



**A PRACTICAL GUIDE TO ESTABLISHING
A BUSINESS IN AUSTRALIA**

2018/2019

TABLE OF CONTENTS

| | |
|--|-----------|
| TABLE OF CONTENTS | 1 |
| INTRODUCTION | 2 |
| ABOUT CROWN CORPORATE..... | 2 |
| BUSINESS STRUCTURES | 3 |
| ESTABLISHING A NEW AUSTRALIAN COMPANY..... | 4 |
| <i>Ongoing Compliance Requirements for Proprietary Companies</i> | 5 |
| OPERATING AS A BRANCH | 6 |
| <i>Ongoing Compliance Requirements for Foreign Companies</i> | 6 |
| TAXATION | 7 |
| INCOME TAX..... | 7 |
| TAXATION OF COMPANIES..... | 7 |
| TAXATION OF FOREIGN COMPANIES..... | 8 |
| TAXATION OF INDIVIDUALS..... | 8 |
| <i>Resident Tax Rate</i> | 9 |
| <i>Foreign Resident Tax Rate</i> | 9 |
| FRINGE BENEFITS TAX (FBT)..... | 10 |
| SUPERANNUATION..... | 10 |
| PAYROLL TAX..... | 10 |
| GOODS AND SERVICES TAX (GST)..... | 11 |
| VISAS AND IMMIGRATION | 12 |
| SHORT STAY WORK VISA..... | 12 |
| LONG STAY WORK VISA | 12 |
| PERMANENT RESIDENCE IN AUSTRALIA..... | 13 |

INTRODUCTION

A Practical Guide to Establishing Business in Australia is a tailored publication for investors and businesses looking to establish operations in Australia. It discusses the various options available to structure a presence in Australia and steps to be taken. A high-level overview of the Australian tax system has been provided for foreign investors to understand the various taxes that may apply and should be budgeted and planned for. Also discussed are Immigration and Visa requirements which apply for foreign employees to live and work in Australia.



ABOUT CROWN CORPORATE

Crown Corporate is a firm of chartered accounts, lawyers and immigration professionals, specialising in assisting foreign companies establish a presence in Australia. We pride ourselves on providing clear and practical advice and understand the needs of businesses setting up in Australia. Our focus is on implementation. We provide a complete and integrated service covering, company incorporation, business registrations, employment visas, payroll and ongoing compliance.

BUSINESS STRUCTURES

A foreign company looking to establish a business presence in Australia may choose to register a new Australian company or alternatively, operate as a branch and register the foreign company. The preferred structure will depend on the investor's particular facts and circumstances. Some points to consider are:

Commercial perception: Compared to a branch, an Australian company may be perceived to have a more permanent presence and a larger commitment to doing business in Australia.

Liability: An Australian company is a distinct legal entity and separate from its investors. A branch on the other hand is an extension of the foreign parent operating in Australia. The liability of a branch extends to its parent.

Taxation: A company and a branch may have different Australian tax outcomes depending upon the country that the foreign investor is coming from and the nature of its business. A branch is subject to income tax at 30%. The company income tax rate ranges between 27.5% and 30% depending upon its annual turnover.

Australian resident director: A company must have an Australian resident director. A branch does not require an Australian resident director. However, it does require a resident local agent.

Exit: A company has to go through a formal process to wind up its operations. It is easier for a branch to cease operations and close.

Whilst it is possible to transition from a branch to a company, this may attract tax and transaction costs. It is important to plan upfront.

ESTABLISHING A NEW AUSTRALIAN COMPANY

An Australian company must register with the Australian Securities and Investment Commission (ASIC) as either a proprietary company or a public company. A proprietary company is limited to 50 non-employee shareholders. It can, however, be simpler and cheaper to administer from an Australian regulatory point of view. An Australian company is a separate legal entity and is liable for its own obligations.

An Australian company must have a registered office within Australia and Australian resident directors (at least two for public companies or one for proprietary companies). There are no residency restrictions on shareholders and no general minimum capital requirements for an Australian company.

A company's directors can be personally liable for company obligations incurred at a time when the company is insolvent or there are reasonable grounds for suspecting it is insolvent or would become insolvent by incurring a particular obligation.

A proprietary company wishing to apply to ASIC for registration must:

- Ensure that the company's name is available.
- Complete and lodge the relevant application form and documents.

As at 1 September 2018, the ASIC fee for registering a company is A\$488. The ongoing annual fee for proprietary companies is A\$263.

Ongoing Compliance Requirements for Proprietary Companies

A proprietary company will have to lodge an annual statement with ASIC and notify ASIC of certain changes as they occur.

