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All information in this book, unless otherwise stated, is up to date as of 1 June 2014.

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Contents

1. Australia

Australia

PwC contact

Tom Seymour
PricewaterhouseCoopers
Riverside Centre
123 Eagle Street
Brisbane, Queensland 4000
Australia
Tel: +61 7 3257 8623
Email: tom.seymour@au.pwc.com

Significant developments

The new Australian government, elected in September 2013, proposes a number of priority tax reforms, including the repeal of Australia's carbon pricing mechanism and the Minerals Resource Rent Tax (MRRT) with effect from 1 July 2014. Legislation to implement these proposals has not yet been enacted.

Although a loss carryback regime applies to all companies for tax losses incurred generally from 1 July 2012 such that a company is able to carry tax losses back to offset against the prior year taxable profit and obtain a refund of tax previously paid on the prior year profit through a tax offset mechanism, the newly elected government has proposed that this measure be repealed with effect from the 2013/14 tax year. Legislation to implement this proposal has not yet been enacted. *See Net operating losses in the Deductions section for more information*.

Australia's transfer pricing rules were reformed to 'improve the integrity and efficiency of the tax system'. The most recent reform, which involved modernising Australia's transfer pricing regime in line with international best practice as set out by the Organisation for Economic Co-operation and Development (OECD), applies in respect of income years commencing on or after 29 June 2013. *See Transfer pricing in the Group taxation section for more information*.

Australia is in the process of tightening its thin capitalisation regime, which seeks to limit deductions available for interest and other defined debt deductions for certain inbound and outbound investors. This was part of a package proposed by the previous Australian government, intended to 'protect the corporate tax base from erosion and loopholes', and will broadly include measures to reduce the safe-harbour debt-to-equity ratio from 3:1 to 1.5:1 with effect for income years commencing on or after 1 July 2014. Legislation to implement these proposals has not yet been enacted. *See Thin capitalisation in the Group taxation section for more information*.

Companies with annual Australian assessable income (including that of affiliates) of more than 20 billion Australia dollars (AUD) will no longer be entitled to the 40% research and development (R&D) tax credit for income years commencing on or after 1 July 2013 under measures currently proposed. *See R&D tax credit in the Tax credits and incentives section for more information*.

From an employer perspective, employers are required to contribute funds to a registered superannuation entity on behalf of an employee at a set minimum percentage of the employee's earnings base (the 'superannuation guarantee' scheme), subject to limited exceptions. From 1 July 2013, the required superannuation guarantee percentage was 9.25%, and increases to 9.5% from 1 July 2014. *See Superannuation guarantee levy in the Other taxes section*.

New law requires certain large companies to pay instalments of tax on a monthly basis (instead of quarterly), commencing from 1 January 2014. This change is being phased in over three years, commencing with companies with turnover of AUD 1 billion or more. *See Payment of tax in the Tax administration section for more information*.

Legislation was enacted in June 2013 that will require the Commissioner of Taxation to publish limited information about the tax affairs of large corporate taxpayers, including disclosure of the entity's name, Australian Business Number, total income, taxable income, and tax payable. The first reporting will cover the 2013/14 tax year, with the first published data occurring in late 2015. *See Payment of tax in the Tax administration section for more information*.

Taxes on corporate income

Companies are currently subject to federal tax on their taxable income at a flat rate of 30%. The newly elected government proposes to reduce the corporate tax rate to 28.5% with effect from 1 July 2015 (legislation to give effect to the rate change has not been made).

Companies that are residents of Australia are subject to Australian income tax on their worldwide income. Generally, non-resident companies are subject to Australian income tax on Australian-sourced income only. However, where a company is resident in a country with which Australia has concluded a double taxation agreement (DTA), Australia's right to tax business profits is generally limited to profits attributable to a permanent establishment (PE) in Australia.

Local income taxes
There are no state or municipal taxes on income in Australia.

Corporate residence

A company is a resident of Australia for income tax purposes if it is incorporated in Australia or, if not incorporated in Australia, it carries on business in Australia and either (i) its central management and control are in Australia or (ii) its voting power is controlled by shareholders who are residents of Australia.

Permanent establishment (PE)
The concept of a PE is established in both domestic law and various DTAs that have been concluded with Australia. Where a company is resident in a country with which Australia has a DTA, it is important to have regard to the definition of PE contained therein as this will generally apply in priority to the domestic law.

Broadly, under Australia's domestic law, a PE is a place at or through which a person carries on any business, and includes:

- A place where the person is carrying on business through an agent (except where the agent does not have, or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the person).
- A place where the person has, is using, or is installing substantial equipment or substantial machinery.
- A place where the person is engaged in a construction contract.
- Where the person is engaged in selling goods manufactured, assembled, processed, packed, or distributed by another person for, or at or to the order of, the first-mentioned person and either of those persons participates in the management, control, or capital of the other person or another person participates in the

management, control, or capital of both of those persons, the place where the goods are manufactured, assembled, processed, packed, or distributed.

Most DTAs contain a definition of PE that is similar, though not identical, to the definition under domestic law.

Other taxes

Goods and services tax (GST)

The federal government levies GST at a rate of 10%, and distributes the revenue to state governments. The GST is a value-added tax (VAT) applied at each level in the manufacturing and marketing chain and applies to most goods and services, with registered suppliers getting credits for GST on inputs acquired to make taxable supplies.

Food, with some significant exceptions; exports; most health, medical, and educational supplies; and some other supplies are 'GST-free' (the equivalent of 'zero-rated' in other VAT jurisdictions) and so not subject to GST. A registered supplier of a GST-free supply can recover relevant input tax credits, although the supply is not taxable.

Residential rents, the second or later supply of residential premises, most financial supplies, and some other supplies are 'input-taxed' ('exempt' in other VAT jurisdictions) and are not subject to GST. However, the supplier cannot recover relevant input tax credits, except that financial suppliers may obtain a reduced input tax credit of 75% of the GST on the acquisition of certain services.

Health insurance is GST-free. Life insurance is input-taxed. General insurance is taxed. Reverse charges may apply to services or rights supplied from offshore, where the recipient is registered or required to be registered, and uses the supply solely or partly for a non-creditable supply.

Wine equalisation tax (WET)

The federal government levies WET at the wholesale level at a rate of 29%, in addition to 10% GST, which is calculated on the price including the WET, and it applies to wine from grapes, fruit and certain vegetables, mead, and sake. Retailers do not receive an input tax credit for WET. A rebate is available to a wine producer of 29% of the wholesale price (excluding WET or GST) for wholesale sales, and of 29% of the notional wholesale selling price for retail sales and applications for own use (up to a maximum of AUD 500,000).

Luxury car tax

The luxury car tax is levied by the federal government at the rate of 33% of the value of the car that exceeds the luxury car tax threshold (AUD 60,316 for the 2013/14 financial year) and is payable on the GST-exclusive value above the threshold. No input tax credit is available for luxury car tax, regardless of whether the car is used for business or private purposes.

Customs duties

Imports into Australia are subject to duties under the Australian Customs Tariff. The top duty rate is 5%, other than for clothing and finished textiles, which are currently taxed at 10% (to be reduced to 5% in 2015). A textile, clothing, and footwear (TCF) strategic investment program will operate until 2015.

Australia currently has comprehensive free trade agreements with Chile, Malaysia, New Zealand, Singapore, Thailand, and the United States. The Australian government has recently announced the signing of a free trade agreement with Korea, and the conclusion of negotiations for a free trade agreement with Japan. In addition, a regional free trade agreement between Australia, New Zealand, and Southeast Asian nations commenced on 1 January 2010, which progressively eliminates all barriers to trade in goods, services, and investments.

Excise duties

Excise duties are imposed at high levels on beer, spirits, liqueurs, tobacco, cigarettes, and petroleum products. Excise rates for tobacco and alcohol are indexed bi-annually in February and August based on movements in the consumer price index (CPI). It is also proposed that fuel excise duties will be indexed on the same basis from August 2014. Some examples of current excise rates include:

- Beer not exceeding 3% by volume of alcohol packaged in an individual container not exceeding 48 litres: AUD 39.75 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15.
- Tobacco in stick form not exceeding in weight 0.8 grams per stick actual tobacco content: AUD 0.40639 per stick.
- Petroleum condensate, crude petroleum oil, and diesel: AUD 0.38143 per litre.
- Liquefied petroleum gas, other than liquefied petroleum gas exempted from excise duty: AUD 0.075 per litre.

A fuel tax credit system provides a credit for fuel tax (excise or customs duty) that is included in the price of taxable fuel. Broadly, credits are available to entities using fuel in their business and to households using fuel for domestic electricity generation and heating.

Land tax

All states and territories (except the Northern Territory) impose a tax based on the unimproved capital value of land. In general, the principal place of residence and land used for primary production is exempt from land tax.

