

DOING BUSINESS IN AUSTRALIA



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HALL CHADWICK AUSTRALIA

Are you or your clients considering doing business in Australia? It is vital to have access to a reliable, established organisation that has a complete and thorough knowledge of the total business function in the greater Australian market.

Hall Chadwick is one of the largest and most experienced accounting groups in Australia servicing clients in every major capital city and many regional centres around the country.

Internationally, Hall Chadwick is a member of the Accountants Global Network (AGN). AGN is an association of independent accounting firms worldwide. It is ranked 14th largest of the international accounting groups.

Hall Chadwick enjoys an enviable reputation for its service to clients and for the competence of its Partners and staff. We offer expert advice and services in Business Structuring, Accounting, Taxation, Audit, Business Migration, Business Recovery & Insolvency and Reconstruction, among other specialist services.

Australia is one of the most attractive business locations in the world and is a strategic location for multinational companies targeting market opportunities in the Asia Pacific Region.

A number of key factors contribute to Australia being the location of choice, whether for manufacturing, management or regional support services. The combination of an advanced banking and technology system, a highly qualified workforce operating in a

multicultural society, supported by extensive deregulation, fast adoption of international standards and market stability are just a few of the reasons why businesses are increasingly coming “downunder”. In addition, Australia is world famous for its lifestyle and very attractive living environment.

With a history dating back to 1886, Hall Chadwick understands that the two pertinent factors for long term success are relationships and constantly exceeding clients' expectations.

Hall Chadwick's divisions service all aspects of client needs, regardless of the industry specialisation. Most importantly, Hall Chadwick offers personalised service not often found in a firm of this size, with Partners liaising with you, strategising, directing and closely monitoring all work. At Hall Chadwick, we acknowledge the importance of anticipating and understanding the unique issues and challenges arising in clients' industries in order to provide comprehensive and quality service.

Our commitment to clients extends beyond traditional accounting and business advice. Our mission is to maximise your success in doing business in Australia. We achieve this by dedicating complete end-to-end professional services in the key industry sectors, as well as making introductions to government at all levels and major service providers in a variety of industries, including legal, banking, employment and real estate.



ABOUT AUSTRALIA

2.1 GEOGRAPHY & DEMOGRAPHICS

Australia is the largest island in the world.

The numerous advantages of locating in Australia have made the country the location of choice for the regional headquarters of many multinational corporations. Located in the Asia Pacific Rim, Australia's proximity to Asia places it in an ideal position for companies seeking to expand into Asian markets. Australia also has an extensive well-educated and trained workforce boasting multi skilled and multi lingual personnel plus a temperate climate and relatively low crime rate.

The national language is English. However, the country maintains an extremely cosmopolitan flavour enriched with a vast array of people from European, Asian and other backgrounds as well as an indigenous population whose presence in the country can be traced back some 60,000 years.

The multicultural nature of Australia is reflected in the many religious denominations, specialised media and schools, and of course, the cuisines of the world that form an important part of the culture. People who migrate to Australia can be sure to find facilities to meet their needs.

Australia has a stable economy for investment and has enjoyed rapid growth. Australia's industrial and rural industries have adopted world best practices and our technology and communications development and uptake is amongst the leading countries in the world.

2.2 CLIMATE

Australia's climate ranges from tropical in the north to temperate in the south. In the southern cities,



temperatures are cool in winter and warm in summer and northern cities are warm in winter and hot in summer.

The climate in the major cities and regional centres is generally moderate. Due to its size, geographical location and the lack of extensive high mountain ranges, Australia has a wide range of climates, but generally there are no severe extremes. Despite rainfalls of 2500mm (100in) in parts of Northern Queensland, Australia is a dry continent, and generally rainfall in the cities is light, with an even spread throughout the year.

2.3 POLITICAL SYSTEM

The Australian political system is extremely stable. The country has three levels of government – Local, State and Federal. Australia has been a democratic country since its inception. Initially, individual states operated as colonies. In 1901, the states united to become The Commonwealth of Australia.



2.3.1 Local Government

Local government is elected by the residents of each specific municipality. Their powers are rather limited and usually cover such issues as environmental, land development and other "local" concerns.

2.3.2 State Government

State Governments are more politically focused.

State Governments have responsibility for education, police, health facilities, energy and mining, as well as industrial development.

The State Governments across Australia have similar but not identical laws. Businesses operating in a particular State or Territory need to be aware of various taxes and other laws. The main taxes (including state taxes) are covered in section 5 of this publication. However, there are no state income taxes.

2.3.3 Federal Government

Federal Government derives its power under the Australian Constitution. Its responsibilities include collection of income tax, defence, foreign affairs, immigration, social security, communications, trade practices, commerce and insurance law. The government is divided into a "lower" and "upper" house being the "House of Representatives" and "Senate" respectively. Bills introduced into parliament must be passed by both the lower and upper house to become law.

2.4 BANKING & CURRENCY

Australia has a highly developed Banking system.

Major Australian and International Banks are well represented throughout Australia. Their services include a full suite of risk management, treasury, international advisory, corporation and personal solutions. All of the usual technologies are fully integrated to businesses operating in Australia.

Australia's currency is the Australian Dollar, denoted as AUD, or \$1.00. The smallest unit is one cent, with 100 cents = \$1.00. The exchange mechanism for the Australian dollar is based on a floating exchange rate.

Minimal exchange controls exist. The system of monitoring transactions with known tax havens has ceased. Rather, anti-avoidance tax rules have been strengthened. One requirement is for entities to advise movement of currency into or out of Australia exceeding \$10,000.

Hall Chadwick has very close relations with senior personnel in most Australian Banks. We are able to make necessary introductions to streamline the process of setting up your banking facilities.

2.5 IMPORT & EXPORT ISSUES

2.5.1 Import Issues

All goods imported into Australia must be cleared by customs, whether they be imported by air, sea or post.

Customs duty and Goods and Services Tax (GST) may apply to goods entering Australia. See Section 5 for a more detailed commentary on GST.

Customs duty rates vary and depend upon a number of factors including the type of goods and the country of origin.

Goods regarded as potentially hazardous or dangerous are subject to import controls.



2.5.2 Export Issues

Export of goods from Australia is regulated by various laws and Government policies.

The thrust of these laws is to:

1. Prohibit the export of certain goods either absolutely or conditionally; and
2. Adequately record Australia's international trade.

Where goods are "conditionally" exported a permit may be required.

As explained in 2.7, an Export Market Development Grant may be accessed in certain circumstances.

The Export Finance and Insurance Commission assists Australian businesses that export goods or services with mainly Australian content. Finance for overseas customers purchasing Australian goods may be available. In addition, insurance for performance bonds and unfair calling on contracts may also be available.

2.6 RESEARCH AND DEVELOPMENT

Australia actively encourages development of technology and is credited with numerous inventions and innovative ideas. One part of the Government's focus on rewarding businesses in Australia who engage in such pursuits are the Research and Development Concessions, which are two pronged.

2.6.1 Tax Concessions

Companies that incur expenditure on eligible Research and Development activities may claim a number of tax concessions.

