PKF International Limited

Doing Business in Australia

LOCAL KNOWLEDGE, GLOBAL EXPERTISE

Important Disclaimer

This publication should not be regarded as offering a complete explanation of the matters that are contained within it and all information within this document should be regarded as general in nature. While significant care was observed in creating this publication, the possibility exists that certain information may, in time, become outdated. This publication has been sold or distributed on the express terms and understanding that the publishers and the authors are not responsible for the results of any actions which are undertaken (or not undertaken) on the basis of the information which is contained within this publication, nor for any error in, or omission from, this publication.

The publishers and the authors expressly disclaim all and any liability and responsibility to any person, entity or corporation who acts or fails to act as a consequence of any reliance upon the whole or any part of the contents of this publication. Accordingly, no person, entity or corporation should act or rely upon any matter or information as contained or implied within this publication without first obtaining advice from an appropriately qualified professional person or firm of advisors, and ensuring that such advice specifically relates to their particular circumstances.

Each Australian PKF member firm is an independently owned and operated member of PKF International Limited's family of legally independent firms, and does not accept any responsibility or liability for the actions or inactions of any individual member or correspondent firm or firms.

Contents

Foreword

Entering into business in a foreign country can be a demanding and complex exercise; these challenges often seem to be exacerbated when that country is geographically distant. However, in a period of international economic uncertainty, a strong, stable economy like Australia's becomes a highly attractive investment proposition.

Australia is a rarity in the current global economy. It is a nation which has exhibited consistent economic growth, only minimally affected by the financial upheaval of recent years. It is a country with a very stable government, a well educated workforce, and a reliable and robust banking sector.

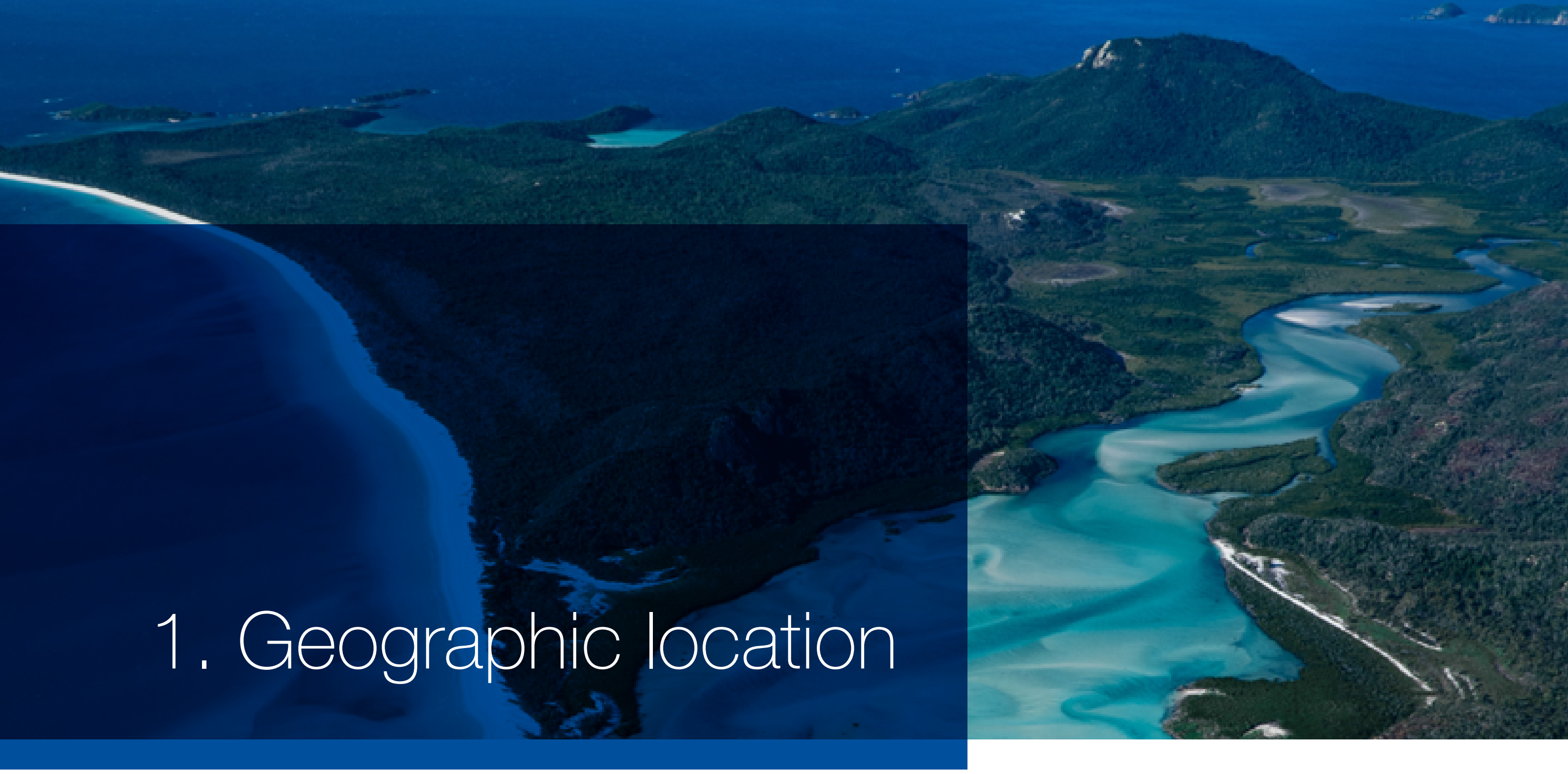
As in any advanced economy, doing business in Australia does involve understanding and negotiating a diverse array of laws, regulations and taxes, particularly for non-residents and foreign-owned organisations. However, these are readily manageable with the right knowledge and advice. With that in mind we have put together this guide as an introduction to the ins-and-outs of doing business in Australia. The guide aims to provide a solid background to the country, practical information about the nature of the Australian business environment, and advice on establishing a successful business presence in Australia.