Stamp duty

All states and territories impose a stamp duty on a wide variety of transactions at different rates. All jurisdictions impose a stamp duty on real estate conveyances, but most exempt conveyances of goods (not associated with other property) from stamp duty. The imposition of duty on share transfers involving unlisted entities differs from state to state. Corporate reconstruction exemptions are available. Advice from a stamp duty specialist should usually be obtained where substantial stamp duty may be imposed because the amount of duty may depend on the form of the transaction.

Fringe benefits tax (FBT)

As of 1 April 2014, the federal government levies FBT on employers at the rate of 47% (previously 46.5%) on the 'grossed-up value' of non-salary and wages fringe benefits provided to employees (and/or the employee's associates) by the employer or associates. The grossing-up of the value ensures tax neutrality between providing benefits and cash remuneration. FBT generally is deductible for income tax purposes. There are some exemptions from FBT, including some minor benefits, remote area housing in certain circumstances, and specified relocation costs. In addition, there are some concessional valuation rules, in particular for motor vehicles and living-away-from-home benefits (although this concession has been significantly scaled back from 1 October 2012, subject to certain transitional rules). The government is proposing to temporarily increase the rate of FBT to 49% for the period 1 April 2015 to 31 March 2017. Legislation to give effect to this increase has not yet been enacted.

Payroll tax

States and territories impose a tax on employers' payroll (broadly defined). The various jurisdictions have harmonised their payroll tax legislation, but some differences remain, particularly tax rates and the thresholds for exempting employers whose annual payroll is below a certain level, after taking into account grouping rules. For example, in New South Wales, the rate for the year ended 30 June 2014 is 5.45% per annum with an annual exemption threshold of AUD 750,000. In Victoria, the rate for the year ended 30 June 2014 is 4.9%, and the annual exemption threshold is AUD 550,000. A variety of rates and thresholds apply in other state and territory jurisdictions.

Superannuation guarantee levy

The federal government effectively requires employers to contribute a certain percentage of an employee's earnings base, subject to limited exceptions, to a registered superannuation fund or retirement savings account on behalf of the employee. Failure to make these contributions will result in the employer being liable for a non-deductible superannuation guarantee charge.

The superannuation guarantee percentage was 9.25% for the financial year ended 30 June 2014, increases to 9.5% from 1 July 2014, and will progressively increase up to 12% over the coming financial years.

No level of Australian government imposes a social security levy.

Insurance tax

States impose taxes on insurance premiums, which may be substantial.

Minerals Resource Rent Tax (MRRT)

MRRT is a tax applied to the mining profit made from extracting iron ore, coal, anything produced from a process that results in iron ore or coal being consumed or destroyed without extraction, or coal seam gas extracted as a necessary incident of mining coal, before it undergoes any significant processing or value add.

The MRRT liability for each mining project interest in an MRRT year is calculated as follows:

MRRT liability = (Mining profit - MRRT allowances) x MRRT rate

The effective MRRT rate is 22.5%, being the headline rate of 30% reduced by a 25% extraction allowance to recognise the miner's employment of specialist skills.

MRRT allowances reduce the mining profit and include appropriate recognition for mining royalties paid under a Commonwealth, state, or territory law, mining losses, and recognition for the investment in assets relating to upstream mining operations from a mining project interest that exists at 1 July 2012.

A miner's MRRT payable for an MRRT year is then calculated as follows:

MRRT payable = Sum of MRRT liabilities for each mining project interest - Low-profit offset (if applicable) - Rehabilitation tax offset

Small miners are subject to the MRRT but may be entitled to compliance concessions, including a low-profit offset that will ensure that a miner who (together with certain connected entities) has total mining profits for an MRRT year of AUD 75 million or less has no liability for MRRT. The offset is phased-out for profits between AUD 75 million and AUD 125 million.

Similar to income tax, MRRT is self-assessed by the miner. The miner is, in most cases, required to give the Commissioner of Taxation an MRRT return for each MRRT year in which it has a mining project interest or pre-mining project interest. MRRT is generally payable by quarterly instalments.

MRRT applies in addition to normal income tax. MRRT payments (including quarterly instalments) are, however, deductible for income tax purposes.

The newly elected government proposes to abolish the MRRT with effect from 1 July 2014. Legislation to repeal the MRRT has not yet been enacted.

Petroleum Resource Rent Tax (PRRT)

PRRT applies from 1 July 1986 to all petroleum projects in Australian offshore areas (or Commonwealth adjacent areas) other than production licences derived from the North West Shelf project and the Joint Petroleum Development Area in the Timor Sea. From 1 July 2012, PRRT applies to all Australian onshore and offshore oil and gas projects, including the North West Shelf.

PRRT is applied to a ‘project’ or ‘production licence area’ at a rate of 40% of the taxable profits derived from the recovery of all petroleum in the project, including:

- crude oil
- condensate
- sales gas
- natural gas
- liquefied petroleum gas (LPG), and
- ethane.

The taxable profit of a project is calculated as follows:

Taxable profit = Assessable receipts - Deductible expenditure

Deductible expenditure broadly includes exploration expenditure, all project development, and operating expenditures.

PRRT is self-assessed by the relevant taxpayer. The taxpayer is, in most cases, required to give the Commissioner of Taxation a PRRT return for each PRRT year. PRRT is generally payable by quarterly instalments.

PRRT applies in addition to normal income tax. PRRT payments (including instalments) are, however, deductible for income tax purposes.

Local municipal taxes

Local taxes, including water, sewerage, and drainage charges, are levied based on the unimproved capital value of land and include a charge for usage (e.g. water usage).

Branch income

Branch profits are subject to ordinary corporate rates of taxation, and there is no withholding on repatriated profits.

Income determination

Inventory valuation

Inventory generally may be valued at cost (full absorption cost), market selling value, or replacement price. Where, because of obsolescence or other special circumstances, inventory should be valued at a lower amount, the lower valuation generally may be chosen, provided it is a reasonable valuation. Special rules apply, however, regarding the valuation of trading stock for certain companies joining a consolidated group. Last in first out (LIFO) is not an acceptable basis of determining cost, nor is direct costing in respect of manufactured goods and work-in-progress.

Conformity is not required between book and tax reporting. For tax purposes, inventory may be valued at cost, market selling value, or replacement price, regardless of how inventory is valued for book purposes. Those who choose to come within the small-business entity measures (broadly defined as taxpayers who carry on business and who, together with certain 'connected' entities, have an aggregated turnover of less than AUD 2 million for the year) may ignore the difference between the opening and closing value of inventory if, on a reasonable estimate, this is not more than AUD 5,000.

Capital gains

A capital gains tax (CGT) applies to assets acquired on or after 20 September 1985. Capital gains realised on the disposal of such assets are included in assessable income and are subject to tax at the corporate tax rate. In order to determine the quantum of any gain for any assets acquired before 21 September 1999, the cost base is indexed according to price movements since acquisition, as measured by the official CPI until 30 September 1999. There is no indexation of the cost base for price movements from 1 October 1999. Disposals of plant and equipment are subject to general rules rather than the CGT rules. Capital losses are allowable as deductions only against capital gains and cannot be offset against other income. In calculating capital losses, there is no indexation of the cost base.

Companies that are residents in Australia generally are liable for the tax on gains on the disposal of assets wherever situated, subject to relief from double taxation if the gain is derived and taxed in another country. However, the capital gain or capital loss incurred by a company from a CGT event in relation to shares in a foreign company is reduced by a percentage reflecting the degree to which the foreign company's assets are used in an active business if the company holds a direct voting percentage of 10% or more in the foreign company for a certain period before the CGT event. Attributable income from CGT events happening to shares owned by a controlled foreign company (CFC) are reduced in the same way. Capital gains and capital losses made by a resident company in respect of CGT events happening in respect of 'non-tainted' assets used to produce foreign income in carrying on business through a PE in a foreign country are disregarded in certain circumstances.

Non-resident companies are subject to Australian CGT only where the assets are taxable Australian property (i.e. Australian real property, or the business assets of Australian branches of a non-resident). Australian CGT also applies to indirect Australian real property interests, being non-portfolio interests in interposed entities (including foreign interposed entities), where the value of such an interest is wholly or principally attributable to Australian real property. 'Real property' for these purposes is consistent with Australian treaty practice, extending to other Australian assets with a physical connection with Australia, such as mining rights and other interests related to Australian real property. A 'non-portfolio interest' is an interest held alone or with associates of 10% or more in the interposed entity.

Dividend income

A 'gross-up and credit' mechanism applies to franked dividends (dividends paid out of profits that have been subject to Australian tax) received by Australian companies. The corporate shareholder grosses up the dividend received for tax paid by the paying company (i.e. franking credits attaching to the dividend) and is then entitled to a tax offset (i.e. a reduction of tax) equal to the gross-up amount. A company with an excess tax offset entitlement converts the excess into a carryforward tax loss using a special formula.

Dividends paid to another resident company that are unfranked (because they are paid out of profits not subject to Australian tax) are taxable, unless they are paid within a group that has chosen to be consolidated for tax purposes. Dividends paid between companies within a tax consolidated group are ignored for the purposes of determining the taxable income of the group.

Franked dividends paid to non-residents are exempt from dividend withholding tax (WHT).

