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## **Doing Business in Australia**

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**Edition No. 2 / May 2021**



# Doing business in Australia



*MSI's guide on Doing Business in Australia provides current information about the financial, regulatory and legal considerations that could affect business dealings within Australia. For further assistance please contact our MSI member firms in Australia.*

## Country overview

### Population

Australia has a total population of 25.1 million inhabitants (August 2019).

Australia is the world's sixth largest country, comprising an area of approximately 7.7 million square kilometres. It is a vast continent covering a distance of 3,700 kilometres from its most northerly point to its most southerly point and is almost 4,000 kilometres wide from east to west.

### Government

Australia is a federation of six States which, together with two self-governing Territories, have their own constitutions, parliaments, governments and laws.

The national or central government is usually called the Federal Government or the Commonwealth Government. However, State and Territory governments are also based on the same principle of parliamentary government. The Constitution of Australia establishes the Federal Government by providing for the Parliament, the Executive Government and the Judicature (more usually called the Judiciary)—sometimes referred to as the 'three arms of government'.

### Languages

The national language is English. In 2016, there were over 300 separately identified languages spoken in Australian homes. More than 21% of Australians spoke a language other than English at home. After English, the next most common languages spoken at home were Mandarin, Arabic, Cantonese, and Vietnamese.

### Currency

The national currency is the Australia Dollar.

### Economic summary

GDP: \$1432.2 billion in USD 2018  
Income per capita: \$56,919 AUD for 2018  
Inflation: 1.9% at 2019

### Main sectors of the economy

Australia has one of the strongest, stable, competitive, open and flexible economies in the world. The GDP in Australia was worth \$1.432 trillion US dollars in 2018. The GDP value of Australia represents 2.31 percent of the world economy.

Australia's strong economic growth has been coupled with low inflation. Over the 10 years ending in 2017, the inflation rate has varied from a low of 1.3% in 2016 to a high of 4.4 per cent in 2008 with an average over the period of 2.37%

The unemployment rate in Australia was 5.2 % in June 2019.

Australia is one of the largest economies in the Asia-Pacific region after Japan, China and Korea. China is Australia's largest trading partner, followed by United States, Japan, South Korea and the UK.

Australia's time zone spans the close of business in the USA and the opening of business in Europe.

The country's most important industrial activities include service industry, tourism, healthcare, media, finance and mining, followed by manufacturing and agriculture.

### Australia and its impact on businesses and investors

Australia is an attractive base for doing business and for investment. It's open and international outlook, well-educated work force, safe and stable location (one of the most liveable places in the world) are key contributors.

Australia is a stable parliamentary democracy, offering international investors a cost-effective, low-risk and innovative business environment. The attractive fiscal climate and technological infrastructure create favourable propositions for international business.

Australia is a member of the Organisation for Economic Co-operation & Development (OECD) The World Trade Organisation (WTO), the Asia Pacific Economic Cooperation (APEC) and the G20.

## Setting up a business

There are a number of ways to conduct business in Australia including:

1. as a Sole Trader,
2. in Partnership,
3. through a Trust (discretionary, unit or a hybrid)
4. through a Joint Venture
5. as a Corporation.
6. Managed Investment Scheme.

Companies that are incorporated outside of Australia and who wish to carry on business in Australia must either incorporate a wholly owned or partly owned subsidiary company in Australia or register as a foreign company conducting business in Australia (often referred to as establishing a branch office in Australia).

### Process of how to set up a business

It is strongly advised that you consult with a local accountant and/or lawyer as to the best structure to conduct your business or investment operations to ensure that the structure is consistent with your key objectives, local tax legislation, regulatory obligations and reporting and consideration of risk and possible exit.

### Financial year of taxes and financial accounts

The financial year is from 1<sup>st</sup> July to 30<sup>th</sup> June. There are a range of taxes to consider including:

- Income tax (resident or non-resident)
- Capital gains tax
- Goods & services tax (GST)
- Group Taxation

Indirect taxes include stamp duty, land tax, payroll tax, and customs duty.

### Accounting and auditing

A statutory audit is required if the company is defined as being "large" and applies from 1 July 2019 when two out of the following three criteria are met:

1. the consolidated revenue for the financial year of the company and any entities it controls is \$50 million or more
2. the value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is \$25 million or more, and
3. the company and any entities it controls have 100 or more employees at the end of the financial year.

Large proprietary companies must prepare and lodge a financial report and a director's report for each financial year. The accounts must be audited unless ASIC grants relief.

If the company does not meet at least two of the above criteria, it is 'small' and may not need to be audited. In some circumstances, small proprietary companies may also have to lodge financial reports.

### Economic and fiscal incentives

The Australian Government offers a number of incentive schemes, R&D Tax incentives and grants available for various sectors to support companies in their business operations. These are subject to change and depending on the nature and size of the investment project, the relevant Australian State Governments may give rebates from payroll, stamp and land taxes on an ad hoc basis and for limited periods.

## Taxation

The tax system in any country is invariably an extremely important criterion when it comes to companies finding a country of incorporation. In that context, it is important to obtain advance certainty regarding the requisite detail and tax and regulatory standing relevant to your situation and key objectives. In addition, Australia has signed tax treaties with many other countries to prevent the occurrence of double taxation.

The choice of your tax structure may offer a variety of tax treaties and opportunities for legitimate tax minimisation and for international tax planning. The Australian tax system can be divided into taxes based on income, profit and capital gains.

### GST

The GST is based on the value added tax model adopted in most countries around the world. GST is levied at a rate of 10 per cent of the taxable value of most goods, services, rights and property in Australia (including imports).