At the end of the guide you will find some information about PKF and PKF Corporate Finance (NSW) – organisations with a long history and deep knowledge of doing business in Australia.

I commend this guide to you.

Warm regards

Steve Meyn
Chair – PKF Australia



1. Geographic location

Australia is a southern hemisphere continent in the southern western Pacific Ocean made up largely, of a mainland and a small island state together with a number of smaller islands around its coastline. It lies between the Pacific Ocean on its east and the Indian Ocean on the west and is over 4,000 kilometres from east to west and over 3,000 kilometres from north to south.

Australia’s closest neighbours north of Australia across the Timor and Arafura Sea are Indonesia and Papua New Guinea and across the Tasman Sea to the east is New Zealand.

2. History

Australia has been inhabited by indigenous Aboriginal and Torres Strait islanders for over 40,000 years. Australia is the last continent to be settled by Europeans, but it also sustains a people and a culture tens of thousands of years old. For much of the past 200 years, the newcomers have replaced much of the old with the new, bringing technology, institutions, and ideas to build an advanced economy within, what is now, a multi-cultural environment.

Key dates in early settlement of Australia include:

- 1770 Captain Cook discovered Australia and claimed it for Great Britain.
- 1788, a fleet of vessels commanded by Captain, later Governor, Arthur Phillip arrived in Australia and established the first settlement at Port Jackson (Sydney) in New South Wales.
- 1804, Hobart was established in Van Diemen's Land (Tasmania).
- 1824, a penal colony was established at Moreton Bay in Queensland, now the city of Brisbane.
- 1829, the settlement of Perth was founded in Western Australia.
- 1835, John Batman explored the Yarra River in the south of the continent and founded the site of Melbourne in Victoria.
- 1836, the province of South Australia was proclaimed with its capital, Adelaide establishing its first municipal council in 1840.
- 1862, the city of Darwin was established.
- 1900, the Australian Constitution was passed and given Royal Assent.
- 1901, Australia became a federation of States and its first Federal Parliament met in Melbourne.
- 1920, Australia's global airline QANTAS was established.
- 1927, the first Federal Parliament was opened in Canberra in the Australian Capital Territory.

Today Australia comprises six states – New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania – and two main territories, the Northern Territory and the Australian Capital Territory.

3. People and Culture

Australia has a population of approximately 25.8 million people with the majority of the population living in the eastern states of New South Wales, Victoria and Queensland.Other major centres of population include the coastal cities of Adelaide in South Australia and Perth in Western Australia.

Australia is largely a western society with the population originally having migrated from Great Britain to join the existing Indigenous community in Australia.

Historically, more people migrate to, than emigrate from, Australia thereby adding to the growth of the national population. The various waves of migrants from numerous countries over time, have had an important effect on the diversity of Australia's population.

High levels of immigration in the years before 1891 resulted in 32% of the population enumerated as overseas-born in the first country-wide consensus in 1891. In 2020, the proportion of Australia's population born overseas was 30%. Those born in England continued to be the largest group of overseas-born residents, accounting for 3.8% of Australia's total population. This year, residents from India moved into second position, replacing China[1].

And, as a multi-cultural society, there is a strong focus on reconciliation, with measures being taken to strengthen relationships between Aboriginal and Torres Strait Islander peoples – the traditional owners of our land – and non-Indigenous peoples, for the benefit of all Australians.

1 | www.abs.gov.au as at 14 September 2022

4. Climate

Australia's climate varies greatly throughout the eight states and territories. There are four seasons across most of the country, and a wet and dry season in the tropical north.

Opposite to that of the northern hemisphere, December to February is summer, March to May is autumn, June to August is winter, and September to November is spring.

5. Economy and Currency

Economy

Australia has a relatively strong well developed economy which has grown at over 3% per annum during the last twenty years and this strength has been based around a highly disciplined banking structure.

Australia's economy has a GDP of almost $1.9 trillion and is regarded in the top 20 economies of the world. It is heavily dependent on the mining and resources sector with agriculture continuing to play an important part in both domestic and export trade.

Australia imports much of its motor vehicles, plant machinery, fuels, equipment and chemicals.

China has in recent years become a significant trading partner along with Japan, European Union, the United States of America (USA) and South Korea.

Australia's unemployment level is currently 3.5%[1], well below both Europe and the USA.

Investment in Australia, particularly in natural resources and agriculture, from both Chinese and Indian investors has maintained prices in those sectors of Australia's economy in recent times.

Exports from these industries have helped offset Australia's increasing dependency on foreign manufacturing.

Currency and Interest Rates

Australia's Reserve Bank operates its own Australian dollar which is traded on world currency exchanges and currently sits at 0.70 to the USD, 4.7 to the RMB and 0.68 to the Euro[2]. The strong demand for Australian commodities particularly from China and India has influenced the strength of the Australian dollar.

Interest rates are set by Australia's Reserve Bank with official cash rates currently at 1.85%[3] per annum.

1 | www.abs.gov.au as at August 2022
2 | www.rba.gov.au as at 05 August 2022
3 | www.rba.gov.au as at 05 August 2022

6. Political System

The Australian political system is stable with a federal system of government within which there are effectively three divisions:

- Commonwealth;
- State and Territory; and
- Local government.

Australia is divided by a written constitution into six states and two main territories:

- New South Wales;
- Queensland;
- South Australia;
- Tasmania;
- Victoria;
- Western Australia;
- Australian Capital Territory; and
- Northern Territory.

Legislative power, based on the Westminster system, is vested in a parliamentary system of representatives elected to State and Commonwealth governments.