An exemption from WHT is also available for dividends that are 'unfranked' under the dividend imputation rules and are declared to be conduit foreign income (CFI) received by non-resident shareholders (or unitholders) in an Australian corporate tax entity (CTE). These rules may also treat the CFI component of an unfranked dividend received by an Australian CTE from another Australian CTE as not taxable to the recipient, provided it is on-paid within a specified timeframe. Broadly, income will qualify as CFI if it is foreign income, including certain dividends, or foreign gains, which are not assessable for Australian income tax purposes or for which a foreign income tax offset has been claimed in Australia.

Foreign dividends are not assessable and are not eligible for a tax offset if received by an Australian resident company from a foreign affiliate where the recipient company has a voting power of at least 10% in the foreign affiliate. This exemption is subject to change proposed to take effect broadly from 1 July 2014 so as to prevent dividends attached to legal form shares that are treated as debt interest for Australian tax purposes from being exempt, and also to extend the exemption to non-share equity interest (that is, interests that are classified as 'equity' for Australian tax purposes, but are not legal form shares).

Income of a non-resident entity in which Australian residents hold interests is not assessable when repatriated to Australia where the income has been previously attributed to those residents and taxed in Australia (*see below*).

Stock dividends

Stock dividends, or the issue of bonus shares, as they are known under Australian law, are, in general, not taxed as a dividend, and the tax treatment is the spreading of the cost base of the original shares across the original shares and the bonus shares. However, if a company credits its share capital account with profits when issuing bonus shares, this will taint the share capital account (if it is not already a tainted share capital account), causing the bonus share issue to be a dividend. Certain other rules may apply to bonus share issues, depending on the facts.

Financial arrangements

Special rules apply to the taxation of financial arrangements (TOFA). 'Financial arrangement' is widely defined to cover arrangements that involve a cash settlable legal or equitable right to receive, or obligation to provide, something of economic value in the future.

These measures provide six tax-timing methods for determining gains or losses in respect of financial arrangements, along with revenue account treatment of the resulting gains or losses to the extent that the gain or loss is made in earning assessable income or carrying on a business for that purpose. The default methods are the accruals method and the realisation method, one or other of which will apply depending on the relevant facts and circumstances of a particular financial arrangement. In broad terms, the accruals method will apply to spread an overall gain or loss over the life of the financial arrangement where there is sufficient certainty that the expected gain or loss will actually occur. A gain or loss that is not sufficiently certain is dealt with under the realisation method.

Alternatively, a taxpayer may irrevocably choose one or more of four elective methods (i.e. fair value, retranslation, financial reports, and hedging) to determine the tax treatment of financial arrangements covered by the election. Qualification criteria must be met before the elective methods may be used. Generally, these criteria require that the taxpayer prepare a financial report in accordance with Australian (or comparable) accounting standards and be audited in accordance with Australian (or comparable) auditing standards.

Exemptions from this regime may be available having regard to the duration of the arrangement or the nature of the relevant taxpayer and the annual turnover or value of assets of that taxpayer. Certain types of financial arrangements are excluded from these rules, including leasing and hire purchase arrangements. Foreign residents are taxable on gains from financial arrangements under these measures to the extent that the gains have an Australian source.

Foreign exchange gains and losses
Foreign currency gains and losses are recognised when realised, regardless of whether there is a conversion into Australian dollars, and are included in or deducted from assessable income, subject to limited exceptions. There are exceptions to the timing and characterisation aspects of the realisation approach where the foreign currency gain or loss is closely linked to a capital asset. To reduce compliance costs with foreign currency denominated bank accounts, taxpayers may elect to disregard gains or losses on certain low balance transaction accounts that satisfy a *de minimis* exemption or may elect for retranslation by annually restating the balance of the account by reference to deposits, withdrawals, and the exchange rates at the beginning and end of each year (or by reference to amounts reported in accordance with applicable accounting standards).

For foreign exchange gains and losses associated with financial arrangements as defined, the compliance impact of the foreign exchange rules will be reduced only for those taxpayers who are eligible to and elect the retranslation or financial reports tax-timing methods under the TOFA measures (*as discussed above*).

Entities or parts of entities, satisfying certain requirements, are able to choose to account for their activities in a currency other than Australian dollars for income tax purposes as an intermediate step to translating the result into Australian dollars (known as the 'functional currency' choice).

Foreign income
The current basis upon which the foreign income of corporations resident in Australia is taxed is set out below.

- Dividends received directly by a resident company from a foreign company are not assessable for tax where the resident company has a (non-portfolio) voting interest of at least 10% in the foreign affiliate and does not receive the dividend in its capacity as a trustee. With effect for income years commencing on or after 1 July 2014, it is currently proposed that the exemption will no longer apply to dividends paid on legal form shares that are treated as debt interests for Australian income tax purposes.
- Active foreign branch profits of a resident company from carrying on business through a PE in a foreign country and capital gains made by a resident company from the disposal of non-tainted assets used in deriving foreign branch income (except income and capital gains from the operation of ships or aircraft in international traffic) are not assessable for tax.
- Other foreign income of Australian resident corporations is subject to tax; however, in most cases, an offset for foreign income tax paid is allowed to the extent of Australian tax payable on such income.
- Generally, limited partnerships are treated as companies for Australian tax purposes. In certain circumstances, foreign limited partnerships, foreign limited liability

partnerships, United States (US) limited liability companies, and United Kingdom (UK) limited liability partnerships will be treated as partnerships (i.e. as a flow-through entity) rather than as a company for the purposes of Australia's income tax laws.
- Australia also has a comprehensive CFC regime. *See Controlled foreign companies (CFCs) in the Group taxation section for more information.*

Deductions

Depreciation and depletion

A capital allowances regime allows a deduction for the decline in value of depreciating assets held by a taxpayer. The holder of the asset is entitled to the deduction and may be the economic, rather than the legal, owner. A 'depreciating asset' is an asset that has a limited effective life and can reasonably be expected to decline in value over the time it is used, but does not include land, trading stock, or, subject to certain exceptions, intangible assets. Deductions are available for certain other capital expenditure.

Intangible assets that are depreciating assets (if they are not trading stock) are:

- Certain mining, quarrying, or prospecting rights and information.
- Items of intellectual property (IP).
- In-house software.
- Indefeasible rights to use an international telecommunications submarine cable system.
- Spectrum licences under radio communications legislation.
- Datacasting transmitter licences.
- Telecommunications site access rights.

Taxpayers that do not qualify as a small business must depreciate the asset over its useful life (known as 'effective life') using either straight-line (known as the 'prime cost' method) or diminishing-value method (straight-line rate multiplied by 200% for depreciating assets acquired on or after 10 May 2006).

Taxpayers may self-determine the effective life of a unit or plant or may choose the effective life contained in a published determination of the Commissioner of Taxation.

Non-small-business taxpayers are able to choose to write-off all items costing less than AUD 1,000 through a low-value pool at a diminishing-value rate of 37.5% per annum.

For those who satisfy the small business entity threshold (broadly defined as taxpayers who are carrying on business and who, together with certain connected entities, have an aggregated turnover of less than AUD 2 million for the year), a simplified depreciation system applies by taxpayer choice and with more attractive depreciation rates, including (with effect from 1 July 2012) an immediate write off for depreciating assets with a cost of less than AUD 6,500 (although note that the newly elected government proposes to reduce this concession to AUD 1,000 for depreciating assets first held on or after 1 January 2014).

'Project pool' rules allow expenditures that do not form part of the cost of a depreciating asset to be deductible over the life of a project that is carried on for a taxable purpose. Amongst other things, items that fall within the rules include the following:

- Amounts paid to create or upgrade community infrastructure for a community associated with the project.
- Site preparation costs for depreciating assets (except horticultural plants in certain circumstances).

- Amounts incurred for feasibility studies for a project.
- Environmental assessment costs applicable to the project.
- Amounts incurred to obtain information associated with the project.
- Amounts incurred in seeking to obtain a right to IP.
- Costs of ornamental trees or shrubs.

The so-called 'blackhole' expenditure provisions allow a five-year straight-line write-off for capital expenditure in relation to a past, present, or prospective business, to the extent that the business is, was, or is proposed to be carried on for a taxable purpose. The expenditure is deductible to the extent that it is not elsewhere taken into account (e.g. by inclusion in the cost base of an asset for CGT purposes) and that it is not denied deductibility for the purposes of the income tax law (e.g. by the rules against deducting entertainment expenditure).

Special rules apply for primary producer assets, such as horticultural plants, water and land care assets, and the treatment of expenditure on R&D (*see the Tax credits and incentives section for more information*) and expenditure on certain Australian films.

A luxury car cost limit applies for depreciating the cost of certain passenger motor vehicles (AUD 57,466 cost limit for the 2013/14 income year).