Deductions of 125% and up to 175% are also available in certain circumstances. Accelerated write-offs can be obtained for expenditure on Research and Development Plans.

2.6.2 Competitive Grants and Loans

Companies are also able to apply for "Start" Grants for worthwhile and viable projects. Loans with very attractive terms are payable to companies with demonstrated quality. The selection criteria is on a relative merit system. Many of Hall Chadwick's clients have accessed these benefits and strategic advice can be provided upon request.

2.7 EXPORT MARKET DEVELOPMENT GRANTS

Each year approximately 3,000 exporters use an Export Market Development Grant (EMDG) to assist their export initiatives.

Sole Traders, Companies and Approved Joint Ventures are eligible to apply. However, a branch of a Foreign Company is not eligible.

The purpose of the EMDG is to encourage businesses to concentrate on export markets.

Grants are made available to reimburse the cost of export promotion of products that are substantially Australian.

Eligible expenditure would include costs of:

- Overseas representatives
- Marketing visits
- Communications
- Samples
- Trade fairs, literature and advertising.

Recipients of the grants are reimbursed 50% of their expenditure on eligible costs up to a maximum benefit of \$250,000 per annum.

There is a sliding scale, depending upon which type of industry participants are involved.



FOREIGN INVESTMENT GUIDELINES



Australia welcomes foreign investment. It provides scope for higher rates of economic activity and employment than could be achieved from domestic levels of savings.

Foreign investment policy provides for Government scrutiny of many proposed foreign purchases of Australian businesses and properties.

In the majority of industry sectors, smaller proposals are exempt from notification and larger proposals are approved unless judged contrary to the national interest. The Government determines what is 'contrary to the national interest' by considering the widely held community concerns of Australians.

Proposals by **foreign interests** to invest in Australia, which require prior approval include:

- acquisitions of **substantial interests** in existing Australian businesses with total assets over \$50 million or where the proposal values the business at over \$50 million;
- takeovers of offshore companies whose Australian subsidiaries or assets are valued at \$50 million or more;
- proposals to establish new businesses involving a total investment of \$10 million or more;
- portfolio investments in the media of 5 per cent or more and all nonportfolio investments irrespective of size; direct investments by foreign governments or their agencies irrespective of size;
- acquisitions of interests in urban land (including interests that arise via leases, financing and profit sharing arrangements and the acquisition of interests in urban land corporations and trusts) that involve the:
 - acquisitions of developed non-residential commercial real estate, where the property is subject to heritage listing, valued at \$5 million or more;
 - acquisitions of developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at \$50 million or more;
 - acquisitions of accommodation facilities irrespective of value;
 - acquisitions of vacant urban real estate irrespective of value;

- acquisitions of residential real estate irrespective of value; or
- proposals where any doubt exists as to whether they are notifiable. (Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.)

A **foreign interest** is defined as:

- a natural person not ordinarily resident in Australia;
- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.
- A substantial foreign interest occurs when a single foreigner (and any associates) has 15 per cent or more of the ownership, or when several foreigners (and any associates) have 40 per cent or more in aggregate of the ownership of any corporation, business or trust.

Proposed acquisitions of **residential real estate** are exempt from examination in the case of:

- Australian citizens living abroad purchasing either in their own name or through an Australian corporation or trust;
- foreign nationals purchasing (as joint tenants) with their Australian citizen spouse; and
- foreign nationals who are the holders of permanent resident visas or are holders, or are entitled to hold, a 'special category visa' purchasing either in their own name or through an Australian corporation or trust.

CHOICE OF BUSINESS STRUCTURE

When considering a business operation in Australia it is essential, at the outset, to identify the best business structure for your use.

In essence, the choice is to run the business through one of the following six alternatives:

1. Sole trader
2. Partnership
3. Discretionary trust
4. Unit trust
5. Private company
6. Joint venture, incorporated or unincorporated

4.1 SIMPLE SOLE PERSON SITUATION

Where a single individual is involved in the conduct of a business, that individual can set up and conduct the business through a private company. However, rules effective from 1 July 2000 may preclude the use of such private companies where they are nothing more than vehicles to avoid the derivation of income by the individual.

In any event, there are many benefits to be gained from utilising the sole trader structure particularly because it is inexpensive to set up and there are CGT advantages in keeping the business in the name of an individual.

4.2 MORE COMPLEX SITUATIONS

When more than one person is involved, the complexities are greater and the need to consider alternative structures is more critical.

4.2.1 Partnership

The most formidable obstacle to utilising a conventional partnership arises from the fact that the partners become jointly and severally liable for each other's debts, thereby exposing each partner to substantial unknown liabilities, in certain circumstances. It may be appropriate to consider using a limited partnership. In such a partnership, liability can be limited for all but one of the partners.

If secrecy and minimising reporting obligations is paramount, a limited partnership may be a suitable vehicle.

4.2.2 Discretionary trust

The discretionary trust structure is usually not appropriate where the individuals concerned are arm's length entities that wish to have their respective rights and interests protected in every way from the outset. In such a situation it is preferable to have firmly allocated units in a unit trust or shares in a private company to ensure continuity in the allocation of income and capital from the entity concerned.

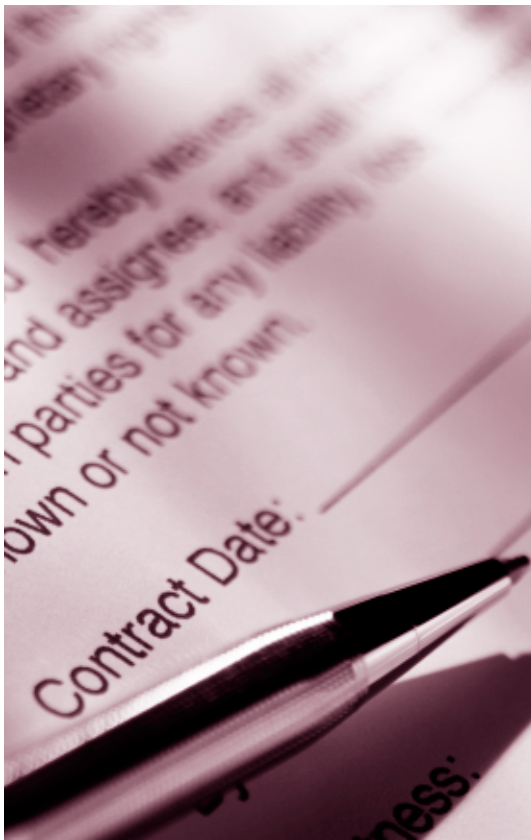
4.2.3 Private company

The private company is the most easily recognisable entity and well understood by both Australians and foreigners alike. However, set up and maintenance costs are usually higher than for other entities.

A key advantage of using a company is limited liability.

One disadvantage of companies is the potential loss of tax benefits when the company passes its profits to shareholders as dividends. More disadvantageous is the fact that companies do not obtain the benefit of the 50% tax exemption available to individuals on the disposal of assets on capital account after 30 September 1999.





Advice should be sought in relation to distributions from private companies in the form of payments, loans and the forgiveness of debts by private companies to shareholders or associates of shareholders as these may, in certain circumstances, be treated as unfranked dividends, thereby triggering a tax liability.

