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DISCLAIMER

This publication is intended to be a brief guide only for investors and business operators considering entering the Australian market place. Entry into Australia may take the form of a subsidiary of a distinct entity, a subsidiary of an overseas parent, a foreign corporation appropriately registered or by an individual wishing to work in Australia. Foreign trusts and partnerships involving resident and non resident entities can also be accommodated. No decisions should be made solely on the material contained in this document because the items herein are of the nature of general comments only, and may be liable to misinterpretation in a particular circumstance. The rapid pace of legislative change in many areas also necessitates all strategies to be reviewed specifically at the relevant time. In light of this it is recommended that advice be sought before acting in any of these areas.

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INTRODUCTION

Australia has been chosen by many US and European based corporations as the desirable hub for their Asia Pacific expansion plans due to Australia's sophisticated business environment including its highly skilled workforce, sound financial systems and overall infrastructure. This combined with a stable government and equally stable and developed legal system provides a unique opportunity for foreign business to establish a presence in the Asia Pacific region. In the context of global markets, the Australian government is continuously seeking to attract foreign business to the region.

As the first major financial centre to open each day, Australia provides a time zone that bridges the closing of the US and the opening of the European markets.

With the Australian business day overlapping those of the US and Europe, firms that seek to operate internationally 24 hours a day use this time zone to their advantage.

That's why Australia is rapidly becoming the customer support centre for the region. Australia's ease of interaction and cultural affinity allows businesses to seamlessly integrate business activities while operating within the same time zone as major Asian markets.

The time difference between Australia and much of Asia, including Singapore, Hong Kong and Malaysia, is only 2 to 3 hours. The ability of companies to service their Asian clients in 'real time' is an attractive advantage.

Combined with advanced transport and communications networks, Australian-based companies have the edge in servicing Asian markets quickly and effectively.

With around 47 per cent of global trade now focused in the Asian-Pacific area according to the Australian Government Agency, Invest Australia, (<http://www.investaustralia.gov.au>), Australia's popularity as a regional hub is well justified. For businesses wishing to compete on a global scale, the time to do business in Australia is now.

Sothertons (<http://www.sothertons.com.au>) is a well respected accounting association of independent firms throughout Australia and New Zealand. The association was founded in 1983 for the purpose of providing member firms who furnish a broad spectrum of efficient, cost-effective accounting, auditing, and management services to clients around Australia and New Zealand.

Typically member firms are full-service public accounting and management consulting firms. These highly successful independent firms, with offices in all capital cities and regional centres, provide technical assistance in traditional accounting and auditing, tax services, and specialized services such as privatization support, fiscal management support, streamlining accounting systems, litigation, strategic planning, business valuations, information technology consulting and system planning.

Sothertons firms have been ranked consistently 32 in the Top 100 Accounting Organisations in Australia by Business Review Weekly (BRW) in 2005.

Importantly with IGAF Worldwide Sothertons reach is extended around the globe. Internationally, Sothertons is a core member of the South East Asia region, of IGAF Worldwide, one of the largest accounting group associations in the world. Founded in 1977 by ten firms in the United States and Canada, IGAF Worldwide has grown to over 140 firms, with over 450 offices in more than 60 countries around the world. In 2010, member firms had over 1,350 partners and over 12,300 personnel generating approximately US\$1.4 billion in annual revenues.

1. GENERAL INFORMATION

Australia, the world's largest island lies in the South-East Asia Pacific region and is surrounded by the Indian and Pacific Oceans. The country consists of six states, one of which, Tasmania, is separated from the mainland by Bass Strait, and two internal territories: the Northern Territory and the Australian Capital Territory, which is the site of the national capital, Canberra. There are six external territories each with its own laws.

Australia's nearest neighbours are New Zealand, Indonesia & "Papua & New Guinea".

Australia has a population of approx 20 million people the majority of whom live in the capital cities and major towns.

The main centres and capital cities are: Sydney, Melbourne, Brisbane, Adelaide, Perth, Canberra, Hobart, and Darwin.