Expenditure on the development of in-house software may be allocated to a 'software development pool' and written off over three years, starting in the year after the expenditure was incurred (40% in year two, 40% in year three, and 20% in year four). Amounts spent on acquiring computer software or the right to use it (except where the acquisition is for developing in-house software) generally is treated as incurred on acquiring a depreciating asset, deductible over its effective life (taken to be four years) commencing in the first year it is first used or installed ready for use. 'Shrink-wrapped' software acquired or manufactured for sale generally will be treated as trading stock.

A loss arising on the sale of a depreciating asset (depreciated value of the asset less sale consideration) is generally an allowable deduction. A gain on the sale of a depreciating asset, to the extent of depreciation recaptured, generally is taxed as ordinary income. Gains exceeding the amount of depreciation recaptured are also taxed as ordinary income.

Subject to exceptions referred to below, capital expenditure incurred after 15 September 1987 in the construction or improvement of non-residential buildings used for producing assessable income is amortised over 40 years at an annual 2.5% rate. Capital expenditure on the construction of buildings used for short-term traveller accommodation (e.g. hotels, motels) and industrial buildings (typically factories) is amortised over 25 years at an annual 4% rate where construction commenced after 26 February 1992. The cost of eligible building construction that commenced after 21 August 1984 and before 16 September 1987 (or construction contracted before 16 September 1987) is amortised over 25 years at an annual 4% rate. There is no recapture of the amortised amount upon disposal of the building, except where the expenditure is incurred after 13 May 1997, in which case recapture will apply, subject to certain transitional rules.

Similar provisions apply in relation to income-producing residential buildings on which construction commenced after 17 July 1985.

The cost of income-producing structural improvements, the construction of which started after 26 February 1992 is eligible for write-off for tax purposes on the same basis as that of income-producing buildings, that is, at a rate of 2.5% per annum.

The cost of consumables may be either written off immediately, or as used.

The following expenditure attracts an immediate 100% deduction: environmental protection activities, dealing with pollution and waste; landcare operations; exploring or prospecting for minerals (other than costs of mining rights and information acquired from a non-government third party that start to be held after 7.30pm [AEST] 14 May 2013, which are proposed to be deducted over the shorter of 15 years and the life of the asset); exploring or prospecting for geothermal energy sources (proposed to be repealed with effect from 1 July 2014); and mine site rehabilitation.

Tax depreciation is not required to conform to book depreciation.

Percentage depletion based on gross income or other non-cost criteria is not available.

Goodwill
Goodwill and trademarks are not depreciating assets, and tax amortisation is not available.

Start-up expenses
There are no specific provisions in relation to deductions for start-up expenses. However, certain start-up expenses, such as costs of company incorporation or costs to raise equity, may qualify for a five-year straight-line write-off to the extent that it is capital expenditure in relation to a current or prospective business that is, or is proposed to be, carried on for a taxable purpose.

Interest expenses
Special rules classify financial arrangements as either debt or equity interests. These rules focus on economic substance rather than legal form and take into account related schemes, and extend beyond shares. In this situation, interest expense on non-share equity would be treated as a dividend, which is potentially frankable, and would be non-deductible for the paying company/group.

The government is proposing to have a special anti-avoidance rule in respect of the current law that allows companies to claim a deduction for interest expenses incurred in relation to offshore investments that generate non-assessable non-exempt dividend income.

Thin capitalisation measures apply to the total debt of the Australian operations of multinational groups (including branches of those groups). *See Thin capitalisation in the Group taxation section for more information*.

Bad debts
A deduction may be available for bad debts written off as bad before the end of an income year. Generally, a deduction will only be available where the amount of the debt was previously included in assessable income, or the debt is in respect of money lent in the ordinary course of a money lending business. The ability to claim a deduction for a bad debt is also subject to other integrity measures.

The amount of a commercial debt forgiven (other than an intra-group debt within a tax consolidated group) that is not otherwise assessable or does not otherwise reduce an allowable deduction is applied to reduce the debtor's carryforward tax deductions for revenue tax losses, carryforward capital losses, non-deducted capital expenditure, and other capital cost bases in that order. Any amount not so applied generally is not assessable to the debtor. Forgiveness includes the release, waiver, or extinguishment of a debt (other than by full payment in cash) and the lapsing of the creditor's recovery right by reason of a statute of limitations.

Charitable contributions
Charitable contributions are generally deductible where they are made to entities that are specifically named in the tax law or endorsed by the Commissioner of Taxation as 'deductible gift recipients'. However, deductions for such gifts cannot generate tax losses. That is, generally the deduction is limited to the amount of assessable income remaining after deducting from the assessable income for the year all other deductions.

Entertainment
Subject to limited exceptions, deductions are denied for expenditure on 'entertainment', which broadly is defined as entertainment by way of food, drink, or recreation, and accommodation or travel to do with providing such entertainment.

Fines and penalties
Fines and penalties imposed under any Australian and foreign law are generally not deductible. This includes fines and penalties imposed in relation to both civil and criminal matters.

The General Interest Charge (GIC) and Shortfall Interest Charge (SIC), which are imposed for failure to pay an outstanding tax debt within the required timeframe or where a tax shortfall arises under an amended assessment, are deductible for Australian tax purposes.

Taxes
In general, GST input tax credits, GST, and adjustments under the GST law are disregarded for income tax purposes. Other taxes, including property, payroll, MRRT, PRRT, and FBT, as well as other business taxes, excluding income tax, are deductible to the extent they are incurred in producing assessable income or necessarily incurred in carrying on a business for this purpose, and are not of a capital or private nature.

Other significant items
Where expenditure for services is incurred in advance, deductibility of that expenditure generally will be prorated over the period during which the services will be provided, up to a maximum of ten years.

General value shifting rules apply to shifts of value, direct or indirect, in respect of loan and equity interests in companies or trusts. Circumstances in which these rules may apply include where there is a direct value shift under a scheme involving equity or loan interests, or where value is shifted out of an asset by the creation of rights in respect of the asset, or where there is a transfer of assets or the provision of services for a consideration other than at market value. The value shifting rules may apply to the head company of a tax consolidated group or multiple entry consolidated (MEC) group for value shifts also involving entities outside the group, but not to value shifting between group members, which the tax consolidation rules address (*see the Group taxation section for more information*).

Net operating losses
Losses may be carried forward indefinitely, subject to compliance with tests of continuity of more than 50% of ultimate stock ownership or compliance with a same business test. For consolidated group companies, the ability to utilise these losses is determined by a modified version of these tests (*see the Group taxation section for more information*).

From 1 July 2012, a loss carryback regime applies such that companies can carry tax losses back to offset prior year taxable profits and obtain a refund of tax previously paid on those prior year profits through a tax offset mechanism. The key features of the loss carryback regime include:

- an initial one year carryback period from the 2012/13 income year (i.e. 2012/13 tax losses can be carried back and offset against tax paid in 2011/12)
- a two year loss carryback period to apply from the 2013/14 income year
- an AUD 1 million cap on the amount of losses able to be carried back, and
- refunds will be limited to the balance of a company's franking account.

The newly elected government is proposing to abolish the loss carryback rules with effect from the 2013/14 and later income years. If this proposal is enacted, it will mean that the loss carryback regime only applied to losses incurred in the 2012/13 income year.

Payments to foreign affiliates
A corporation can deduct royalties, management service fees, and interest charges paid to non-residents, provided the amounts are commercially realistic and referable to activities aimed at producing assessable income.

Group taxation

A tax consolidation regime applies for income tax and CGT purposes for companies, partnerships, and trusts ultimately 100% owned by a single head company (or certain entities taxed like a company) resident in Australia. Australian resident companies that are 100% owned (either directly or indirectly) by the same foreign company and have no common Australian head company between them and the non-resident parent are also allowed to consolidate as a multiple entry consolidated (MEC) group. The group that is consolidated for income tax purposes may differ from the group that is consolidated for accounts or for GST purposes.

Groups that choose to consolidate must include all 100%-owned entities under an all-in rule, and the choice to consolidate is irrevocable. However, eligible tier-1 companies (being Australian resident companies that have a non-resident shareholder) that are members of a potential MEC group are not all required to join an MEC group when it forms, but may form two or more separate MEC or consolidated groups, if they so choose, of which the same foreign top company is the 100% owner. If an eligible tier-1 company joins a particular MEC group, all 100% subsidiaries of the company must also join the group. While the rules for forming and joining MEC groups allow more flexibility than with consolidated groups, the ongoing rules for MEC groups are more complex, particularly for tax losses and on the disposal of interests in eligible tier-1 companies, which are subject to cost pooling rules, although for practical purposes these rules are relevant only if the non-resident is holding or disposing of an indirect Australian real property interest (*see Capital gains in the Income determination section for more information*).

A single entity rule applies to members of a consolidated or MEC group so that for income tax purposes the subsidiary members are taken to be part of the head company, while they continue to be members of the group and intra-group transactions are not recognised. In general, no group relief is available where related companies are not members of the same consolidated or MEC group. Rollover relief from CGT is available on the transfer of unrealised gains on assets, which are taxable Australian property, between companies sharing 100% common ownership where the transfer is between non-resident companies, or between a non-resident company and a member of a consolidated group or MEC group, or between a non-resident company and a resident company that is not able to be a member of a consolidated group.