Companies remain a popular form of business structure because of their ready acceptance within the community, limited liability and a corporate tax rate of 30% which is 17% lower than the top individual rate.

4.3 JOINT VENTURE

A joint venture in Australia is generally understood as an association of two or more persons acting together for a specific commercial purpose but not in partnership. Such joint ventures are commonly used in the mining industry for the purpose of operating a mine and processing the output.

Essentially, participants in joint ventures share costs but do not share profits. They share in the product or the output of the business activity. Hence, if the joint

venture participants use a separate company to manage the sale of the product, the company will distribute the proceeds of sale of the product separately to each joint venturer.

Liability does not extend to all parties involved in the joint venture; unlike partnerships the liabilities of the joint venture are not shared. Joint venture participants who incur liabilities in relation to the project do so on their own account and at their own risk. Other parties involved cannot be held liable. In a partnership, the partners are jointly and severally responsible for all the partnership liabilities.

Parties involved in the joint venture may have different purposes for participating in a project. This has taxation implications and can create different tax outcomes under income tax laws. For example, two parties, one a residential property developer and the other a landowner may undertake a joint venture to develop land. The property developer is carrying on a business whereas the landowner is not. The landowner wants to sell the land for a gain. Each party could have a predetermined number of houses on completion.

Finally, joint venturers can assign their interests in the arrangement without triggering a dissolution and reformation of the joint venture. By way of contrast partners who do this are effectively dissolving the partnership and creating a new one thereby resulting in CGT implications for all partners.

It is important when structuring a joint venture to ensure that the documentation is drafted in such a manner as to ensure that it is not a partnership. You should consult Hall Chadwick for further details.

TAXATION CONSIDERATIONS IN DOING BUSINESS IN AUSTRALIA

5.1 INTRODUCTION

The Australian taxation issues that arise in the context of doing business in Australia are created under the jurisdictions of both Federal and State/Territory laws. The key taxes which are levied by each level of government are outlined in Table 5.1 (refer to Appendix A).

Whilst tax is a fact of life in most countries, opportunities can be created in dealing with each transaction.

With appropriate advice and careful planning the taxation issues can be managed, and in certain circumstances turned to your advantage in a legitimate manner. Where appropriate these planning techniques are outlined in this document. When necessary further development of these techniques can be discussed by contacting Hall Chadwick.

5.2 INCOME TAX

Income tax has been levied at the Federal Government level in Australia for over sixty years.

Essentially, income tax is a tax levied on companies, individuals and certain trusts, on the difference between the relevant entity's assessable income and the allowable deductions, for a particular tax year ending on 30 June. This net amount is called "taxable income".

The rates of tax applicable to the taxable income of individuals is set out in Table 5.2 (refer to Appendix A).

The rate of tax applicable to companies since 1 July 2001 is 30% (previously 34%).

5.2.1 Tax Year

The tax year, by reference to which assessable income and deductions are determined, is normally the year from 1 July to the following 30 June.

In the case of companies and trusts, a substituted tax year can be allowed in certain circumstances and by following certain administrative procedures. One of the main examples where a substituted accounting period can be obtained is in relation to companies which are subsidiaries of offshore entities which have different tax years to the Australian 30 June financial year end. In that instance it is possible to seek, and obtain permission, to use a different tax year.

5.2.2 Special rules for non-residents

Interest, certain types of dividends and royalties received by non-residents from Australian entities are subject to withholding tax, which in essence is a special form of income tax.

The interest withholding tax rate is 10% of the gross interest paid (i.e. without allowing for any deductions that might otherwise be applicable).

The royalty withholding tax rate is normally 30% of the gross royalty paid. However, where there is a Double Tax Agreement (DTA) between Australia and the country of residence of the entity concerned, the rate of withholding tax is usually reduced to 15%.

In the case of dividends, where they are paid out of a pool of profits that has not been subjected to Australian income tax, these dividends will be called unfranked dividends and are subject to the normal withholding tax rate of 30% of the gross dividend paid. However, if there is a DTA between Australia and the country of



residence of the entity concerned, the rate of withholding tax is normally reduced to 15% (although in recent DTAs the rate has been as low as 5%).

In relation to dividends paid out of a pool of profits that is subject to Australian income tax, there is to be no further Australian withholding tax on those dividends. However, there is no franking credit available for Australian corporate tax paid.

In relation to all other income derived by non-residents, only Australian sourced income is subject to tax in Australia. Thus, if a non-resident derives business profits from activities conducted in Australia, but which did not give rise to an Australian source under ordinary source principles, the income from that business activity is not subject to tax in Australia. Again, this conclusion could be altered if there is a DTA in place (refer to 6.2 below).

Source of income is not generally defined in the Tax Act though there are specific rules for certain types of income. Where there is no statutory source rule, source is determined according to principles developed by the Courts.

Statutory source rules apply to outgoing royalties, interest payments on loans secured by mortgage of any property in Australia, and certain types of business income. Statutory source rules can operate in relation to foreign manufacturers who sell goods in Australia that have been manufactured outside Australia and to importers who are instrumental in bringing about certain sales.

Non-statutory source rules, developed by case law, relate to income from the following sources:

- personal services – the place where the services are performed;
- business income – the place of contracting, the place of performance and the place of payment are all relevant;
- sales income – no one factor appears to be relevant unless real estate is involved, in which case the place where the land is situated is determinative;
- dividend income – the place where the fund of profits enabling the payment of the dividend arises is determinative; and
- interest – the place where the contract for the loan was made and the place where the money was lent are significant.

To determine the source of income, a weighing of various factors is taken into account to establish where the critical elements for the production of income occurred. You should refer to Hall Chadwick for clarification.

5.2.3 Residents

Residents of Australia are generally taxed on their worldwide income.

The position in relation to trusts is more complex – in essence, any accumulated income is taxed in the trustee's hands at the rate of 47%; distributed income, or income to which a beneficiary is "entitled" at year end, is taxed to the beneficiary at the marginal tax rate applicable to that beneficiary and is not taxed in the hands of the trustee.

In relation to superannuation funds, the normal rate of income tax is 15% if the superannuation fund is a complying superannuation fund. If the fund is a non-complying fund its earnings are taxed at the rate of 47%.

The position in relation to partnerships in Australia is, with one qualification, that all the assessable income and deductions of a partnership are treated as the assessable income and deductions of the partners in the partnership and taxed in the partner's hands. In other words, the partnership, in essence, is treated as a look-through entity.

The one qualification also applies in relation to limited partnerships, which are effectively taxed as companies.

Once the tax payable is calculated by applying the rate of tax to the taxable income, there are further possible tax offsets which are designed to reduce the amount of tax payable.

Examples of such tax offsets include:

- Medical Expenses Rebate
- Low Income Taxpayers Rebate
- Dependant Rebate
- Pensioners Rebate
- Overseas Forces Rebate
- Inter company Dividend Rebate
- Franking Rebate
(in relation to the receipt of franked dividends)

5.3 TAX ON CAPITAL GAINS (ALSO KNOWN AS CAPITAL GAINS TAX OR CGT)

Interestingly, in the context of Australian taxation, the name Capital Gains Tax (CGT) is a complete misnomer.