Generally, GST does not apply to exports of goods or services consumed outside Australia. From 1 July 2012, Australia moved to a self-assessment system for GST. Under the self-assessment system, the relevant GST liabilities and credits only crystallise for the taxpayer upon lodgement of a GST return or import declaration.

Some supplies will be "GST-free". The following supplies may be GST-free (subject to certain conditions): exports of goods; international air and sea travel;

most health, education and childcare services; most food, water, sewerage and drainage.

Other GST-free supplies include, but are not limited to:

- the sale of an existing business (what is called in the legislation "the supply of a going concern");
- the first supply of precious metals;
- supplies through inwards duty-free shops;
- grants of freehold and similar interests by government;
- certain cross-border supplies with an ultimate recipient in Australia who is registered for GST;
- certain supplies of services for consumption outside Australia; and
- certain supplies of farm land.

### Personal Income tax

Tax implications and rates vary depending on whether you are considered a tax resident or non-tax resident.

Residents who are not temporary residents are subject to tax on worldwide income and taxable capital gains (although a foreign tax credit is generally available within limits).

Resident individual tax rates 2019–20	
Taxable income	Tax on this income
0 – \$18,200	Nil
\$18,201 – \$37,000	19c for each \$1 over \$18,200
\$37,001 – \$90,000	\$3,572 plus 32.5c for each \$1 over \$37,000

\$90,001 – \$180,000	\$20,797 plus 37c for each \$1 over \$90,000
\$180,001 and over	\$54,097 plus 45c for each \$1 over \$180,000

The above rates do not include the Medicare levy of 2%.

### Corporate income tax

Profit generated by companies located in Australia is subject to company tax. The full company tax rate is 30% and the lower company tax rate is 27.5%.

The lower tax rate of 27.5% applies in 2018-19 to 2019-20 for companies with an aggregated turnover threshold not exceeding \$50M.

Company tax rates apply to companies, corporate unit trusts and public trading trusts.

### Transfer pricing

Australian transfer pricing rules adopt the arm's length concept as promulgated by the OECD. The transfer pricing rules apply to companies, branches, partnerships and trusts. Transfer pricing is seen as a major issue by the ATO, which is actively pursuing multinationals in Australia.

### Withholding taxes

The withholding rate is:

- 10% for interest payments
- 30% for unfranked dividend and royalty payments.

These rates apply to all payees unless the payment is made to a resident of a country which has a tax treaty with Australia, and a lower rate is specified in the relevant treaty. If this is the case, the lower treaty rate will apply.

Tax treaties are special agreements that Australia has entered with over 40 countries and help prevent the same income being taxed more than once.

### Employment law

Employment law in Australia has largely developed from three different sources:

1. The common law;
2. Contract law; and
3. Statute.

The most important piece of national legislation governing employment is the Fair Work Act 2009, which covers the majority of employees in Australia. It sets out the National Employment Standards (NES) which are the minimum conditions of employment that employees are entitled to and which cannot be displaced by an employment agreement. It covers such things as: maximum working hours; flexible work arrangements and leave; public holidays; and termination and redundancy pay.

In addition to the Act, many employees are also covered either by a Modern Award (which applies to employees across a particular sector, for example the retail sector) or an Enterprise Agreement (which is a collective agreement between an employer and employees for a particular enterprise). These set out the terms and conditions of employment at a more bespoke level than otherwise provided for in the Act. It is important to note that the application of a Modern Award or Enterprise Agreement may leave the employee in a better-off situation than provided for by the NES, but they cannot leave the employee worse-off.

### Superannuation

The system of superannuation in Australia is equivalent to what is referred to as the 'pension system' in other parts of the world; that is, money paid by an employer into a protected fund which can be accessed by the employee after their retirement.

Currently, employers are required by legislation to pay an additional 9.5% of an employee's ordinary time earnings into a compliant super fund at least four times a year (this is referred to as the 'super guarantee'). The employee has the right to choose which fund their super is paid into, although the employer can

nominate a default super fund if no alternative choice is made by the employee.

### Payroll

When starting a business and employing staff, the company must register with the tax authorities. Wage tax is generally paid monthly to the tax authorities. Distinct legislation applies to guide whether an individual contractor is deemed an employee or independent sub-contractor where the relevant compliance, withholding taxes and employment costs will apply.

### Trade unions

The trade union movement in Australia is not nearly as strong or pervasive today as it has been historically. Indeed, over the past 35 years the proportion of the workforce that belongs to unions has fallen from around 50% to 17% - and as low as 12% in the private sector.

Consequently, industrial action by trade unions, once extremely common in Australia, has steadily become less prevalent over the past few decades. Nevertheless, there remains a powerful and organised union presence in Australia across many sectors, including such bodies as: the Australian Council Trade Unions (ACTU); the Australian Workers Unions (AWU); the Construction, Forestry, Maritime and Energy Union (CFMEU); and the Maritime Union of Australia (MUA).

### Visa and work requirements

It is illegal for anybody to perform work in Australia without a valid visa (if they are a non-citizen) or to perform work in a manner that is in contravention of the conditions of their visa. Some of the most common visas used by non-citizens who work in Australia are permanent resident visas; working holiday visas; student visas (limits work to forty hours per fortnight); and employer nomination scheme visas.

For a full list of Australian visas including information on who can apply, how to apply, and the conditions attached to each visa, visit [the Australian Government's Department of Home Affairs website](https://www.homeaffairs.gov.au/visas).

## Contact us

The information provided in this guide cannot be exhaustive and we recommend anyone considering doing business in Australia should seek professional advice from our member firms before making any business or investment decision.

### Contact our member firms in Australia to discuss your requirements:

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