7. Australian Standard of Living

Australia has a high percentage of home ownership among its residents and residents are influenced by movements in interest rates and home mortgage repayments. The residents enjoy a relatively high standard of living and a cost of living which compares favourably with Europe and the USA.

8. Legal System

Australia's legal system is based upon the common law system of the United Kingdom.

This common law legal system is quite distinct from the civil law systems which operate in Europe and Japan.

Under Australia's Federal system of government some functions are legislated by the Federal Government and others legislated by the individual State Governments.

Laws in relation to federal taxes, defence, immigration, foreign affairs, trade and commerce are controlled by the Federal Government while the States and Territories have the power to enact other laws, including some taxation laws.

Federal legislation generally overrides state or territory legislation.

Australia's court system is under the overriding jurisdiction of the High Court of Australia which relies on the validity of laws under the Constitution. The High Court also hears appeals on decisions of the Federal, State and Territory courts and is the highest court of appeal.

Whilst the Federal Court covers most civil matters, under Australian legislation the State and Territory courts deal with most criminal matters under Australian legislation, albeit that there is a presumption of innocence in all cases until guilt is proven.

Offences of a minor nature are generally dealt with through magistrates or local courts.

Some of the more specific legislation is dealt with in particular courts including:

- The Family Law Court;
- The Land and Environment Court; and
- The Administrative Appeals Tribunal.

9. Establishing a Business Entity

The types of business entity under which people operate businesses in Australia include:

- **Individuals**

  Carry on business as sole traders where the individual is personally liable for all obligations incurred in operating the business.

- **Partnerships**

  Where between two (2) and twenty (20) individuals and/or entities may jointly carry on a business.

  Although the partners may trade under a common name, a partnership is not a separate legal entity in its own right and this results in the partners being jointly and severally liable for the obligations of the business. Profits and losses are shared between the partners in accordance with their partnership entitlement.

  Some professional partnerships are permitted to exceed 20 partners in number but most partnerships are limited to this number.

- **Australian Companies**

  A company that is limited by and capitalised with shares is the most common form of company in Australia. The company is a separate legal entity with the legal capacity and powers of a natural person. The liability of the shareholders/members will generally be limited.

  Businesses may be carried on through either a private (proprietary) company or a public company.

  A proprietary (private) company may have as few as one shareholder but is limited to 50 shareholders although employees may be shareholders and not included within this limit. Many companies are established with one or two shareholders and one or two directors to carry on small to medium sized businesses.

  A public company is one with more than 50 shareholders, which may be listed or unlisted.

  An Australian company is governed by the Australian Corporations Act. Companies have varying levels of disclosure obligations to Australia's corporate regulator, the Australian Securities and Investment Commission (ASIC), including the lodgement of annual audited financial statements.

Public and private companies in Australia have a number of common legal requirements. These include;

- Appointing at least one director who is a resident of Australia,
- Have a registered office,
- Have a principal place of business,
- Appoint a Company Secretary and a Public Officer (who must be an Australian resident),
- Keeping appropriate financial and other records,
- Complying with relevant tax and financial reporting obligations, and
- Ensuring the company remains solvent.

- **Foreign Companies**

  Companies registered in a foreign jurisdiction may also register with the Australian Securities and Investment Commission (ASIC) to carry on business in Australia, either using an Australian subsidiary company or an Australian branch office.

  If a foreign company wishes to establish a subsidiary company in Australia it must engage at least one local director to represent the company in Australia and establish a registered office in Australia.

  Once registered, the foreign company is required to lodge copies of its financial statements and comply with various lodgement obligations under the Australian Corporations Act.

- **Trusts**

  A business may be carried on by a legal entity known as a trust. The trustee owns the trust property and carries on the business on behalf of the beneficiaries of the trust and is liable for the obligations of the trust, but will generally have rights of recourse against the trust property in respect of those obligations. The beneficiaries' entitlements may be in a fixed proportion or variable at the discretion of the trustee.

  Foreign investors seeking to undertake a business activity in Australia are likely to utilise one or a combination of a corporation and/or trust for their activities.

  A trust arises as a result of the creation of an enforceable obligation against one person (the trustee) to hold and deal with the property of another person (the beneficiary) for the benefit of that person (a Trust Deed). The trustee (which can be a corporation) owns the property and deals with it on behalf of the beneficiaries.

9.1 Taxation Laws

In Australia, there are a number of taxes which apply to individuals and businesses. The main taxes include:

- Personal Income Tax;
- Capital Gains Tax;
- Company Tax;
- Goods and Services Tax (GST);
- Superannuation Tax;
- Fringe Benefit Tax (FBT); and

- A range of indirect taxes and excises which are legislated and administered by the State Governments, including:
  - Land Tax;
  - Payroll Tax;
  - Stamp Duty;
  - Vehicle Taxes; and
  - Gambling Taxes.

The Australian financial and taxation system operates on a twelve month financial year which ends on June 30. However, taxes are collected throughout the year, generally, either monthly or quarterly by the Australian Taxation Office. The financial year end date can be aligned to that of a foreign parent company by exception.

9.1.1 Personal Income Tax

The rates of tax applicable to Australian resident individuals for the 2023 income year are set out in the following table:

Resident tax rates 2022 - 23

Taxable income	Tax on this income
0 - $18,200	Nil
$18,201 - $45,000	19c for each $1 over $18,200
$45,001 - $120,000	$5,092 plus 32.5c for each $1 over $45,000
$120,001 - $180,000	$29,467 plus 37c for each $1 over $120,000
$180,001 and over	$51,667 plus 45c for each $1 over $180,000

From 1 July 2024, the 32.5% tax rate will be lowered to 30%, the 37% tax bracket will be removed, and the higher threshold of $180,000 will be increased to $200,000.

In addition to the amount of tax payable, a healthcare levy of 2.0% is applied to fund Australia's public medical health system under Medicare. Australian tax residents are generally required to lodge a tax return annually, setting out their incomes with the Australian Taxation Office.