This includes changes to the structure of the company itself (i.e. its name or constitution) or changes concerning its directors, shareholders, local agent or office addresses.

The accounting and auditing requirements for a proprietary company generally depends upon whether the proprietary company is categorised as large or small. Proprietary companies which are categorised as small are exempt from having to prepare financial statements or having them lodged.

A company is classified as small if it meets two of the following three criteria:

- *Revenue*: less than A\$25 million in gross operating revenue at the end of the financial year of the company and the entities it controls.
- *Assets*: less than A\$12.5 million in gross assets at the end of the financial year of the company and the entities it controls.
- *Employees*: less than 50 employees employed by the company and the entities it controls at the end of the financial year.

A large proprietary company must do all the things small companies must do, and must also:

- Prepare a profit and loss statement, balance sheet and a cash flow statement for each financial year.
- Appoint an auditor to audit the company's financial statements. These must be lodged with ASIC within four months of the end of the financial year.

OPERATING AS A BRANCH

A foreign company that wishes to conduct business in Australia must register with ASIC.

A foreign company wishing to apply to ASIC for registration must:

- Ensure that the company's name is available.
- Complete and lodge the relevant application form and documents, including a certified copy of the company's certificate of incorporation (or a document of similar effect) and constitution documentation.
- Have a registered office in Australia.
- Appoint a local agent to represent the company in making sure it complies with its legislative requirements in Australia.

As at 1 September 2018, the ASIC fee for registering a foreign company is A\$488. The ongoing annual fee is A\$1,217. ASIC will allocate an Australian Registered Body Number (ARBN) to the foreign company and issue a Certificate of Registration evidencing its registration as a foreign company in Australia.

Ongoing Compliance Requirements for Foreign Companies

On an on-going basis, registered foreign companies must notify ASIC of certain changes as they occur. This may include changes to the structure of the company itself (i.e. its name or constitution) or changes concerning its directors, local agent or office addresses.

Subject to certain exemptions, registered foreign companies must annually lodge with ASIC a copy of their balance sheet, profit and loss statement and cash flow statement for the previous financial year, which must be prepared in accordance with the laws of the company's place of incorporation. These financial reports must be accompanied by any other documents that the company is required to prepare under the laws applicable in its place of incorporation.

TAXATION

INCOME TAX

Income tax is one of the important considerations for foreign investors wishing to set up a business presence in Australia. It is important to plan upfront to ensure the proposed structure is tax efficient and available concessions are utilised. The Australian tax year runs from 1 July to 30 June. Australia has an extensive tax treaty network covering most countries. Each treaty seeks to reduce or eliminate the double taxation of income between the countries by providing tax relief.

TAXATION OF COMPANIES

An Australian resident company is subject to Australian tax on its income from all sources, whether in or out of Australia. A company incorporated in Australia is generally considered to be a resident of Australia for tax purposes.

Small companies with an aggregated annual turnover lower than AUD \$50 million are only required to pay tax at a 27.5% tax rate. An additional requirement is that no more than 80% of the company's assessable income should be 'base rate entity passive income'. This typically includes dividends on share investments, net capital gains, rent, interest and royalty payments.

All other companies are taxed at 30%.

Transactions with international related parties are required to comply with Transfer Pricing Guidelines, which require pricing to be determined on an arms-length basis.

A company can distribute dividends to non-resident shareholders without any further tax withholding, provided the dividends are distributed out of profits after tax (also known as franked dividend). Otherwise, a 30% dividend withholding

tax will apply. This tax rate may be further reduced for shareholders from countries with which Australia has a tax treaty and at the rate prescribed in the treaty.

TAXATION OF FOREIGN COMPANIES

The income of a foreign company that has set up a branch in Australia is taxed at 30% and is worked out on a similar basis as that for a company, with the exception that a branch is only taxable on income from Australian sources.

Where a tax treaty protection is available, a foreign investor will generally not have a taxable presence in Australia if there is no 'Permanent Establishment' in Australia as defined in the treaty.

TAXATION OF INDIVIDUALS

Businesses sending employees to work in Australia need to pay close attention to how these employees will be taxed. This is especially so where the individual is coming from a country with tax rates lower than Australia.

Income tax is calculated on an individual's taxable income and charged at progressive tax rates. Individuals are classified as either residents, temporary residents or non-residents. Determining whether an individual is a resident of Australia for income tax purposes depends on the detailed circumstances of each person.

A tax resident of Australia will generally be liable to Australian income tax on their worldwide income.