Consolidated groups file a single tax return and calculate their taxable income or loss ignoring all intra-group transactions.

When a consolidated group acquires 100% of an Australian resident entity, so that it becomes a subsidiary member, the cost base of certain assets (in general, those that are non-monetary) of the joining member are reset for all tax purposes, based on the purchase price plus the entity's liabilities, subject to certain adjustments. In this way, an acquisition of 100% of an Australian resident entity by a consolidated group is broadly the tax equivalent of acquiring its assets. Subject to certain tests being passed, tax losses of the joining member may be transferred to the head company and may be utilised subject to a loss factor, which is broadly the market value of the joining member divided by the market value of the group (including the joining member). The value of the loss factor (referred to as 'the available fraction') that applies for transferred losses may be reduced by capital injections (or the equivalent) into the member before it joined, or into the group after the loss is transferred.

Franking credits and tax losses remain with the group when a member exits, and the cost base of shares in the exiting member is calculated based on the tax value of its assets at the time of exit, less liabilities subject to certain adjustments.

Generally, members of the group are jointly and severally liable for group income tax debts on the default of the head company, unless the group liability is covered by a tax sharing agreement (TSA) that satisfies certain legislative requirements. A member who enters into a TSA generally can achieve a clean exit from the group where a payment is made to the head company in accordance with the TSA.

Transfer pricing

Australia has a comprehensive transfer pricing regime aimed at protecting the tax base by ensuring that dealings between related, international parties are conducted at arm's length. The arm's-length principle, which underpins the transfer pricing regime, uses the behaviour of independent parties as a benchmark for determining the allocation of income and expenses between international related parties.

Recent reforms to Australia's transfer pricing rules were made to 'improve the integrity and efficiency of the tax system'. The first phase of the reforms (with retrospective effect from 1 July 2004) provided the Commissioner of Taxation with the power to issue transfer pricing assessments under the Associated Enterprises or Business Profits Articles of Australia's DTAs in addition to the Commissioner's already existing ability to raise transfer pricing assessments under domestic law. The final stage of the transfer pricing reforms, applicable to income years commencing on or after 29 June 2013, modernised Australia's transfer pricing regime in line with international best practice as set out by the OECD. Under the new regime, which effectively replaced the first phase reform, transfer pricing adjustments will operate on a self-assessment basis and apply in respect of certain cross-border dealings between entities and to the allocation of actual income and expenses of an entity between the entity and its PE, using the internationally accepted arm's-length principle, which is to be determined consistently with the relevant OECD Guidance material (and applied to both treaty and non-treaty cases). In addition, companies are now required to have transfer pricing documentation in place to support their self-assessed positions before the lodgement of the tax return.

Thin capitalisation

Thin capitalisation measures apply to the total debt of the Australian operations of multinational groups (including branches of those groups). The measures cover investment into Australia of foreign multinationals and outward investment of Australian-based multinationals, and include a safe-harbour debt-to-equity ratio of 3:1 for income years ended before 1 July 2014. Interest deductions are denied to the extent that borrowing exceeds the applicable safe-harbour ratio. Where borrowing exceeds the safe-harbour ratio, multinationals are not affected by the rules if they can satisfy the arm's-length test (that the borrowing could have been borne by an independent entity).

A further alternative test is available for outward investing entities based on 120% of their worldwide gearing.

As mentioned above, the thin capitalisation rules apply to inward investment into Australia. In particular, they will apply where a foreign entity carries on business through an Australian PE or to an Australian entity in which five or fewer non-residents have at least a 50% control interest, or a single non-resident has at least a 40% control interest, or the Australian entity is controlled by no more than five foreign entities. Separate rules apply to financial institutions. To facilitate their inclusion in the rules, branches are required to prepare financial accounts.

International Financial Reporting Standards (IFRS), equivalents of which currently apply in Australia, make it more difficult for some entities to satisfy thin capitalisation rules because of the removal of internally generated intangible assets from the balance sheets. Accordingly, thin capitalisation law allows departure from the Australian equivalents to IFRS in relation to certain intangible assets and excludes deferred tax assets and liabilities and surpluses and deficits in defined benefit superannuation funds from applicable calculations.

There are currently proposals to tighten the thin capitalisation regime with a range of measures, including reducing the safe-harbour debt-to-equity ratio from 3:1 to 1.5:1 and the worldwide gearing ratio to 100% and extending its availability to inward investing entities for income years commencing on or after 1 July 2014. Legislation to implement these proposals has not yet been enacted.

Controlled foreign companies (CFCs)

Under Australia's CFC regime, non-active income of foreign companies controlled by Australian residents (determined by reference to voting rights and dividend and capital entitlements) may be attributed to those residents under rules that distinguish between companies resident in 'listed countries' (e.g. Canada, France, Germany, Japan, New Zealand, the United Kingdom, and the United States) and in other 'unlisted' countries. In general, if the CFC is resident in an unlisted country and it fails the active income test (typically because it earns 5% or more of its income from passive or tainted sources), the CFC's tainted income (very broadly, passive income and gains, and sales and services income that has a connection with Australia) is attributable. If a CFC is resident in a listed country, a narrower range of tainted income is attributed even if the CFC fails the active income test.

When income previously taxed on attribution is repatriated, it is not assessable for tax.

Tax credits and incentives

Foreign income tax offsets (FITOs)

FITOs are available to avoid double taxation in respect of foreign tax paid on income that is assessable in Australia. Generally, a corporation will be entitled to claim a FITO where it has paid, or is deemed to have paid, an amount of foreign income tax and the income or gain on which the foreign income tax was paid is included in assessable income for Australian tax purposes.

The amount of the FITO available is limited to the greater of AUD 1,000 and the amount of the 'FITO limit'. The FITO limit is broadly calculated as the difference between the corporation's actual tax liability and its tax liability if certain foreign taxed and foreign-sourced income and related deductions were disregarded. Excess FITOs are not able to be carried forward and claimed in later income years.

Inward investment incentives
Depending on the nature and size of the investment project, state governments may give rebates from payroll, stamp, and land taxes on an *ad hoc* basis and for limited periods.

Capital investment incentives
Incentives for capital investment are as follows:

- Accelerated deductions are available for capital expenditures on the exploration for and extraction of petroleum and minerals (other than mining rights and information acquired from a non-government third party that start to be held after 7.30pm [AEST] 14 May 2013, which are proposed to be claimed over the shorter of 15 years and the life of the asset), the exploration or prospecting for geothermal energy sources (proposed to be repealed with effect from 1 July 2014), the rehabilitation of former mineral extraction sites, certain environmental protection activities, the establishment of certain 'carbon sink' forests, certain expenditure of primary producers, and for certain low cost depreciating assets held by small business entities.
- There are a number of tax concessions aimed at encouraging investments in the venture capital sector. Non-resident pension funds that are tax-exempt in their home jurisdiction, are residents of Canada, France, Germany, Japan, the United Kingdom, the United States, or another country prescribed by regulation, and satisfy certain Australian registration requirements, are exempt from income tax on the disposal of investments in certain Australian venture capital equity held at risk for at least 12 months. A similar exemption is extended to other tax-exempt non-resident investors, including managed funds and venture capital fund-of-funds vehicles and taxable non-residents holding less than 10% of a venture capital limited partnership. These investors are able to invest in eligible venture capital investments through an Australian resident venture capital limited partnership or through a non-resident venture capital limited partnership. Eligible venture capital investments are limited to specified interests in companies and trusts. Detailed rules in the legislation prescribe the nature of such investments and the characteristics, which such companies and trusts, and their investments, must possess.
- There is a venture capital tax concession applicable to an 'early stage venture capital limited partnership' (ESVCLP). The thresholds for qualification include requirements that, amongst other things, the committed capital of the ESVCLP must be at least AUD 10 million but not exceed AUD 100 million, the investments made must fall within prescribed parameters as to size and proportion of total capital, and the ESVCLP must have an investment plan approved by Innovation Australia. Where the thresholds for their application are met, the ESVCLP provisions provide flow-through tax treatment to domestic and foreign partners, with the income and capital received by the partners being exempt from taxation. As the income will be tax exempt, the investor will not be able to deduct investment losses.
- The taxable income derived from pure offshore banking transactions by an authorised offshore banking unit in Australia is taxed at the rate of 10% (the government is considering targeted rules to address integrity issues concerning dealings with related parties).
- Refundable tax offsets are available to companies for certain expenditure incurred in Australia in producing specified classes of film or undertaking specified post, digital, or special effects production activities in respect of specified classes of films. The concessions are only available to a company that is either an Australian resident or a non-resident carrying on business through an Australian PE and which has been issued with an Australian Business Number (ABN). The availability of the offsets is subject to a number of conditions, including meeting registration and minimum spend requirements. The rate of the offset varies from 15% to 40%, depending upon the nature of the relevant film and activities undertaken.