9.1.2 Capital Gains Tax

Under Australian taxation legislation, Capital Gains Tax (CGT) applies to the capital gain made on disposal of any asset, with specific exemptions granted with respect to certain assets including the "principal place of residence". Rollover provisions apply to some disposals, including transfers of assets to beneficiaries on death.

CGT operates by having net gains treated as taxable income in the tax year an asset is sold or is subject of a disposal in another form. If an asset is held for at least one (1) year any gain is first discounted by 50% for certain taxpayers (individuals and trusts). Net capital losses in a tax year may be carried forward and offset against future capital gains. However, capital losses cannot be offset against income.

Personal use assets and collectables are treated as separate categories and losses on those are quarantined so they can only be applied against gains in the same category.

9.1.3 Company Tax

Companies pay company tax on profits in Australia at a flat 30% rate. Small business and base rate companies – those with aggregated turnover of less than $50 million – are subject to a lower tax rate of 25% for the 2022 income year. Aggregated turnover includes your annual turnover, plus the annual turnover of all the entities that are connected or affiliated with your company. These connected or affiliated entities may be based in Australia or overseas. Tax is paid on company income at the level before it is distributed to individual shareholders as dividends. A franking credit (being the company tax paid with respect to those dividends) is provided to individuals who receive dividends to reflect the tax already paid by that company (this “franking” is referred to as dividend imputation). Businesses have to pay company tax to the Australian Taxation Office on a monthly or quarterly basis, depending on size.

9.1.4 GST

Goods and Services Tax (GST) of 10% is imposed on the price of most goods and services supplied in Australia. Similar to VAT / GST in other jurisdictions, the GST is designed as primarily a tax on individual consumption, with most businesses being able to claim input tax credits for GST paid on acquisitions. Businesses registered for GST need to include GST in the price they charge their customers. Most registered customers (other than businesses which make input taxed supplies) can then claim a credit for the GST they have paid on their expenses and other inputs. Businesses have to pay the difference between GST charged on sales and GST credits to the Australian Taxation Office on a monthly or quarterly basis. If GST credits exceed GST payable, in a return period, the taxpayer is entitled to a refund. Some supplies are GST free (zero rated in other VAT / GST jurisdictions), for example, certain medical and educational services, certain going concerns, foodstuffs, exports or input taxed (exempt in other VAT / GST jurisdictions), for example, financial services and residential accommodation.

International Aspects of GST

GST is payable on goods imported into Australia. The Australian Border Force is responsible for collecting GST on taxable goods when they land in Australia. GST is typically payable before goods are released for local entry. Generally, the GST payable is 10% of the value for customers of the goods imported. A GST-registered business that imports goods as part of its business may claim a GST credit for any GST paid on those goods (where the business is not making input taxed supplies).

Australia has specific provisions relating to imposing GST on the offshore supply by non-residents to Australian consumers of intangibles, services and low-value goods. There is also a reverse charge mechanism for business which import services for purposes of making input taxed supplies.

Goods and services that are exported from Australia are generally GST-free.

The international tax aspects of GST can be complex for businesses operating in multiple tax jurisdictions and appropriate advice should be sought in respect of the GST consequences of international transactions.

9.1.5 Superannuation Tax

Australian legislation provides for compulsory superannuation (retirement pension) contributions to be made by employers on behalf of their employees.

Currently, the rate of these contributions is set at the rate of 10.5% of the employee’s ordinary time earnings from the employer. Under the current schedule of legislated increases, the percentage rate will rise to 11% on 1 July 2023, and continue to rise by 0.5% until it reaches 12% on 1 July 2025. A tax is also applied to Australia’s superannuation contributions, superannuation income and, in some cases, superannuation pension payments.

Superannuation contributions and income (unless in pension phase) are generally taxed at 15% and capital gains made by a superannuation fund are taxed at 10%.

9.1.6 Fringe Benefits Tax

A tax is also levied by the Federal Government on non-cash benefits (fringe benefits) provided to employees by their employer.

The tax currently applied to such benefits is 47% calculated by grossing up of the value of the benefit.

9.1.7 Temporary Full Expensing

As part of the response to the impact of COVID-19, the Federal Government introduced the temporary full expensing rules in order to encourage business spending. Under the temporary full expensing rules, eligible businesses are able to deduct the full cost of certain depreciating assets, rather than depreciating them over their effective lives.

This measure generally applies to businesses with aggregated turnover of less than $5 billion, who have acquired eligible assets from 6 October 2020 and first use or install them by 30 June 2023. It can, in limited circumstances, also apply to businesses with aggregated turnover in excess of $5 billion. Aggregated turnover includes the turnover of associated entities, including foreign entities.

9.1.8 Other Federal Taxes, Duties and Excises

Cigarettes, petrol and alcohol are subject to excise taxes in Australia along with many commonly used fuels.

Customs duties are also levied on imported goods such as motor vehicles, alcohol, perfume and tobacco related products.

Motor vehicles, in some cases, are also subject to a luxury car tax (generally cars costing more than $69,152).

9.1.9 Land Tax

The State & Territory Governments are responsible for the imposition and administration of Land Tax.

This tax is levied by the State and Territory Governments on vacant land, land on which a residence, in some form, is situated, company title properties, residential (excluding principal place of residence), commercial and industrial strata units, commercial properties, factories, retail shops and warehouses. Outside of the principal place of residence exemption, there are some exemptions from Land Tax but these are generally limited in nature but include land used for primary production activities.

Land Tax may also be payable on land leased from State and Local Governments.

Land Tax applies at different thresholds depending upon whether the property owner is an Australian resident, a non-resident, a company or a trustee. There are also surcharge land taxes imposed on land owned by foreign citizens and these rules can be complex dependent upon the State or Territory in which the land is owned.