Australia's climate ranges from tropical in the north to temperate in the south. In the southern cities, temperatures are cool in winter and warm in summer and northern cities are warm in winter and hot in summer.

- Summer –December to February
- Autumn –March to May
- Winter – June to August
- Spring –September to November

English is Australia's common and official language.

1.1 GOVERNMENT

A Federation (the Commonwealth of Australia) was formed in 1901 by a written Constitution and comprises 6 states 2 internal and 6 external territories:-

STATES & TERRITORIES	CAPITAL CITIES
1. New South Wales	Sydney
2. Victoria	Melbourne
3. Queensland	Brisbane
4. Tasmania	Hobart
5. South Australia	Adelaide
6. Western Australia	Perth
7. Australian Capital Territory	Canberra
8. Northern Territory	Darwin
EXTERNAL TERRITORY OF:	
9. Norfolk Is	
10. Christmas Is,	
11. Cocos (Keeling)	
12. Ashmore & Cartaris	
13. Coral Sea Islands	
14. Australian Antarctic Territory	

Australia belongs to the Commonwealth of Nations and under the Constitution, the Head of the Commonwealth of Australia is the Queen of England, she is represented by the Governor General and the State Governors.

Australia is a stable parliamentary democracy with three levels of government – Federal, State and Local.

FEDERAL

The Federal Government derives its power under the Constitution of Australia.

The Australian Parliament (<http://www.aph.gov.au/>) operates under the Westminster system, and consists of the Senate (Upper House) and The House of Representatives (Lower House) the Members of both Houses are elected by popular vote.

STATE

Businesses operating in a particular State or Territory need to be aware of the various taxes and other laws. The main taxes (other than income tax) are covered in [Section 7](#) of this publication.

LOCAL

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

EXTERNAL TERRITORIES

The external territories have their own laws and any enterprise considering undertaking business should obtain advice relevant to that particular territory

1.2 CURRENCY & BANKING

The currency unit is the Australian dollar (A\$ - international symbol AUD), which is divided into 100 cents.

Australia has a highly developed banking system. The Australian banking system comprises the Reserve Bank of Australia, which acts as a central bank for large trading banks (commercial banks) together with their saving bank subsidiaries, several smaller trading banks, various foreign banks, specialist development banks and merchant banks.

The main trading banks are ANZ Banking Corporation, National Australia Bank, Westpac Banking Corporation and the Commonwealth Bank of Australia. These banks provide a full range of banking services and products including all types of business loans and trade finance facilities.

Reserve Bank of Australia

[\(http://www.rba.gov.au/\)](http://www.rba.gov.au/)

The Reserve Bank of Australia's (RBA) main responsibility is monetary policy. Policy decisions are made by the Reserve Bank Board, with the objective of achieving low and stable inflation over the medium term. Other major roles are maintaining financial system stability and promoting the safety and efficiency of the payments system. The Bank is an active participant in financial markets, manages Australia's foreign reserves, issues Australian currency notes and serves as banker to the Australian Government.

1.3 IMMIGRATION AND EMPLOYMENT

WORKING CONDITIONS

The standard work week is 38 hours although employees in a number of industries work a thirty five or thirty seven and a half hour week. Most employees work a five day week with minor variations between industries and occupations.

All employers are required by law to contribute to a superannuation fund for employees up to 9% of their salary or wage.

All employers are required by law to take out workers' compensation insurance to cover employees injured in the course of or arising out of their employment. Currently, an employee is entitled to long service leave after a qualifying period of service. The current provision is most commonly thirteen weeks leave for fifteen years service, but some states and awards provide for two or three months leave for 10 years service.

Leave entitlement for sickness and accident varies between each industry. Generally, most businesses provide under the awards up to two weeks' sick leave each year and some provide extra leave for compassionate reasons and for women during pregnancy.

Non Australian residents require work permits to gain employment. **MIGRATION & RESIDENCY**

(a) MAIN REQUIREMENTS

Australia has a non-discriminatory global immigration policy. The number of people wanting to migrate far exceeds Australia's capacity to absorb them. A system of selection that is in the interest of both Australia and new arrivals is therefore necessary. The system is designed to assess economic, employment and other settlement prospects.