R&D tax credit

For companies with an annual turnover of less than AUD 20 million, there is a 45% refundable R&D tax credit, equivalent to a 150% tax concession. This equates to a cash savings of 15% on every dollar of R&D spend and will be refundable where the company is in a tax loss position. Companies with a turnover of greater than AUD 20 million (up to a proposed upper limit of AUD 20 billion applicable to income years commencing on or after 1 July 2013) have access to a non-refundable 40% tax credit, equivalent to a 133% tax concession. This equates to a cash savings of 10% on every dollar of R&D spend.

Under measures currently proposed by the government, companies with annual Australian assessable income (including that of affiliates) of more than AUD 20 billion will no longer be entitled to the 40% tax credit for income years commencing on or after 1 July 2013. In addition, the government is proposing to reduce both the refundable and non-refundable tax credits by 1.5% (to 43.5% and 38.5% respectively) with effect from 1 July 2014. Legislation to give effect to these proposals has not yet been enacted.

Generally, only genuine R&D activities undertaken in Australia qualify for the R&D tax incentive. However, R&D activities conducted overseas also qualify in limited circumstances where the activities cannot be undertaken in Australia. Special grant programmes also may be available to assist corporations in the conduct of certain R&D in Australia. These grants are awarded on a discretionary basis.

Other incentives

Cash grants for export-market development expenditure are available to eligible businesses seeking to export Australian-source goods and services.

Withholding taxes

Withholding tax (WHT) rates are shown in the following table.

Recipient	Dividends (%) (1)	Interest (%) (2)	Royalties (%) (3)
Resident corporations or individuals (34)	0	0	0
Non-resident corporations or individuals:			
Non-treaty	30	10	30
Treaty:			
Argentina	10/15 (4)	12	10/15 (4)
Austria (5)	15	10	10
Belgium	15	10	10
Canada	5/15 (6)	10	10
Chile (7)	5/15 (7)	5/10/15 (7)	5/10 (7)
China, People’s Republic of (8)	15	10	10
Czech Republic	5/15 (9)	10	10
Denmark	15	10	10
East Timor (Timor Sea Treaty) (10)	15	10	10
Fiji	20	10	15
Finland	0/5/15 (11)	0/10 (11)	5 (11)
France	0/5/15 (12)	0/10 (12)	5 (12)
Germany	15	10	10
Hungary	15	10	10
India	15	15	10/15 (13)
Indonesia	15	10	10/15 (14)
Ireland, Republic of	15	10	10
Italy	15	10	10

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Recipient	Dividends (%) (1)	Interest (%) (2)	Royalties (%) (3)
Japan	0/5/10/15 (15)	0/10 (15)	5 (15)
Kiribati	20	10	15
Korea, Republic of	15	15	15
Malaysia	0/15 (16)	15	15
Malta	15 (17)	15	10
Mexico	0/15 (18)	10/15 (18)	10
Netherlands	15	10	10
New Zealand	0/5/15 (19)	0/10 (19)	5
Norway	0/5/15 (20)	0/10 (20)	5
Papua New Guinea	15/20 (21)	10	10
Philippines	15/25 (22)	10/15 (22)	15/25 (22)
Poland	15	10	10
Romania	5/15 (23)	10	10
Russian Federation	5/15 (24)	10	10
Singapore	0/15	10	10
Slovak Republic	15	10	10
South Africa	5/15 (25)	0/10(25)	5
Spain	15	10	10
Sri Lanka	15	10	10
Sweden	15	10	10
Switzerland (26)	15	10	10
Taipei/Taiwan	10/15 (27)	10	12.5
Thailand	15/20 (28)	10/25 (28)	15
Turkey (29)	5/15 (29)	0/10 (29)	10
United Kingdom (30)	0/5/15 (31)	0/10 (31)	5
United States	0/5/15/30 (32)	0/10/15 (32)	5 (32)
Vietnam	10/15 (33)	10	10

Notes

1. Dividends paid to non-residents are exempt from dividend WHT except when paid out of profits of a company that have not borne Australian tax (i.e. unfranked dividends). Dividends include those stock dividends that are taxable. The rates shown apply to dividends on both portfolio investments and substantial holdings other than dividends paid in connection with an Australian PE of the non-resident. Unfranked dividends paid to non-residents are exempt from dividend WHT to the extent that the dividends are declared by the company to be conduit foreign income. There is also a deduction in certain cases to compensate for the company tax on inter-entity distributions where these are on-paid by holding companies to a 100% parent that is a non-resident (*see Dividend income in the Income determination section*). Dividends paid to a non-resident in connection with an Australian PE are taxable to the non-resident on a net assessment basis (i.e. the dividend and associated deductions will need to be included in the determination of the non-resident's taxable income, the dividend is not subject to dividend WHT), and a franking tax offset is allowable to the non-resident company for franked dividends received.
2. Australia's interest WHT rate is limited to 10% of gross interest, although the treaty may allow for a higher maximum limit. An exemption from Australian WHT can be obtained for interest on certain public issues or widely held issues of debentures. Provisions exist to ensure that discounts and other pecuniary benefits derived by non-residents on various forms of financings are subject to interest WHT. Interest paid to non-residents by offshore banking units is exempt from interest WHT where offshore borrowings are used in offshore banking activities (including lending to non-residents). An offshore borrowing is defined as a borrowing from (i) an unrelated non-resident in any currency or (ii) a resident or a related person in a currency other than Australian currency. The interest WHT rates listed above for residents in a treaty country are those that generally apply. It is common for Australia's tax treaties to include a reduced limit for interest derived by certain government entities and/or financial institutions. One should refer to the relevant treaty for these limits.
3. Royalties paid to non-residents (except in respect of a PE in Australia of a resident of a treaty country) are subject to 30% WHT (on the gross amount of the royalty), unless a DTA provides for a lesser rate. Tax is generally limited to the indicated percentage of the gross royalty.
4. For Australian-sourced dividends that are franked under Australia's dividend imputation provisions and paid to a person who directly holds at least 10% of the voting power of the company, the limit is 10% (although note that Australia does not impose WHT on franked dividends). For Argentinean-sourced dividends paid to a person who holds at least 25% of the capital in the company, the limit

is 10%. A 15% limit applies to other dividends. Source-country tax is limited to 10% of the gross amount of royalties in relation to copyright of literary, dramatic, musical, or other artistic work; the use of industrial or scientific equipment; the supply of scientific, technical, or industrial knowledge; assistance ancillary to the above; or certain forbearances in respect of the above. Source-country tax is limited to 10% of the net amount of royalties for certain technical assistance. In all other cases, it is limited to 15% of the gross amount of royalties.

5. The government announced on 4 February 2010 that negotiations to update Australia's tax treaty with Austria would take place in March 2010. No further announcements have been made in relation to the progress of treaty negotiations.
6. A 5% dividend WHT rate applies to franked dividends paid by an Australian resident company and, in the case of dividends paid by a Canadian resident company (other than a non-resident owned investment corporation), to a company that directly holds at least 10% of the voting power in the dividend company (although note that Australia does not impose WHT on franked dividends). Otherwise, the maximum WHT rate on dividends is 15%.
7. The treaty between Australia and Chile takes effect in respect of Australian WHT on income derived on or after 1 April 2013, on fringe benefits provided on or after 1 April 2013, and in respect of other Australian tax, in respect of income years beginning on or after 1 July 2013. A 5% dividend WHT rate applies to dividends paid to a company that directly holds at least 10% of the voting power in the company paying the dividends. Otherwise, the maximum WHT rate on dividends is 15%. In respect of interest, a 5% WHT rate applies to interest derived by a financial institution that is unrelated to and dealing wholly independently with the payer. Where the 5% rate does not apply, a 15% WHT rate applies to interest arising in Chile, and a 10% WHT rate applies to interest in all other cases. A 5% royalty WHT rate applies to royalties for the use of, or right to use, any industrial, commercial, or scientific equipment, and a 10% royalty WHT rate applies in all other cases.
8. Except Hong Kong and Macau.
9. The treaty between Australia and the Czech Republic allows Australia to impose a 5% WHT on the franked part of a dividend in certain circumstances (although note that Australia does not impose WHT on franked dividends). In the Czech Republic, a rate of 15% applies to the gross amount of dividends if the dividends are paid to a company that directly holds at least 20% of the capital of the company paying the dividend.
10. East Timor does not have a comprehensive DTA with Australia. However, the Timor Sea Treaty governs the taxation rights between the two countries for petroleum-related activities conducted in the Joint Petroleum Development Area of the Timor Sea by any person or entity, irrespective of the residency status of that person or entity. Where the Timor Sea Treaty applies to third-country resident payees, only 10% of the total gross interest, dividend, or royalty payment is subject to Australian WHT, as follows:
    - Interest: 10% of total gross interest paid is subject to WHT at a rate of 10%.
    - Dividends: 10% of total gross unfranked dividends paid are subject to WHT at a rate of 15%, or at the relevant DTA rate of the recipient.
    - Royalties: 10% of total gross royalties paid is subject to WHT at a rate of 10%, or at the relevant DTA rate of the recipient. However, the other 90% of each such amount is subject to East Timorese WHT at the same rates.
11. A zero WHT rate applies to inter-corporate dividends where the recipient directly holds 80% or more of the voting power of the company paying the dividend. A 5% rate limit applies on all other inter-corporate dividends where the recipient directly holds 10% or more of the voting power of the company paying the dividend. A 15% rate applies to all other dividends. A rate limit of 10% applies to interest, except no tax is chargeable in the source country on interest derived by a financial institution resident in the other country or a government or political or administrative subdivision or local authority or central bank of the other country. Amounts derived from equipment leasing (including certain container leasing) are excluded from the royalty definition and treated either as international transport operations or business profits.
12. The source country exempts inter-corporate non-portfolio (i.e. minimum 10% shareholding) dividends paid out of profits that have borne the normal rate of company tax. There is a 5% rate limit for all other non-portfolio dividends. A rate limit of 15% applies for all other dividends. A rate limit of 10% applies to interest, except no tax is chargeable in the source country on interest derived by a financial institution resident in the other country or a government or political or administrative subdivision or local authority or central bank of the other country. Amounts derived from equipment leasing (including certain container leasing) are excluded from the royalty definition and treated either as international transport operations or business profits.
13. The source-country limit under the Indian agreement is 10% for royalties paid in respect of the use of or rights to use industrial, commercial, or scientific equipment or for the provision of consulting services related to such equipment. In other cases, the limit is 15%.
14. The source-country limit under the Indonesian agreement is 10% for royalties paid in respect of the use of or the right to use any industrial, commercial, or scientific equipment or for the supply of scientific, technical, industrial, or commercial knowledge or information, and it is 15% in other cases.
15. The source country exempts inter-corporate dividends where the recipient directly holds 80% or more of the voting power of the company paying the dividend and certain limitation of benefit thresholds are met. A 5% rate limit applies on all other inter-corporate dividends where the recipient directly holds 10% or more of the voting power of the company paying the dividend. A rate limit of 10% otherwise applies for dividends. However, where the dividends are paid by a company that is a resident of Japan, which is entitled to a deduction for the dividends in Japan, the rate limit is 15% where more than 50% of the assets of the paying company consist, directly or indirectly, of real property situated in Japan and 10% in all other cases. Special rules apply to distributions to Japanese residents by real estate investment trusts (REITs). A rate limit of 10% applies to interest, except no tax is chargeable in the source country on interest derived by a financial institution resident in the other country or a government or political subdivision or local authority or central bank or other