9.1.10 Payroll Tax

The State and Territory Governments are responsible for the imposition and administration of Payroll Tax. It is a tax imposed on taxable wages paid by employers or employer groups where the total Australian or group Australian payroll exceeds threshold limits. Taxable wages include, for example, salary, commission, bonuses, allowances, superannuation contributions, grants under ESS, fringe benefits, Directors fees and certain contractor payments. Payroll tax rates and thresholds apply differently in each state and territory, which for the 2022/2023 financial year are as follows:

State	Rate	Threshold – per annum
New South Wales	5.45%	$1,200,000
Victoria	4.85%	$700,000
Queensland	4.75% - 4.95%[1]	$1,300,000
South Australia	4.95%	$1,500,000
Western Australia	5.50% - 6.50%[2]	$1,000,000
Tasmania	4.0% - 6.10%[3]	$1,250,000
Australian Capital Territory	6.85%	$2,000,000
Northern Territory	5.50%	$1,500,000

9.1.11 Stamp Duty

Each State Government also imposes Stamp Duty on a range of transactions including the sale of properties, the sale of businesses and the sale of vehicles together with mortgages and hire purchase transactions. However, concessional rates of Stamp Duty and in some cases no Stamp Duty applies in the case of qualifying first home owners.

There are also surcharge duties imposed on land transfers to foreign citizens and these rules can be complex dependent upon the State or Territory in which the land is transferred.

9.1.12 Thin Capitalisation

Australian tax law generally allows a deduction for the expenses an entity incurs in connection with debt (typically interest expenses and loan fees).

However, the thin capitalisation rules limit the amount of debt that foreign owned Australian entities, as well as Australian entities with offshore investments, can have.

1 | 4.75% for taxable wages of $6,500,000 or less. 4.95% for taxable wages over $6,500,000
2 | 5.5% for taxable wages of $100 million or less. 6% (the rate in the table is 6.5%, please adjust either the footnote or the table) for taxable wages over $100 million
3 | 4% for taxable wages of $2,000,000 or less. 6.1% for taxable wages over $2,000,000

The thin capitalisation rules provide for a number of benchmarks, the most common of which is the safe harbour, which broadly allows entities to fund their operations with up to 60% debt. Where these benchmarks are exceeded, debt deductions may be disallowed.

There is currently a proposal to change the thin capitalisation rules from 1 July 2023 by replacing the safe harbour test with a test that would limit debt deductions to 30% of profits. However, this has not been legislated.

Thin capitalisation rules should be considered prior to establishment of Australian operations to ensure that the funding structure of Australian operations does not trigger thin capitalisation limits.

9.1.13 Transfer Pricing

Transfer pricing rules broadly apply to Australian entities and Australian permanent establishments to ensure that they price international related party dealings at arm's length (i.e. as truly independent parties would have done in the same situation).

Australian transfer pricing legislation ensures that businesses operating in Australia declare a level of income from their international related party dealings which is commensurate with the activities carried out in Australia, the assets used and the risks assumed by the taxpayer.

Where an Australian entity does not transact at arm's length with an international related party, the ATO can seek to tax the Australian entity as though it had transacted at arm's length.

The ATO may also impose financial penalties on entities for non-compliance with transfer pricing rules which may result in a liability for additional tax plus interest. Foreign businesses entering Australia should consider the pricing at which international related party transactions are undertaken.

9.1.14 Significant Global Entities

Entities that are Significant Global Entities (SGEs) are subject to a number of reporting requirements as well as being subject to far stricter penalties for non-compliance and late lodgements.

An entity is an SGE for an income year if it is:

- A global parent entity with annual global income of A$1 billion or more, or
- A member of a consolidated group where the global parent entity has an annual global income of A$1 billion or more

Therefore, entities with turnover in excess of A$1 billion, which are looking to invest in Australia, should be aware of the additional requirements that will arise due to their SGE status.

9.1.15 Other rules impacting foreign investors

There are a number of anti-avoidance provisions that foreign businesses looking to invest in Australia should be aware of. These include:

- **Hybrid mismatch rules –** dealing with arrangements which exploit differences in the tax treatment of entities or instruments on cross-border trade and investment.
- **Multinational Anti-Avoidance Law –** prevents multinationals from avoiding Australian tax by using artificial or contrived arrangements to avoid having a taxable presence in Australia.
- **Diverted Tax Profits –** targets arrangements that do not reflect the economic substance of activities undertaken in Australia.

9.1.16 International Tax Agreements

Australia has entered into more than 40 bilateral tax agreements with other countries, including:

- United States of America;
- China;
- Japan;
- Germany;
- France;
- United Kingdom;
- India;
- Canada;
- Russia;
- South Korea;
- Netherlands;
- Indonesia;
- Switzerland;
- Thailand;
- Malaysia;
- Singapore;
- Philippines;
- New Zealand.

These tax treaties allocate the taxing rights of each jurisdiction in respect of certain income of taxpayers. The agreements vary from country to country, but broadly aim to reduce the incidence of double taxation and fiscal evasion. Foreign businesses entering Australia should consider relevant international tax agreements, as they significantly impact the tax implications of residency, business profits of permanent establishments and repatriation of income (e.g. dividends, interest and royalties).

9.1.17 Foreign Resident Withholding

Dividends, interest and royalty (DIR) payments made by an Australian resident to a non-resident are subject to a withholding tax. DIR withholding tax is a final tax on income, therefore if a non-resident taxpayer only receives DIR income from which tax is withheld, there is no need to complete an Australian income tax return. Unless altered by a double tax agreement, the withholding tax rates are as follows:

Tax on	Rate (%)
Interest	10
Unfranked dividends (no withholding on fully franked dividends)	30
Royalties	30

Although it is the non-resident who bears the liability, it is up to the payer to withhold and remit an amount to the ATO.