What is not readily understood is that Australia does not formally impose a capital gains tax. Rather, under the Federal income tax laws (which have been described above), capital gains are treated as ordinary assessable income and are therefore subject to tax as such, with certain qualifications.

A key qualification that has been in place since 20 September 1999 is that, in the case of individuals and trusts, only 50% of any capital gain is included in assessable income provided the asset has been held for at least 12 months. This discount, however, does not apply in relation to gains derived by companies.

There are also other concessions, particularly in relation to small business, that have been introduced in recent years. Where these concessions apply, substantial capital gains can be obtained tax-free. Further information on these is available from Hall Chadwick.

5.3.1 Special considerations for non-residents

Non-residents only include capital gains in their assessable income if the capital gain arises from a disposal, or other CGT event, in respect of assets that have the necessary connection with Australia. The meaning of the phrase "necessary connection with Australia" is defined in the federal tax law but, in essence, the following assets have the necessary connection:

- land or buildings situated in Australia;
- an asset that has, at any time, been used by the taxpayer in carrying on a trade or business wholly or partly at, or through, a permanent establishment in Australia;
- a share, or an interest in a share, in a private company that is resident in Australia;

- an interest in a resident trust estate;
- a share, or an interest in a share, in a company that is a resident public company in the year in which the CGT event occurs where, at any time during the last five years, the taxpayer and/or its associates were the beneficial owners of not less than 10% by value of the shares of the company;
- a unit in a resident unit trust where, at any time in the last five years, the taxpayer and/or its associates, were the beneficial owners of not less than 10% of the issued units of the unit trust;
- an option or right to acquire a CGT asset of any kind referred to above;
- certain shares received under special arrangements relating to CGT rollover events.

Significantly, where a taxpayer who is a non-resident makes a disposal of an asset not covered by any of the items listed above, that disposal is not subject to capital gains tax.

Planning Point

A non-resident of Australia who owns a capital asset in the form of a shareholding in an Australian public company, which does not exceed 10% by value of the shares of the company, is not subject to tax in Australia on any capital gain derived from the sale of such shares.

It should also be noted that any franked dividends i.e. dividends paid in relation to those shares, if paid out of a pool of profits which have already been taxed in Australia, will suffer no further withholding tax in Australia.

Thus, for a non-resident who owns shares in such a public company, the only tax that would be paid in

relation to dividends and capital gains from those shares would be the Australian corporate income tax payable on the profits derived by the public company itself. As mentioned above, there would be no Australian dividend withholding tax since the dividends are franked and there would be no Australian capital gains tax since the asset would not have the necessary connection with Australia.

5.4 GOODS AND SERVICES TAX (GST)

Australian GST came into effect from 1 July 2000, replacing a more narrowly based wholesale sales tax.

5.4.1 Special rules for non-residents

One of the requirements for there to be a taxable supply is that the supply must have a connection with Australia.

The supply of goods is connected with Australia if either:

- the goods are delivered or made available in Australia;
- the goods are removed from Australia;
- the goods are imported into or brought from overseas and installed or assembled in Australia

The supply of real property is connected with Australia if the real property or the land to which the real property relates is in Australia.

All supplies of things other than goods and real property, are evaluated by the same test to determine whether or not that supply is connected with Australia in the relevant sense. A supply of anything other than goods and real property is connected with Australia if it is done in Australia, or if the supplier makes the supply through an enterprise that the supplier carries on in Australia.



Planning Point

The supply of goods to an Australian, who is temporarily situated outside Australia, does not give rise to a GST liability provided the goods are delivered or made available to the recipient outside Australia.

Further, a non-resident supplier of intangible property has no GST liability if all relevant aspects of the supply are made outside Australia and the supplier does not make the supply through an enterprise that the supplier carries on in Australia. In essence, this means that the supplier must not have a permanent establishment in Australia.

The final comment above is subject to one important caveat - the recipient of the supply (as opposed to the supplier) can, in certain circumstances, be subject to GST on the supply of intangible property. Refer to Hall Chadwick for further details.

GST is imposed on all taxable supplies made on or after 1 July 2000 at the rate of 10%. It is calculated on the value of the taxable supply which is 10/11ths of the GST inclusive price received by the supplier as consideration for the supply. Generally, registered entities can claim a credit for GST paid on supplies. Therefore, it is the end user who effectively bears the tax.

Non-taxable supplies are not subject to GST. Included in non-taxable supplies are GST-free supplies that cover a range of items, most notably basic food, healthcare, education and exported goods and services.

Also, included in non-taxable supplies are input taxed supplies. The most significant category of input taxed supplies is financial supplies.

There are differences between a GST-free supply and an input taxed supply. Where the supplier makes a GST free supply, any GST that it has paid in relation to acquisitions that relate to GST free supplies may be claimed as input tax credits. These input tax credits can be refunded to the taxpayer. By contrast, in relation to input taxed supplies, where the supplier makes such a supply and there is an associated GST expense in relation to acquisitions made that relate to those supplies, normally no input tax credit can be obtained.

The full list of GST-free and input taxed supplies is provided in Table 5.3 (refer to Appendix A).

Imports are treated separately. In essence, imports become taxable as taxable imports for GST purposes only where they relate to the import of goods. Thus, in broad terms, if goods are imported into Australia, where they would not be GST-free or if input taxed supplies were supplied locally, the GST liability is imposed on the importer for an amount equal to 10% of the value of the taxable import. The value of the taxable import includes the customs value, associated costs of transport and insurance and any customs duty payable in respect of the import of the goods. If used entirely in the conduct of a business, the importer would also be entitled to an input tax credit equal to the GST liability.

Essentially, a GST liability, in relation to the import of goods, arises only if the goods are used wholly or partly for essentially private purposes.

Finally, it should also be noted that exports are GST-free. However, to satisfy the requirements of the definition of being an export for this purpose, there are strict technical rules that must be complied with. Further information on this issue can be obtained from Hall Chadwick.

5.5 FRINGE BENEFITS TAX (FBT)

FBT was introduced with effect from 1 July 1986 to impose a tax upon employers in relation to all non-cash components of benefits paid to employees.

FBT covers a wide range of benefits listed in Table 5.4 (Refer to Appendix A).

Each category referred to in Table 5.4 has its own designated valuation rules which means that some categories are inevitably dealt with more favourably than others. With “Salary Packaging”, it is still possible, in the Australian context, to extract an advantage from salary packaging a motor vehicle, since the valuation rules for motor vehicles are slightly more generous than those applicable to other categories. However, it must be conceded that the relative advantage here has been diminished in recent years.

For expatriates and employees who are required to live away from home some very significant benefits can be provided tax-free, or with a negligible amount of tax applicable.

There are also some minor items exempt from FBT that can be salary packaged to good effect. These include in particular:

- Laptops;
- Payments made to complying superannuation funds;
- Car parking provided by small businesses on their premises;
- Mobile phones;
- Certain childcare fringe benefits.

5.6 MEDICARE LEVY

The Medicare levy applies only to resident individuals. It has no application to non-residents or to companies.

