and alcoholic beverages continue to have GST applied. Overseas retailers that meet the registration threshold of A$75,000 will need to register for GST, charge GST on sales of low value imported goods (unless they are GST free), and lodge returns with the ATO.

9.3 Land tax

Land tax is an annual tax levied on the owner of land in Australia, based on the unimproved capital value of the land, which excludes the value of the building or capital improvements.