9.2 Financial Laws

Australia's central banking authority is the Reserve Bank of Australia which controls monetary policy including the setting of interest rates. However, most foreign exchange transactions are uninhibited by legislation.

Financial regulation is controlled by two bodies established by the Federal Government, the Australian Prudential Regulatory Authority (APRA) and the Australian Services and Investments Commission (ASIC).

Banks and other Approved Deposit Taking Institutions (ADIs) together with life and general insurance companies and large superannuation funds are licensed and placed under the control of APRA.

The activities of these licensed entities are governed by various pieces of Government legislation including the Banking Act with respect to ADIs.

Foreign Investment in Australian Banks is also governed by the Banking Act together with supporting legislation. Australia's banking standards particularly with respect to capital adequacy are amongst the highest in the world and Australia has a very stable banking environment.

ASIC administers legislation relating to companies, businesses and investment under the following legislation:

- Corporations Act 2001;
- Australian Securities and Investments Commission Act 2001;
- Business Names Registration Act 2011 and related legislation; and
- National Consumer Credit Protection Act 2009, and various other Government Legislation related to Medical Indemnity, Insurance, Superannuation and Retirement Savings.

The government appointed regulatory authorities also control the Australian Financial Services Licence (AFSL) regime under which dealing in and marketing of financial products, the provision of financial advice, operating a managed investment scheme and providing other services relating to financial products are governed. It is important to note that this regime is governed by Australia's Corporations Act 2001 under legislation which is designed to have extraterritorial effect to encompass offshore activities related to investment in Australia.

These authorities also control the operation of the Australian Stock Exchange and other financial exchanges, trading platforms, clearing and settlement arrangements and related facilities and services.

Australia has enacted Anti-Money Laundering and Counter-Terrorism legislation to monitor and identify high risk transactions.

9.3 Employment Laws

Projects which involve the employment of a workforce in Australia require the investor to have a strong understanding of employment laws as they relate to its organisation.

9.3.1 Standards

Minimum Australia Employment Standards are set out within the Fair Work Act (as the "National Employment Standards"). These standards, together with workplace awards (termed "Modern Awards"), set a minimum benchmark for all employees in relation to:

- minimum rates of pay;
- maximum weekly hours;
- annual leave and long service leave;
- parental leave;

- personal and compassionate leave;
- notice of termination and redundancy; and
- consultation, representation and dispute resolution.

9.3.2 Workplace Agreements

A Company may potentially enter into an Enterprise Agreement with a group of its award-covered employees. The Enterprise Agreement may modify or exclude award provisions that would otherwise apply to the employees and will have to demonstrate to Fair Work Australia (the Federal regulator) that the employees are better off overall under the Enterprise Agreement than they would be under the relevant Modern Award.

9.3.3 Other Considerations

Superannuation

Companies and other employers are required under the Federal Government Superannuation Guarantee legislation to pay a minimum 10.5% of an employee's ordinary earnings to a retirement fund. Employees may nominate a higher percentage, up to a specified 'ceiling' of superannuation contribution (refer 9.1.5).

Workers' Compensation

Companies and other employers are required to take out workers' compensation insurance to cover any accidents in the workplace. The insurance premium is determined by the level of risk associated with the industry.

Payroll tax

The various State Governments charge employers a "payroll tax" based on the size of the total amounts paid to their employees (including benefits) (refer 9.1.9).

Discrimination

Workplace legislation prohibits discrimination before, during and on termination of employment on the basis of sex, race, age, religion, disability, membership or non-membership or a union, and responsibilities as a carer.

Unions and Industrial Action

Union membership in Australia is declining, with industry specific factors and organisational size having an impact on the level of union involvement within a workplace. Compulsory unionism has been outlawed and there is no requirement for business to favour union members.

Occupational Health and Safety

Companies and other employers are bound by State and Federal Occupational Health and Safety (OHS) Legislation that aims to minimise and eliminate all significant risks to employees' health, safety and wellbeing.

The duty of care imposed by OHS legislation includes, but is not limited to, the obligation to:

- provide and maintain plant and systems of work that are safe and without risks to health;
- make arrangements for ensuring safety and the absence of risks to health in connection with the use, handling, storage and transport of plant substances;
- provide information, instruction, training and supervision to employees;
- maintain the workplace in a condition that is safe and without risks to health;
- provide and maintain means of access and egress from the workplace which are safe and without risks to health;
- provide and maintain a working environment for employers' employees that is safe, without risks to health and which provides adequate facilities for their welfare at work;
- make available adequate information about the use for which the plant is designed and its safe operating procedure; and
- make available any research or results on any conditions necessary to ensure that substances used in the workplace will be safe and without risks to health.

The Commonwealth, States and Territories each have a regulator under their respective legislative regimes to ensure compliance with the legislation and enforce the penalties where necessary.

9.4. Property Laws

Property Laws in Australia are based on the "Torrens" principle of title registration which involves a system for evidencing, recognising and transferring titles to land.

Each state in Australia has a centrally controlled register of all land titles which identify the owner of the land.

This register also identifies registered mortgages, registered leases, covenants and easements over the particular title.

Each of Australia's six states and two main territories have enacted "Property Act" legislation and "Titles" legislation to protect the interests of land owners and financiers.

Foreign citizens wanting to purchase urban real estate either have to seek approval of Australia's Foreign Investment Review Board ("FIRB") (refer section 10) or fall under a category of purchaser who is exempt from such approval.

9.5 Competition and Consumer Laws

The Australian Competition and Consumer Act 2010 ("ACC Act") is the legislation under which competition and fair trading is administered by the Australian Competition and Consumer Commission ("ACCC"). It also regulates national infrastructure services.