The Medicare levy can best be described as an extra charge or levy for medical care imposed by reference to the taxable income of a taxpayer in addition to the tax otherwise payable by the taxpayer.

The current Medicare levy is imposed at a flat rate of 1.5% on the taxpayer's entire taxable income unless taxable income is less than certain concessionary amounts in which case lower rates may apply. Thus, a taxpayer on the maximum marginal income tax rate of 47% will pay a total tax of 48.5%, inclusive of the Medicare levy. An additional medicare levy surcharge of 1% of taxable income can apply to high income earners in certain situations.

5.7 HIGHER EDUCATION CONTRIBUTIONS SCHEME CHARGE (HECS)

HECS applies to award courses undertaken in Australian Higher Education Institutions.

The fee charged varies depending on the nature of the discipline. By way of example, a law student pays HECS of \$5,870.00 per semester, with a series of payment options.

There is no general exemption from the HECS scheme for non-residents. However, students who are exempt from HECS include overseas students who are fully sponsored under a foreign aid program and overseas students who pay full fees, although they are subject to other student charge arrangements.



5.8 SUPERANNUATION GUARANTEE CHARGE (SGC)

The superannuation guarantee legislation is designed to encourage employers to provide a minimum level of superannuation support for employees. Where employers provide less than the required minimum level of support, they are liable to pay a non-deductible charge called the Superannuation Guarantee Charge (SGC). The current minimum prescribed rate is 8%, increasing to 9% from 1 July 2002. The percentage is calculated in respect of the employee's total remuneration package.

5.9 SUPERANNUATION SURCHARGE

Superannuation contribution surcharge applies to all deductible contributions made after 20 August 1996, on behalf of certain taxpayers where threshold tests are fulfilled.

Essentially, this is a tax on the member and not on the fund.

The surcharge is 15% if the member's total taxable income exceeds \$98,955 for the 2000-2001 tax year. The surcharge rate is zero percent if the member's total taxable income is less than \$81,493 for that tax year.

The surcharge is somewhere between zero and 15% if the member's total taxable income is between those amounts.

5.10 PAYROLL TAX

Payroll Tax is levied by each of the six Australian States and two Territories regarding assessable wages paid or payable in respect of services performed wholly or mainly within a particular jurisdiction. In every case,

there is a threshold below which Payroll Tax is not payable. Thus, for example, in New South Wales the first \$600,000 of Payroll is not subject to Payroll Tax. In Victoria, this amount is equal to the first \$515,000 and Queensland the first \$850,000. Other States and Territories have similar thresholds. Beyond that threshold amount, a flat rate is normally charged although there is a complicated sliding formula in Western Australia. The flat rate in New South Wales is currently 6.2%, Victoria 5.75% and Queensland 4.9%.

Queensland is set to abolish Payroll Tax in the near future.

As can be seen from the above, the residence of the employer or employee is not relevant to Payroll Tax - the critical issue is where the services are performed. If they are performed within one of the relevant jurisdictions the tax will apply subject to the threshold tests.

Certain planning opportunities exist and you should contact Hall Chadwick for further details.

5.11 LAND TAX

Land tax applies equally to residents and non-residents who own land in the particular State or Territory jurisdiction in question.

Land tax is a State or Territory tax that is currently imposed by all six states of Australia and by the Australian Capital Territory. It is not imposed by the Northern Territory. In each case, it is imposed on the value of the land, only the methods for determining value in this context vary from state to state.

With the exception of the ACT, liability for land tax rests with the owner on a particular date or at a particular point in time. In the ACT, where all land is owned by the Commonwealth, land tax is imposed on lessees.

In NSW and Victoria, the relevant moment to judge the ownership of the asset is midnight on 31 December in any given year. The dates for all other states, but not the ACT, is midnight on 30 June in any given year.

In the six States and in the ACT, the owner's principal place of residence is generally exempt, although there are certain qualifying criteria which vary between jurisdictions. However, NSW has removed the exemption where the land value is \$1 million or more from the 1998 year. That threshold of \$1 million is indexed in line with inflation and has increased to slightly more than \$1.3 million in 2001.

In all States but Queensland there is a threshold below which no land tax applies and above which the imposition of land tax can be quite significant.

By way of example, in New South Wales the land tax is nil up to \$205,000 and thereafter becomes 1.7% of the excess above \$205,000.

Each State imposes its own land tax and, accordingly, it is imposed in relation to land owned by the taxpayer in that State.

Thus, from a land tax perspective alone, it is preferable to own land in a variety of States, all of which are under the threshold in each State, without triggering a land tax liability. Alternatively, the use of separate entities to own different pieces of land can achieve the same result.

5.12 STAMP DUTY

Normally, Stamp Duty is imposed by each of the six Australian States and two Territories in respect of documents that have been created in relation to a transaction. As a result of relatively recent reforms, this form of taxation can also extend to a tax which arises on things other than new documents, but this remains the exception rather than the rule.

The rate of Stamp Duty varies from State to State and in respect of different types of documents relating to different types of transactions. Most commonly, Stamp Duty is applied in respect of conveyances of real property and the total amount of Stamp Duty payable on this basis can be substantial. Thus, for example, in New South Wales, where a property is transferred for an amount of AUD\$1,000,000, the referable Stamp Duty payable is AUD\$40,490. Similar amounts are usually payable in other States.

The residence of transacting parties is not the critical feature which gives rise to Stamp Duty. Rather, the essential connecting factors that give rise to a liability to Stamp Duty in any State or Territory include:

- Whether a document is executed within the jurisdiction;
- Whether the transaction relates to property located within the jurisdiction; and
- Whether the transaction relates to "any matters or things done or to be done" within the jurisdiction.

Thus, residents conducting business operations in Australia are subject to tax in a State or Territory if, for example, the transaction relates to property located within the particular State or Territory.



OTHER ISSUES RELATING TO INTERNATIONAL TAXATION

6.1 RESIDENCE

There is a critical distinction between an Australian resident and non-resident.

In particular, in the context of companies, to achieve and maintain non-resident status the relevant company should ensure that the following criteria are satisfied:

- It is incorporated outside Australia;
- Its central management and control is outside Australia; and
- Its power is controlled by non-Australian resident shareholders.

The first test is essentially a factual matter which can be satisfied with ease.

The second test is more complex. There is an authority to suggest that the place where the directors of the company meet to conduct the business of the company is the sole determinant of the place of central management and control. However, the authority for this proposition is old and may no longer reflect the complete picture. It is advisable to ensure that directors meetings occur outside Australia and that these meetings determine both policy and key operational matters relating to the company. Further, it is advisable that for tax purposes at least the majority of the directors of the company are not Australian residents and practical day to day management of the company should, where possible, take place outside of Australia.

The third test is again more clear cut and simply requires that those who control the voting power of the company be resident outside Australia.

6.2 DOUBLE TAXATION AGREEMENTS

Australia has entered into over forty comprehensive Double Taxation Agreements (DTAs) with countries such as the UK, the USA, France, Germany, Japan, New Zealand and China (PRC).

These Double Tax Agreements (DTA) may have consequences in relation to a number of the taxes considered in Chapter 5 above.