A 'non-resident' or a 'temporary resident' of Australia is generally only liable to Australian income tax on income sourced in Australia (although the 'temporary resident' may be assessable on worldwide income in limited cases, such as, salary and wage income).

As every person's circumstances are different, there may be various tax credits, tax offsets (rebates), levies, liabilities, and tax treaty provisions, which may apply.

Under Australian law, there are different tax rates for residents and non-residents. This table sets out the rates and thresholds for taxpayers and effective from 1 July 2018.

Resident Tax Rate

| 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 |
| \$180,000 and over | \$54,097 plus 45c for each \$1 over \$180,000 |

* The tax-free threshold is prorated for part-year residents

The rates above do not include the Medicare levy of 2%. Medicare is a government scheme that gives all Australian residents access to health care. If you are entitled to Medicare benefits, then in addition to income tax, you need to pay the Medicare levy at a rate of 2% on taxable income, subject to exemptions for low-income earners.

Foreign Resident Tax Rate

| Taxable income | Tax on this income |
|-----------------------|---|
| 0 - \$90,000 * | 32.5c for each \$1 |
| \$90,001 - \$180,000 | \$29,250 plus 37c for each \$1 over \$90,000 |
| \$180,001 and over | \$62,550 plus 45c for each \$1 over \$180,000 |

Foreign residents are generally not required to pay the Medicare levy

FRINGE BENEFITS TAX (FBT)

Fringe Benefits Tax is a tax levied on the employer on benefits provided to employees.

Examples of benefits that are subject to FBT include:

- Housing benefits
- Private use of motor vehicles provided by the employer
- Entertainment
- Home leave travel
- Provision of private health insurance.

Benefits provided are grossed up and FBT at 47% is imposed on the grossed-up value. Certain benefits, such as superannuation are exempt from FBT while other benefits such as motor vehicles and home leave travel reimbursements are concessionally taxed. The effect of taxing fringe benefits in this way is that employers pay FBT equivalent to the income tax that an employee on the top marginal rate of tax receiving the benefit would have paid had they purchased the benefit themselves from their after-tax income. The FBT is deductible to the employer for income tax purpose.

SUPERANNUATION

The pension system in Australia operates as a compulsory private superannuation contribution scheme. Under this system, employers must contribute an amount equal to at least 9.5% of an employee's defined 'earnings'.

PAYROLL TAX

Payroll tax is a State/Territory tax levied at specified rates on the annual wages and salaries of employees in each State or Territory.

GOODS AND SERVICES TAX (GST)

A 10% GST is imposed on supplies of most goods and services imported or sold in Australia. The GST is a consumer tax. Expenses which a business incurs in Australia will typically include GST. The business will be entitled to claim an equivalent input tax credit, which it can use to offset against the GST which it is required to pay on supplies that it makes. GST on taxable supplies is accounted for in the Business Activity Statement that must be lodged monthly or quarterly.

VISAS AND IMMIGRATION

Entry, work and residency entitlements are administered by the Department of Home Affairs. Individuals who are not Australian citizens or Australian permanent residents are required to hold a valid visa with the appropriate work entitlements in order to work in Australia.

SHORT STAY WORK VISA

The Temporary Work (Short Stay Specialist) visa (subclass 400) is available if overseas employees are required to visit Australia to do short-term, highly specialized, non-ongoing work. Generally, the stay period allowed under this visa is for up to three months. However, the Department will consider granting a visa for up to six months in limited circumstances if supported by a strong business case.

LONG STAY WORK VISA

The Temporary Skill Shortage (TSS) visa (subclass 482) is the visa program most commonly used by businesses to sponsor employees wishing to work in Australia on a temporary basis. The initial visa period can be valid for either 2 years or 4 years, period depending upon the occupation classification. The employer can be an overseas employer or an Australian company.

This visa has various conditions which may apply, including:

- English language proficiency;
- Skills assessment;
- Market salary;
- Labour Market Testing;
- Employment experience; and
- Police clearance certificates.

PERMANENT RESIDENCE IN AUSTRALIA

An Employer Nomination Scheme ('ENS') visa permits businesses to sponsor highly skilled workers to obtain permanent residency.

There are three possible application pathways for an ENS visa:

- *Temporary Residence Transition* where applicants have worked with the employer in Australia on a subclass 457 or a subclass 482 visa for 3 out of the preceding 4 years prior to nomination.
- *Direct Entry Scheme* for applicants who may have not met the working conditions mentioned above. They will be required to provide a skills assessment.
- *Agreement Stream* where the employer has a Labour Agreement.

Each of the above visas have various additional requirements. Alternatively, there are a variety of general skilled migration visas available, each depending on individual's circumstances.