The ACC Act is designed to create standards of business conduct which establish bans on:

- misleading and deceptive conduct in trade or commerce;
- unconscionable conduct in trade or commerce and on unconscionable conduct in consumer and some business transactions;
- unfair contract terms in consumer contracts; and
- establishes strong liability obligations on manufacturers with respect to defective goods and products.

The competition provisions of the legislation serve to prevent acquisitions of Australian companies which give rise to a substantial lessening of market competition, together with preventing other such conduct, including price fixing, the establishment of cartels, customer boycotts, resale price maintenance and “third line” forcing.

The legislation also creates and governs the rules applying in Australia in relation to the country of origin labelling of products sold in the Australian market to prevent misleading conduct.

Criminal sanctions apply to many breaches of the ACC Act, particularly those related to price fixing and conducting a cartel.

The ACC Act also creates access to essential facilities for competitors in the telecommunications, water, postal, rail transport, gas and electricity and airport sectors.

9.6 Takeover Laws

The Australian Corporations Act 2001 governs conduct by both residents and non-residents of Australia in relation to the acquisition of interests in Australia public companies (ASX listed and unlisted) and public investment vehicles structured as trusts.

The takeover provisions of this legislation effectively prohibit any party from acquiring an increased holding from below 20% to more than 20% or from an existing holding of greater than 20% and below 90% by more than 3% every 6 months, without undertaking an on-market or off-market takeover bid, or obtaining approval of other shareholders or a court approved Scheme of Arrangement or undertaking various other excepted acquisitions provided for in the legislation.

Investors acquiring voting power greater than 5% (either individually or under any arrangement with other shareholders) are required to disclose this interest. Australia also has a Takeovers Panel which is able to review and determine unacceptable conduct in takeover circumstances.

Takeovers in Australia are also subject to Australian Securities Exchange rules and regulations, Foreign Investment Review Board appraisals (when required) and Australian Competition and Consumer Commission approvals, if substantially lessening competition.

9.7 Environmental Laws

An investor proposing to invest in a development project, such as a mining related project in Australia is likely to have to consider environmental regulation at three jurisdictional levels, and in some cases a proposed development may require approvals, consents and authorisation at all three levels.

The responsibilities of each jurisdiction are summarised below:

Local Government

1). land subdivision and development;

2). building and town planning approval;

3). local roads and other infrastructure services;

4). certain approval requirements, such as connection to local government water supply systems; and

5). sundry services.

State Government

1). land use planning and building and development control;

2). pollution prevention and control, including the licensing of activities, projects and developments with environmental impacts;

3). waste control and management, including contaminated land management;

4). controls over contamination of land and groundwater;

5). conservation of built and cultural heritage;

6). clean-up or remediation;

7). the storage, handling and transport of dangerous goods and the regulation of hazardous materials;

8). natural resources exploration and management; and

9). flora and fauna conservation; and species and habitat protection.

Australian

1). foreign investments;

2). areas of world heritage and the “national estate”

3). environmental impact assessment of Federal Government projects;

4). Australia’s carbon pricing legislation;

5). exports of specific items (e.g. uranium); and

6). export and import of certain hazardous wastes.

It is probable that a mining project will require approvals from all three levels of government due to a number of factors that will impact the environment. These factors include, but are not limited to carbon emissions associated with the plant operation, increased mining activity and increased transport activities. Activities involving pollution emissions must generally be licensed by government authorities in each State.

Investors should be aware that environmental authorities in some jurisdictions can require a financial assurance be provided before an environmental protection licence is issued to allow the business to operate where there is:

- a degree of risk of environmental harm associated with the activities under the licence; or
- remediation work that may be required because of activities under the licence; or
- an unsatisfactory history of compliance with environmental regulations.

9.8. Protection of Intellectual Property (IP)

Australia has enacted intellectual property protection legislation under the Patents Act 1990. Two forms of patent exist: a standard patent (20 years from the date of filing) or an innovation patent (inventions which do not meet the inventiveness threshold required for standard patents, up to 8 years from the date of filing). Australia is a party to both the Paris Convention and the Patent Co-operation Treaty.

Australia has also protected copyright by legislation under the Copyright Act 1968 which protects literary, musical, artistic and dramatic works together with film, sound and television works.

Australia's Design Act 2003 created a system for registration of designs with IP Australia, which protects the overall appearance of a product resulting from one or more "new" and "distinct" visual features.

Australia's Trade Marks Act 1995 protects trademarks. Australia is also a party to the Madrid Protocol which provides for a single application to be made in a member country for subsequent processing by each of the Registrars of Trademarks in other member countries nominated in the trademark application.

A number of other pieces of legislation including the Plant Breeder's Rights Act and the Circuit Layouts Act protect other forms of intellectual property in Australia.

10. Foreign Investment

Investment by foreign parties in Australia is administered by the Foreign Investment Review Board (FIRB), a government agency.

Foreign parties investing in Australia may be required to seek FIRB approval, with the thresholds for seeking approval impacted by the monetary value of the asset, the type of asset as well as the residency of the investor.

Foreign investors include:

- a natural person who is not ordinarily a 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 2 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; or
- a foreign government or its agencies.

The Australian Government can only object to the foreign investment if it is deemed not to be in the national interest. Typically, FIRB has 30 days to decide whether a proposal is not in the national interest. FIRB typically will have regard to the following issues when considering a proposal:

- the extent to which the investor's operations are independent from the relevant foreign government;
- the extent to which the investor is subject to and adheres to the law and observes common standards of business behaviours;
- the extent to which the investment may hinder competition or lead to undue concentration or control in the industry or sectors concerned;
- the extent to which the investment may impact on Australian Government revenue or other policies;
- the extent to which the investment may impact on Australia's national security; and
- the extent to which the investment may impact on the operations and directions of an Australian business, as well as its contribution to the Australian economy and broader community.