6.2.1 Income Tax

Clearly, the broadest impact is in relation to income tax where the treaties operate to achieve a number of results, particularly as follows:

Business profits are not taxed in Australia if they are derived by a taxpayer who is resident in a DTA country in circumstances where that DTA resident does not have a permanent establishment in Australia;

Interest, royalty and dividend income which flows from Australia to a person resident in a DTA country is taxed at reduced withholding tax rates;

Certain personal services income, which is ordinarily subject to tax in Australia, may be excluded from Australian tax by the DTA. Details of this can be obtained from Hall Chadwick.

6.2.2 Fringe Benefits Tax

There is some debate as to whether DTAs can have any effect upon Fringe Benefits Tax (FBT) (5.5 above). The only point that is absolutely clear on this issue is that



the DTA entered into with New Zealand in 1995 specifically deals with FBT and confers taxing rights upon that country which has the primary right to tax the remuneration to which the fringe benefit relates.

In respect of all other DTAs that do not make specific reference to FBT, the position is unclear but the preferred view is that they have no application to FBT.

Again, there are some very generous tax concessions available for expatriates and persons required to live away from home. Hall Chadwick can assist with this process.

6.2.3 Capital Gains Tax

Even more complex issues arise in relation to whether or not the DTAs can apply so as to limit the taxing capacity of treaty partners in relation to Capital Gains Tax (CGT). The view adopted by the Australian Taxation Office (ATO) in Draft Ruling TR 2000/D12 is that the DTAs entered into before Australia's CGT commenced to operate (i.e. before 20 September 1985) have no impact to limit Australia's taxing capacity since the tax was not specifically contemplated within the terms of those DTAs. This reasoning would apply to 20 DTAs including the UK, the USA, Japan, France and Germany.

This Australian Taxation Office proposition is arguable, especially having regard to the fact that even those DTAs are expressed to apply to taxes which are identical or substantially similar to those which existed at the date of entry into the DTA. The contrary proposition is that CGT is a tax that is substantially similar to income tax, especially as it is structured as part of the income tax (refer to 5.1 above).



In relation to the other DTAs, there is a provision which seeks to preserve Australia's taxing rights in relation to capital gains thereby excluding the benefit of the DTA.

A note of caution - the DTAs are similar in structure but different in a number of points of detail. You should not assume that one DTA is identical to another. Each needs to be independently checked.

6.3 TRANSFER PRICING

When related parties, such as a non-resident parent company and an Australian subsidiary, transact with one another in relation to either goods and/or services (including for example making a loan to each other), the Australian Taxation Authorities are keen to ensure that this is done on such a basis so as not to deliberately or inadvertently reduce Australian tax that would be payable if the parties were not so related.

The bottom line, in relation to the complex issues raised by the concept of transfer pricing, is that parties who are not operating at arm's length when dealing with each other, should ensure that they have properly thought through and documented the reasoning to determine the price charged between themselves.

In particular, they should discuss and clearly document the process by which they have reached the related party price and that documentation should include

reference to all functions, assets and risks which have been identified by the respective parties in determining the arm's length pricing amounts. The documents should reveal both the pricing methodology adopted and why other perhaps more conventional methodologies were not used.

In that way, upon any subsequent transfer-pricing audit, the parties would have clear, tangible and contemporaneous documentation to present in defence of the pricing that has been arrived at.

For transactions which have taken place in the past it would be advisable to:

- Review the pricing policies;
- If more exist, develop documentation having regard to the relevant transfer pricing principles mentioned above and in the various administrative rulings;
- Where discrepancies are found, or inadequate documentation or inappropriate pricing is discovered, consider requesting an amended assessment to avoid penalties that can arise under audit;
- For future transactions, in addition to the processes referred to above, consider approaching both the Australian and Foreign Revenue Authorities for an "Advanced Pricing Agreement". This is an agreement between the Australian Taxation Office, the relevant Foreign Tax Office and the relevant taxpayers under which for a given period of time the pricing methodology is agreed to by all parties.

The Advanced Pricing Agreement is both time consuming and potentially costly in terms of legal and accounting fees but in the long term cost savings can be achieved.

Tax returns for companies, trusts, partnerships and superannuation funds have a special associated schedule, Schedule 25A, titled "Overseas Transactions Information". Entities operating in Australia that engage in international transactions with related overseas entities are required to provide information about those transactions on this form.

For further information in relation to all these matters, including the completion of Schedule 25A, applications for and conclusion of Advanced Pricing Agreements and general advice and documentation in relation to transfer pricing issues, you should contact Hall Chadwick.

6.4 FUNDING THE AUSTRALIAN VENTURE

Funding of the Australian venture can be arranged either in the form of debt, equity, or a combination of the two. In this regard, a number of factors are relevant as follows:

- In relation to inward investment into Australia, a series of complex rules, which apply with effect from 1 July 2001, restrict deductions for interest and related expenses to the extent that debt funding exceeds 75% of the value of the Australian assets of the venture. This is expressed in simple terms. The formula to give effect to this result is complex and further advice

is required in relation to this point. Nonetheless, some transactions need to be arranged having regard to this constraint; otherwise a denial of interest deductions could arise.

- Interest payable on loans is normally fully deductible subject to the above and the borrowing entity in Australia is required to withhold 10% when paid to a non-resident.
- The difference between debt and equity is complex; in essence, if there is an effective non-contingent obligation on the part of the borrower to repay an amount that has been lent at some future time, it is debt. Otherwise it is equity.
- Dividends paid on equity investments are not deductible to the Australian tax payer and are subject to a withholding tax of 30%, if they are paid out of a pool of profits which have not been subject to tax in Australia (i.e. they are unfranked dividends). This rate of 30% is however reduced by virtue of a DTA, where applicable. The reduced rate can be 15% and in some instances as low as 5%.
- Where the dividends are franked, ie they are paid out of a pool of profits which has already been subject to Australian corporate tax, there is no further withholding tax.

6.5 PULLING IT ALL TOGETHER – PRACTICAL CONSIDERATIONS

From the above analysis it is evident that in setting up a business structure in Australia a number of considerations need to be taken into account.

These include the following three critical aspects:

1. Determine the most appropriate business structure to adopt, having regard to the nature of the business involved and the nature of the participants in the ownership of the business. In particular, consider all six alternatives and identify which structure is most appropriate to your needs.
2. Consider the most appropriate method of funding of the business venture having regard to factors such as how repatriation of profits can be achieved with minimal local and foreign taxes.
3. Give careful consideration to how you arrive at pricing in relation to transactions between related parties. In particular, consider whether the agreed pricing is justifiable having regard to comparable arm's length transactions, and how you document the methodology that has been used in such a manner so as to satisfy a future audit.

MIGRATION

Australia is one of the most ethnically diverse countries on earth. Since 1945 over six million people have come to Australia as new settlers from more than 150 countries. In the year 2000 alone over 80,000 settled here with the majority coming under the skilled migration program. This influx has given the country a productive diversity and hence a competitive advantage in doing business with the rest of the world since 20% of the population now fluently speak a language other than English at home.

If you are not an Australian citizen, you will need a visa/Electronic Travel Authority (ETA) to enter and spend time in Australia. The type of visa required will depend on your country of origin, the intended length of stay and the nature of your stay.