specified entity of the other country. Amounts derived from equipment leasing (including certain container leasing) are excluded from the royalty definition and treated either as international transport operations or business profits.

16. A zero dividend WHT rate applies to franked dividends paid by an Australian resident company to an entity that directly holds at least 10% of the voting power in the dividend paying company'; otherwise, a 15% WHT rate applies. In relation to dividends paid by a company resident of Malaysia, no WHT applies.
17. Source-country tax in Malta is limited to the tax chargeable on the profits out of which the dividends are paid.
18. A zero dividend WHT rate applies to franked dividends paid (in Mexico, those dividends that have been paid from the net profit account) to a company that directly holds at least 10% of the voting power in the dividend paying company. In all other cases, a 15% WHT rate will apply to dividends. Source-country tax is limited to 10% when interest is paid to a bank or an insurance company, derived from bonds and securities that are regularly and substantially traded on a recognised securities market, paid by banks (except where the prior two criteria apply), or paid by the purchaser to the seller of machinery and equipment in connection with a sale on credit. It is 15% in all other cases.
19. A zero WHT rate applies in certain cases to inter-corporate dividends where the recipient directly holds at least 80% of the voting power in the dividend paying company. A rate of 5% applies on all other inter-corporate dividends where the recipient directly holds 10% or more of the voting power of the company paying the dividend. A general limit of 15% applies for all other dividends. Source-country tax on interest is limited to 10%. However, no tax is chargeable in the source country on interest derived by a government or a political subdivision or local authority of the other country (including a government investment fund or a bank performing central banking functions) or on interest derived by a financial institution that is unrelated to and dealing wholly independently of the payer (excluding interest paid as part of a back-to-back loan arrangement and, for New Zealand payers, where that person has not paid approved issuer levy).
20. A zero WHT rate applies in certain cases to inter-corporate dividends where the recipient directly holds at least 80% of the voting power in the dividend paying company for the 12-month period prior to payment. A rate of 5% applies to all other inter-corporate dividends where the recipient directly holds 10% or more of the voting power of the company paying the dividend. A general limit of 15% applies to all other dividends. A general rate limit of 10% applies to interest. However, no tax is chargeable in the source country on interest derived by a government of the other country (including its money institutions or a bank performing central banking functions) from the investment of official reserve assets and on interest derived by a financial institution resident in the other country (excluding interest paid as part of a back-to-back loan arrangement).
21. For Australian-source dividends, the limit is 15%. Where dividends are sourced in Papua New Guinea, the limit is 20%.
22. Source-country tax is limited to 15% where relief by way of rebate or credit is given to the beneficial owner of the dividend. In any other case, source-country tax is limited to 25%. Source-country tax generally is limited to 15% of gross royalties if paid by an approved Philippines enterprise. In all other cases, the rate is limited to 25% of the gross royalties.
23. Source-country tax (Australia) is limited to 5% where a dividend is paid to a Romanian resident company that directly holds at least 10% of the capital of the Australian company paying the dividend to the extent that the dividend is fully franked. Source-country tax (Romania) is limited to 5% where a dividend is paid to an Australian resident company that directly holds at least 10% of the capital of the Romanian company paying the dividend if the dividend is paid out of profits that have been subject to Romanian profits tax. In other cases, it is limited to 15%.
24. Source-country tax generally is limited to 15%. However, a rate of 5% applies where the dividends have been fully taxed at the corporate level, the recipient is a company that has a minimum direct holding in the paying company, and the recipient has invested a minimum of AUD 700,000 or the Russian ruble equivalent in the paying company. Where the dividends are paid by a company that is a resident in Russia, the dividends are exempt from Australian tax.
25. A 5% rate limit applies on all inter-corporate dividends where the recipient directly holds 10% or more of the voting power of the company paying the dividend. A rate limit of 15% otherwise applies for dividends. A general rate limit of 10% applies to interest. However, no tax is chargeable in the source country on interest derived by a government of the other country (including a bank performing central banking functions) and on interest derived by a financial institution resident in the other country (excluding interest paid as part of a back-to-back loan arrangement).
26. On 30 July 2013, the Australian and Switzerland governments signed a new DTA, which has not yet entered into force. Once in force, the DTA will apply a 5% WHT rate to dividends paid to companies that hold directly 10% or more of the voting power of the paying company. Dividends paid to publicly listed companies, or subsidiaries thereof, or to unlisted companies in certain circumstances, that hold 80% or more of the voting power of the paying company will be exempt from dividend WHT. Dividends paid to government or a political subdivision or local authority (including a government investment fund), a central bank, complying Australian superannuation funds, and tax exempt Swiss pension schemes will also be exempt from dividend WHT. In all other cases, a 15% WHT rate will apply. A general rate limit of 10% applies to interest. However, once the new DTA is in force, interest paid to bodies exercising governmental functions, banks performing central banking functions, banks that are unrelated to and dealing independently with the payer, complying Australian superannuation funds, and tax exempt Swiss pension schemes will be exempt from interest WHT. Once in force, the DTA will apply a 5% WHT on royalties.
27. Source-country tax (Taiwan) is limited to 10% of the gross amount of the dividends paid to a company that holds at least 25% of the capital of the company paying the dividends. A rate of 15% applies in all other cases. To the extent that dividends are franked because they are paid out of profits

that have borne Australian tax, they are exempt from dividend WHT (*See Note 1 above*). The treaty allows Australia to impose a 10% WHT on the franked part of a dividend.