11. Government Support for Business

A key policy objective of Australian Governments is attracting and expanding foreign direct investment in the Australian economy. The Australian Federal and State Governments have a wide range of schemes to provide grants and other incentives that align with government and economic objectives. Depending on the industry and operations, foreign businesses entering Australia may be eligible for a range of funding programs.

The Australian Trade Commission ("Austrade") is the Australian Government's international trade, investment and education promotion agency.

Austrade's role is to advance Australia's international trade, investment and education interests. Austrade works in partnership with business and all levels of government to facilitate foreign investment in Australia. Some established schemes that are relevant to foreign businesses entering Australia include:

- Export Market Development Grant
- Research and Development ("R&D") Tax Incentive
- Major Project Facilitation Program

Generally to access the grants, companies need to be resident in Australia.

A number of other initiatives have been implemented by the Australian Government in the financial services, advanced manufacturing, infrastructure, clean energy and business services industries to support foreign investment. It is recommended to engage at an early stage with consultants to receive advice on access to and availability of any grants.

11.1. Export Market Development Grants (EMDG)

The EMDG is a key government financial assistance program for aspiring and current exporters. The grant supports a wide range of industry sectors and products to encourage Australian businesses to develop export markets for goods, services, tourism and intellectual property. The EMDG is administered by Austrade and can include up to seven grants to each eligible applicant.

Applicants under the EMDG scheme may also be reimbursed up to 50% of eligible export promotion expenses above $5,000 provided that the total expenses are at least $15,000. To access the scheme for the first time, businesses need to have spent $15,000 over two years on eligible export marketing expenses.

11.2 Research and Development Tax Incentive

The Research and Development ("R&D") Tax Incentive provides a targeted tax offset designed to encourage more companies to engage in research and development in Australia.

The R&D Tax Incentive has two core components:

- a 43.5% refundable tax offset to eligible entities with an aggregated turnover of less than $20 million per annum; or
- a non-refundable 38.5% tax offset to all other eligible entities.

11.3. Major Project Facilitation Program

The Major Project Facilitation ("MPF") program is administered by the Australian Department of Infrastructure and Transport. The MPF assists businesses, including foreign businesses, with investments in Australia, to coordinate the government approval and negotiation processes in relation to major projects.

The program provides suitable applicants with a single contact point within the Australian Government and a range of services to assist with a streamlined and coordinated investment process. Investors can apply to the Minister for MPF status if their project:

- is of strategic significance to Australia;
- needs Australian Government approvals or other involvement; and
- is commercially viable and ready to proceed through Government approvals processes.

The MPF program is available to all industry sectors, but projects that typically attain MPF status include infrastructure, mineral, oil, gas, agribusiness and advanced manufacturing projects.

12. Immigration and Visas

Where companies require the services of international personnel with specialised skill sets during the establishment and operation of the business, the visa requirements for each of the personnel will vary based on their role and level of involvement in the business.

Australia offers the following visas to individuals coming to the country for business:

- temporary business (short stay) visa;
- temporary business (long stay) visa;
- employer nominated permanent residency; and
- business skills (provisions and permanent) visa.

Experienced registered migration agents, who are often lawyers, provide consulting services to companies seeking to bring personnel to Australia to ensure that all appropriate immigration procedures are satisfied.

13. PKF in Australia

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.

PKF in Australia offers the combined knowledge and experience of over 96 partners and 750 staff located in Adelaide, Brisbane, Canberra, Gold Coast, Hobart, Melbourne, Newcastle, Perth, Sydney, Tamworth, Townsville, and Walcha and specialist resources in the areas of:

- **Audit & Assurance**
- **Business Advisory Services**
- **Business Recovery & Insolvency**
- **Corporate Finance**
- **Taxation Services**
- **Forensic Accounting Services**
- **Franchise Services**
- **Hospitality Services**
- **Information Technology**
- **Superannuation & SMSF**
- **Financial Planning**

We strive to provide our clients with comfort and value for money by offering:

- long term and responsive relationships;
- reliable and accurate information relevant to their needs;
- unbiased and independent advice;
- pragmatic solutions;
- an ethical, thorough and systematic approach; and
- a diverse skills base.

Navigating through financial and strategic issues can be challenging when you are trying to do business in a foreign country. That's why having a firm on the ground who understands the market forces at play, the legal and regulatory environments and who can provide real value through outstanding service will ensure those looking to invest will succeed in today's highly competitive international markets.

14. PKF Corporate Finance

Our finance experts, located across Australia, advise owners and executives on business sales, mergers and acquisitions, accessing capital and accelerating growth or business turnaround. We also advise larger companies and financial investors on deals with privately owned mid-market companies.

We are in regular dialogue with PKF's other corporate finance specialists around the world and have a strong track record of leveraging our global network for cross border deals to deliver increased value and superior results. We access the right buyers, investors and targets for our clients. We secure insights for our clients that others cannot.

We offer extensive experience providing valuation and financial due diligence services to large multi-national companies on M&A transactions in the mid-market, We can reduce your risk on making an acquisition or getting ready for a sale or fund raising transaction.

15. Our team

Boris Kresic
Partner, Taxation
PKF Sydney and Newcastle

bkresic@pkf.com.au
+61 2 8346 6000

Iain Spittal
Partner, Taxation
PKF Sydney and Newcastle

ispittal@pkf.com.au
+61 2 8346 6000

Andrew Jones
Partner, Corporate Finance
PKF Sydney and Newcastle

ajones@pkf.com.au
+61 2 8346 6000

Locations

- Adelaide
- Brisbane
- Canberra
- Gold Coast
- Hobart
- Melbourne
- Newcastle
- Perth
- Sydney
- Tamworth
- Townsville
- Walcha

right people
right size
right solutions

PKF International Ltd.
15 Westferry Circus, London E14 4HD, United Kingdom
Telephone: +44 20 3691 2500

www.pkf.com

DBIAUS122022