Short stay visas for up to 3 months can be obtained in electronic form from participating travel agencies when making travel arrangements, or through participating airlines, as well as at Australian consulates/embassies overseas. ETAs are available to holders of the following passports from Andorra, Austria, Belgium, Brunei, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong SAR, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Malta, Monaco, Netherlands, Norway, Singapore, South Korea, Spain, Sweden, Switzerland, Taiwan, UK, USA and the Vatican.

If you do not hold a passport from one of the above countries then you should apply for a “label” visa. There are short stay visas (up to three months), longer stay visas (up to three years), as well as permanent visas available to business people who meet the statutory criteria. There is a wide range of visas relevant to business people and hence it is best to seek professional advice from a registered migration agent. Hall Chadwick is registered to provide this service.

The processing of visa applications (other than the ETAs) can often take a considerable amount of time. In part, this depends on the demands being placed on particular Australian embassies but it also relates to the need to discover whether the applicant is of good character, not a risk to national security, not involved in any activity prejudicial to Australia’s interests. Many applicants are also required to undergo health checks particularly with regards to active tuberculosis.

In addition to these standard public interest issues, there is a business points test aimed at securing a good fit between the needs of the applicant and the needs of the country. Every business “label” visa has some points test associated with it. While there is a large number of items included in the various tests, the common ones are the gross assets in the main business, labour costs in the business, net assets available to the individual and partner, age, language ability and any sponsorship by a regional authority.



Not only is business planning and company structuring required but also family issues need to be taken into account. It is for these reasons that the government's preferred path is for business people to seek a temporary visa and convert this to permanent after a period of time. Obviously the checks for temporary visas are less onerous than those for permanent ones.

Businesses can also be involved in facilitating the process. For example, businesses can apply for a labour agreement with the government or can seek to become a sponsor even if they are an overseas business. An interesting section of such agreements that facilitate companies bringing in their own staff is the regional headquarters agreements (RHQ) where companies gain access to streamlined immigration arrangements needed to support an international operation. Visas granted under RHQ agreements are to enable the transfer of key expatriate executive and specialist personnel of the company group in and out of Australia according to the needs of the company.

Australia's approach to multiculturalism is to accept and respect the right of all its citizens to express and share their individual cultural heritage within a commitment to Australia and the values of our democracy. Because of this cultural diversity, Australia is becoming the place of choice for many overseas companies seeking to set up an Asia Pacific regional headquarter. Likewise, education has become a major export as increasing

numbers of overseas students undertake degrees in Australia's world quality but relatively low cost education institutions.

Hall Chadwick is the one-stop shop for doing business in Australia. We can help you export to and import from Australia, establish a branch office of your current business, establish a new business in Australia, move senior executives back and forth, travel to Australia to undertake business activities and live in Australia to conduct business. Like accounting and taxation, it can all look too daunting unless you have professional advice to ease the way.

Working with Hall Chadwick will ensure that your migration visa needs are handled appropriately and you can do what you do best – attend to your business needs.

FINANCIAL REPORTING AND THE ROLE OF THE ASIC

Australian Corporations Law requires that financial statements be prepared for companies operating in Australia. Financial statements must be prepared in compliance with accounting standards, except in limited circumstances for small and non reporting proprietary companies.

If disclosure and secrecy is paramount, utilisation of Trusts or Limited Partnerships may alleviate these concerns.

The Australian Accounting Standards are broadly in accordance with International Accounting Standards. However, there are a number of exceptions.

There are a number of different types of companies, each having their merit and differing reporting requirements.

A "Limited" company as opposed to a "Proprietary Limited" company must prepare and lodge financial statements with the Australian Security and Investments Commission (ASIC) annually.

Companies which seek to raise public funds must adhere to the Corporations Law rules. Broadly, such companies can be grouped into entities known as "disclosing" entities which are subject to continuous disclosure and reporting requirements. Such entities include:

- Entities listed on a stock market
- Entities raising funds under a prospectus document
- Entities which are the subject of a take-over
- "Borrowing Corporations"

Reports for such entities would include half yearly reports. Listed companies are also subject to the Australian Stock Exchange rules – "Listing" and "Business rules."

A more common vehicle is the "Proprietary Limited" – "Pty Ltd" company.

Depending upon the size of a Pty Ltd company, financial accounts may be required to be submitted to the ASIC and also audited.

Subject to obtaining relief from the ASIC as noted below, a company must lodge audited financial statements with the ASIC.

A "large" company is one which satisfies at least two of the following conditions:

- a) 50 full time employees
- b) Consolidated gross revenue of \$10 million AUD
- c) Consolidated gross assets of \$5 million AUD

If a company is the subsidiary of a foreign company, it is automatically required to prepare and lodge audited financial statements. However, the ASIC can grant relief from this requirement if certain tests are met. Please contact a Hall Chadwick Partner for details.

If an Australian company:

1. Is not deemed to be a "large" company; and
2. Is not part of a "large" group in Australia; and
3. The Directors resolve that the company meets the above tests plus;
4. The relevant form is lodged with the ASIC (within the prescribed time limits) to seek the Commissioner's approval that the lodgement and audit concessions be granted;

then financial statements do not need to be lodged with the ASIC. The financial statements would also not be required to be audited.

Item 4 is an annual requirement.

8.1 BRANCH OF OVERSEAS COMPANY

A branch of a foreign company is required to lodge with the ASIC at least once every calendar year (including the year of registration):

- a) A copy of its balance sheet, cash flow and profit and loss statement and;
- b) Any other documentation that the company is required to prepare by the law applicable to the foreign country in its place of origin.

However, a similar relief from reporting may be applied for in certain circumstances. The ASIC provides a concession from preparation and submission of audited financial statements such that the compliance burden placed on a branch is no more than that on a similar sized business incorporated as a proprietary limited company in Australia.

The conditions for relief from lodging audited financial statements of the foreign company must continually be monitored each year. Otherwise, audited financial statements of the foreign company (incorporating the Australian branch's activities) must be submitted on an annual basis.

Both subsidiaries and branches of foreign companies must lodge an annual report. However, the amount of detail provided can be kept to a minimum if concessions are available and applied for.

8.2 ROLE OF AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION – ASIC

The ASIC's role is to protect users of financial accounts, regulate and enforce laws that are applicable to Australian Companies and to maintain a public database to provide certainty in commercial dealings.



The ASIC is responsible for the registration of Australian and Foreign Companies operating in Australia.

The ASIC administers futures brokers', dealers' and investment advisers' licences.

Registration with the ASIC allows a company to operate throughout Australia, without the need to register in individual States.

The Commissioner of the ASIC exercises power under the following laws:

- Corporations Act 2001
- ASIC Act
- Insurance (Agents and Brokers) Act
- Insurance Contracts Act
- Superannuation (Resolution of Complaints) Act
- Superannuation Industry (Supervision) Act
- Retirement Savings Act
- Life Insurance Act
- Insurance Act

The ASIC has responsibility to issue regulations in respect of the laws of Parliament. It administers annual returns with audited financial statements that are lodged (unless a concession is available) with the ASIC on an annual basis as well as the submission to the ASIC of Dealers, Brokers and Advisers reports on a six monthly basis.