28. The source-country limit on dividends where the recipient has a minimum 25% direct holding in the paying company is 15% if the paying company engages in an industrial undertaking; 20% in other cases. The source-country limit on interest is 10% when interest is paid to a financial institution. It is 25% in all other cases.
29. The Australian and Turkish DTA takes effect in respect of Australian WHT in respect of income derived from 1 January 2014. The DTA applies a 5% WHT rate to inter-corporate dividends where the recipient directly owns 10% of the voting power of an Australian resident company or directly owns 25% of the capital of a Turkish resident company where the profits out of which the dividend is paid has been subject to the full rate of corporation tax in Turkey. In all other cases, a 15% WHT rate will apply. The DTA applies a general limit of 10% WHT on interest. However, interest derived from the investment of official reserve assets by the either the Australian or Turkish government, the Australian or Turkish central bank, or a bank performing central banking functions in either Australia or Turkey shall be exempt from interest WHT.
30. On 28 October 2008, it was announced that the Australian and the United Kingdom governments would commence negotiations on a revised tax treaty. No further announcements have been made in relation to the progress of treaty negotiations.
31. Source-country tax on dividends is generally limited to 15%. However, an exemption applies for dividends paid to a listed company that satisfies certain public listing requirements and controls 80% or more of the voting power in the company paying the dividend, and a 5% limit applies to dividends paid to other companies with voting power of 10% or greater in the dividend paying company. Source-country tax on interest is generally limited to 10%. However, generally zero interest WHT is payable where interest is paid to a financial institution or a government body exercising governmental functions.
32. Source-country tax on dividends is generally limited to 15%. No source country tax is chargeable on dividends to a beneficially entitled company that satisfies certain public listing requirements and holds 80% or more of the voting power in the company paying the dividend. A 5% limit applies to dividends paid to other companies with voting power of 10% or greater in the dividend paying company. No limit applies to US tax on dividends paid on certain substantial holdings of Australian residents in US REITs. In practical terms, US tax on these dividends is increased from 15% to the current US domestic law rate of 30%. The 15% rate applies to REIT investments made by certain listed Australian property trusts subject to the underlying ownership requirements not exceeding certain levels. Investments in REITs by listed Australian property trusts acquired before 26 March 2001 are protected from the increased rate. Source-country tax on interest generally is limited to 10%. However, generally zero interest WHT is payable where interest is paid to a financial institution or a government body exercising governmental functions. Rules consistent with US tax treaty policy and practice will allow interest to be taxed at a higher 15% rate (the rate that generally applies to dividends) and for tax to be charged on intra-entity interest payments between a branch and its head office. Amounts derived from equipment leasing (including container leasing) are excluded from the royalty definition.
33. Source-country tax is limited to 15% (Australia) and 10% (Vietnam).
34. Where the recipient does not quote a Tax File Number (or Australian Business Number), the payer is obligated to withhold tax at the rate of 46.5% under the Pay-As-You-Go (PAYG) withholding regime. No withholding is required in relation to franked dividends.

Other payments

A PAYG withholding regime applies to require the deduction and remittance of taxes on behalf of foreign resident individuals and entities that are in receipt of the following types of payments:

Type of payment	Rate of withholding (%)
Payments for promoting or organising casino gaming junket arrangements	3
Payments for performing artists and sportspersons, including payments to support staff such as art directors, bodyguards, coaches, hairdressers, and personal trainers:	
if recipient is a company	30
if recipient is an individual	the applicable non-resident marginal tax rate
Payments under contracts entered into for the construction, installation, and upgrading of buildings, plant, and fixtures, and for associated activities	5

Managed investment trust distributions
For managed investment trust fund payments to a non-resident investor, a WHT regime applies, with divergent outcomes, depending upon whether or not the recipient of such fund payments is resident of a country identified as being one with which Australia has an effective exchange of information (EEOI) arrangement and which is regulated as such for purposes of these rules. For a resident of a regulated EEOI country, a final WHT at a 15% rate applies for distributions. For residents of non-EEOI regulated countries, a final WHT at a 30% rate applies.

Distributions from a managed investment trust that holds only certified 'clean buildings' is eligible for a reduced rate of WHT of 10% where the recipient of the fund payment is a resident of a regulated EEOI country.

EEOI countries that have been identified by regulation are Anguilla, Antigua & Barbuda, Aruba, the Bahamas, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Gibraltar, Guernsey, Isle of Man, Jersey, Macau, Mauritius, Monaco, the Netherlands Antilles, San Marino, St. Christopher and Nevis, St. Vincent and the Grenadines, and the Turks and Caicos Islands, as well as countries with which Australia has concluded DTAs, other than Austria, Chile, Greece, the Philippines, Switzerland, and Turkey. Australia has entered into EEOI agreements with Andorra, Bahrain, Brunei, Chile, Costa Rica, Dominica, Grenada, Liberia, Liechtenstein, the Marshall Islands, Montserrat, Saint Lucia, Samoa, Switzerland, Turkey, and Vanuatu; however, these countries have not yet been identified in regulations to be EEOI countries.

Tax administration

Taxable period
The Australian tax year runs from 1 July to 30 June. However, a corporation may apply to adopt a substitute year of income, for example, 1 January to 31 December.

Tax returns
A corporation (including the head company of a tax consolidated group) lodges/files a tax return under a self-assessment system that allows the Australian Taxation Office (ATO) to rely on the information stated on the return. Where a corporation is in doubt as to its tax liability regarding a specific item, it can ask the ATO to consider the matter and obtain a binding private ruling.

Generally, the tax return for a corporation is due to be lodged/filed with the ATO by the 15th day of the seventh month following the end of the relevant income year or such later date as the Commissioner of Taxation allows. Additional time may apply where the tax return is lodged/filed by a registered tax agent.

Payment of tax
A PAYG instalment system applies to companies other than those whose annual tax is less than AUD 8,000 that are not registered for GST. Most companies are currently obligated to pay instalments of tax for their current income year on a quarterly basis by the 21st day of the fourth, seventh, and tenth months of that year and by the 21st day of the month immediately following that year. Instalments are calculated by applying an instalment rate to the amount of the company's actual ordinary income (ignoring deductions) for the previous quarter. The instalment rate is notified to the taxpayer by the ATO and determined by reference to the tax payable for the most recent assessment. The ATO may notify a new rate during the year on which subsequent instalments must be based. Taxpayers can determine their own instalment rate, but there may be penalty tax if the taxpayer's rate is less than 85% of the rate that should have been selected.

New legislation requires certain large companies to pay instalments of tax on a monthly basis (instead of quarterly), commencing from 1 January 2014. This change will be phased in over three years, commencing with companies with turnover of AUD 1 billion or more from 1 January 2014, followed by companies with a turnover of AUD 100 million or more from 1 January 2015, and those with a turnover of AUD 20 million or more from 1 January 2016.

Final assessed tax is payable on the first day of the sixth month following the end of that income year or such later date as the Commissioner of Taxation allows by a published notice.

Tax audit process
The Australian tax system for companies is based on self-assessment; however, the ATO undertakes ongoing compliance activity to ensure corporations are meeting their tax obligations. The ATO takes a risk-based approach to compliance and audit activities, with efforts generally focused on taxpayers with a higher likelihood of non-compliance and/or higher consequences (generally in dollar terms) of non-compliance. Compliance activities take various forms, including general risk reviews, questionnaires, reviews of specific issues, and audits.

Statute of limitations
Generally, the Commissioner of Taxation may amend an assessment within four years after the day of which an assessment is given to a company. Under the self-assessment system, an assessment is deemed to have been given to the company on the day on which it lodges its tax return. The four year time limit does not apply where the Commissioner is of the opinion there has been fraud or evasion, or to give effect to a decision on a review or appeal, or as a result of an objection made by the company, or pending a review or appeal. The unlimited period of review of an assessment to give effect to a transfer pricing adjustment was recently changed to a seven-year period of review in respect of assessments raised for an income year commencing on or after 29 June 2013.

Topics of focus for tax authorities
The ATO annually releases its compliance program that identifies issues that are attracting its attention, what it sees as risks for the upcoming year, and how it plans to respond to these risks. The following areas were identified in the 2013/14 Compliance Program:

- For large and multinational businesses, there is a focus on shifting of profits to lower tax jurisdictions (including, for example, the use of 'marketing hubs and business restructures'), manipulating equity and debt ratios across borders (i.e. thin capitalisation), and the use of the tax consolidation regime to gain inappropriate outcomes.
- The use of trusts to conceal income, mischaracterise transactions, artificially reduce trust income amounts, and underpay tax.
- Enhanced and expanded data matching with over 640 million transactions checked each year to ensure income is correctly reported and claims are not overstated.

Legislation was enacted in June 2013 that will require the Commissioner of Taxation to publish limited information about the tax affairs of large corporate taxpayers (i.e. those with a reported total income of AUD 100 million and those with a liability to pay the MRRT or PRRT), including disclosure of the entity's name, Australian Business Number, total income, taxable income, and tax payable. The first reporting will cover the 2013/14 tax year, with the first published data occurring in late 2015.

Other issues

Intergovernmental agreement (IGA) on the Foreign Account Tax Compliance Act (FATCA)

In April 2014, the Australian government signed an IGA with the United States in relation to the implementation of FATCA. The agreement is intended to establish a framework to assist Australian financial institutions in meeting their obligations under FATCA.

Australia will enact legislation to give effect to the IGA requiring Australian financial institutions to collect information about their customers that are likely to be taxpayers in the United States, and report that information to the ATO. The Australian Commissioner of Taxation will then pass this information on to the US Internal Revenue Service (IRS). Legislation has not yet been enacted to give effect to Australia's obligations under the agreement, but is proposed to apply to FATCA 'reportable accounts' maintained on or after 1 July 2014.

Worldwide Tax Summaries Editorial Team

Worldwide Tax Summaries Operations Director and Executive Editor
Chris Wooley
PwC US
+1 813 222 7097
christopher.j.wooley@us.pwc.com

Director, Global Tax Knowledge Management
Jim Calderon
PwC US
+1 202 414 1612
james.d.calderon@us.pwc.com

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