9.1 TRADEMARKS

Australia has laws which provide for the exclusive use and enjoyment of a Trademark registered in Australia.

Australia became a member of the Madrid protocol on 11th July 2001. This allows the filing of International Trademark Applications.

An International Trademark application can now be lodged as a single document which covers up to 50 member countries.

The Australian Trademarks Office accepts applications. Countries for which coverage is required must be nominated in the application.

9.2 PATENTS

A patent is legally enforceable in Australia. Once registered, the owner of the patent is allowed the exclusive use and enjoyment of the intellectual property.

9.3 COPYRIGHT

Another form of protection in Australia is contained in the Copyright Act 1968.

Protection is automatic without the need to register.

As a result of international treaties, such as the Berne Convention, most foreign copyright owners are protected in Australia.

9.4 TRADE PRACTICES LAW

The Trade Practices Law that operates in Australia governs Competition Law, the liability of companies for product failure and it enforces a regime of proper practice by corporations in the conduct of trade.

The legislation prohibits various business practices, such as primary and secondary boycotting, third line forcing, resale price maintenance and misuse of market power. Certain exemptions can be claimed from the Australian Competition and Consumer Commission (ACCC) to allow various business practices to operate notwithstanding their prohibitions. However, permission needs to be granted first by the ACCC who have to be satisfied as to the utility of the conduct sought to be approved.

Australian Trade Practices Law also prohibits misleading and deceptive actions by corporations in the conduct of business. Damages can be awarded against companies that engage in such practices and prosecutions can also be invoked.

Finally, manufacturers will be responsible for any liability of their product under the Trade Practices Laws. Care needs to be taken by manufacturers to ensure that products are safe and capable of operating as intended.

Hall Chadwick works with businesses to obtain any necessary advice for our clients and can make necessary introductions to specialist legal practitioners in this area if required.

9.5 INDUSTRIAL LAW IN AUSTRALIA

Australia has a number of legal instruments that govern employment relationships in Australia. First and foremost, and establishing a foundation in the employment context, is the common law, which has developed over the centuries and is sourced from the law of England. The basic principles of Contract Law and Commercial Law affect employment relations between employers and employees.

There are a number of unique features to Australian Employment and Industrial Law. These include the system of Awards which are essentially Court orders emanating from various industrial tribunals around the Commonwealth. These Awards regulate the work practices and conditions of many Australian employees.

In addition, there is legislation sourced from a number of Acts including the various State Industrial Relations Acts, the Federal Workplace Relations Act as well as Work Safety legislation found in the various jurisdictions.

Again, Hall Chadwick can provide practical and valuable advice on most employment matters and make any necessary introductions to lawyers who specialise in Industrial Relations in Australia.



APPENDIX A

SECTION 5 TABLES

TABLE 5.1 - KEY TAXES

FEDERAL		STATE/TERRITORY	
Income Tax	(5.2)	Payroll Tax	(5.10)
Taxes on Capital Gains	(5.3)	Land Tax	(5.11)
Goods & Services Tax	(5.4)	Stamp Duty	(5.12)
Fringe Benefits Tax	(5.5)		
Medicare Levy	(5.6)		
Higher Education Contribution Scheme	(5.7)		
Superannuation Guarantee Charge	(5.8)		
Superannuation Surcharge	(5.9)		

TABLE 5.2 - TAX RATES

BRACKET (AUD)	Year 2000-2001	
	RESIDENTS % RATE	NON-RESIDENTS % RATE
0-6000	Nil	29
6001-20,000	17	29
20,001-50,000	30	30
50,001-60,000	42	42
60,001 +	47	47

TABLE 5.3 - SUPPLIES NOT SUBJECT TO GST

GST-FREE SUPPLIES	INPUT TAXED SUPPLIES
Basic Food	Financial Supplies
Health	Residential Rent
Education	Residential Premises
Child care	Precious Metals
Exports	School tuckshops and canteens
Religious services	Fund-raising events – charitable institutions
Non-commercial activities – charitable Institutions	
Raffles – charitable institutions	
Water and sewerage	
Supplies of going concern	
International Trade: Certain Transport Services	
Precious metals	
Supplies made by inwards duty free shops	
Grants of freehold land by Governments	
Farm land	
Cars for use by disabled persons	
International mail	

TABLE 5.4 - BENEFITS SUBJECT TO FRINGE BENEFITS TAX

Cars
Debt wavers
Loans
Expense payments
Housing
Living away from home allowances
Airline transport
Board meals
Meal entertainment
Entertainment provided by tax exempt bodies
Car parking
Property benefits (if not otherwise covered by the above)
Residual benefits (if not otherwise covered by the above)

CASE STUDY 1

Facts:

On 1 November 2001, a US investor intends to buy an office block in Melbourne, Australia, for \$12 million. The investor intends to purchase the property through an Australian private company, which will be directly and wholly owned by the investor's US corporation.

The overseas investor plans to arrange a loan of \$11 million to be provided by an Australian bank at 7.5% interest only. The balance of the purchase cost will be financed by equity.

During the year ending 30 June 2002, the projected rental income is \$800,000. The interest expense will be \$990,000 and there will be other incidental expenses of \$100,000.

The overseas investor plans to sell the Australian property in August 2002 at its projected market value of \$15 million. It plans to repatriate the funds to the home country.

Question:

What Australian tax and related issues should the investor be aware of?

Considerations:

- FIRB
- Location of the entity to own the shares in the Australian company
- Unit trust rather than company
- GST
- Legal fees
- Land Tax
- Thin capitalisation
- Debt / equity
- Loan from an Australian bank vs. loan from an offshore bank
- Depreciation and other deductions
- Losses
- Capital gain on sale
- Repatriation of funds
- Return on investment
- Tax treaty issues
- Withholding tax, especially on interest



CASE STUDY 2

Facts:

A Singapore company wishes to acquire an Australian IT company.

Question:

The Singapore company would like to know where the purchasing entity should be located and what issues need to be considered in Australia.

Considerations:

- Funding, including thin capitalisation
- Source of income
- Payment of fees other than royalties
- Transfer pricing
- Withholding tax
- Payment of dividends
- Repatriation of funds
- Return on investment
- Tax treaty issues

CASE STUDY 3

Facts:

A Hong Kong investor wishes to purchase a hotel in Sydney as a joint venture with a European investor. Their long-term intention is to acquire more hotels in other Australian locations and sell or float the Australian business. They have substantial funds for the purchase of the first hotel.

As a separate venture, they are also considering franchising the hotel name. They will receive commissions / royalties from new hotels, whereby they will own the real estate but will not operate the hotel business, i.e. they would be landlords.

Question:

The investors have asked for advice on all the issues they should consider before proceeding with the investment.

Considerations:

- Structuring each investment
 - unincorporated or incorporated joint venture
 - partnership or joint venture?
- Tax treaty issues
- Funding, including thin capitalisation
- GST
- Losses
- Depreciation / balancing adjustments
- Capital gain on sale
- Repatriation of funds
- Return on investment
- Withholding tax on royalties

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