(b) CATEGORIES OF MIGRATION

1. FAMILY MIGRATION

Allows the sponsorship of close family, principally spouses, dependent children and parents. Selection criteria are simple; mainly basic health and character requirements. Other sub-categories include orphaned and married relatives, fiancés, children for adoption, special need relatives, aged close relatives and last remaining brothers, sisters, and adult children.

Sponsors, who in some cases must have resided in Australia for two years, undertake to provide accommodation and financial support as necessary.

2. SKILLED MIGRANTS

You may be able to migrate to Australia if you have special skills or a business background that will make an economic contribution to Australia, and if you come within one of the following categories:-

A. LABOUR AGREEMENTS

For skilled people who have been nominated by an employer, within the frame work of an industry-wide agreement and who are under 55 years.

B. EMPLOYEE NOMINATION SCHEME

For skilled people who have been nominated by an employer in Australia and who are under 55 years.

C. BUSINESS SKILLS

For people who can demonstrate that they have a successful business background, and are able to use their business skills to establish new businesses or actively participate in existing businesses in Australia. Such businesses are expected to provide economic benefit to Australia by, for example, creating employment or exporting Australian goods and services.

D. DISTINGUISHED TALENT

For people who have distinguished themselves internationally through their special, creative or sporting talents, or who have outstanding abilities that would represent a clear gain for Australia.

E. INDEPENDENT

For people whose education, skills and ready employability will contribute to the Australian economy. These people are subject to the "points test".

3. INDEPENDENT & CONCESSIONAL (I & C) MIGRATION

This category aims to select young, skilled, educated applicants who will make an early economic contribution through easy transition to the workforce. Applicants are assessed against a point system comprising factors of employability, skills, education and age.

4. SPECIAL ELIGIBILITY MIGRATION

Allows migration of applicants not eligible in other categories where there is a social need, economic or cultural benefit to Australia and comprises the following elements:-

- ✓ Trans Tasman travel arrangements for spouses and dependants of migrating New Zealand citizens, who are themselves not New Zealand citizens.
- ✓ Former Australian citizens and residents.

5. GRANT OF RESIDENCE STATUS

Allows for people temporarily in Australia to be granted permission to reside permanently where the legal requirements of the Migration Act and policy requirements are met. Eligibility is for:-

- ✓ spouses, dependant children and aged parents;
- ✓ ministerially recognised territorial asylees or refugees;
- ✓ people who hold valid temporary entry permits, who are authorized to work and whose continued stay would be economically beneficial to Australia; and

- ✓ holders of valid temporary entry permits who can demonstrate strong compassionate or humanitarian reasons for remaining.

(c) TEMPORARY RESIDENCE & WORK PERMITS

Temporary Residence Visas may be categorized as follows:-

- ✓ Temporary working holiday visa - this visa is valid for up to 12 months.
- ✓ Visitor's visa - this visa is valid for 6 months, but does not permit the holder to work in Australia.
- ✓ Top Management visa - substantial organizations may fill top management positions with overseas appointees who are usually admitted to Australia for 4 years; an extension beyond this period will be granted in some circumstances.
- ✓ Business visa - this visa is valid for 6 months and entitles the holder to give lectures, attend conferences or work in a negotiating or advisory capacity.

1.5 INTERNATIONAL RELATIONS

In its international relations, Australia uses its assets – economic, strategic and cultural – as well as an international reputation as a responsible, constructive and practical country. The values which Australia brings to its international relations are the values of a liberal democracy. These have been shaped by national experience and given rigor through cultural diversity. They include the rule of law, freedom of the press, the accountability of the government to an elected parliament, and a commitment to a “fair go”.

In terms of Gross Domestic Product, Australia is on par with leading world economies. The Australian economy has been performing well, especially through the challenge of the East Asian financial crisis. Over the past decade, Australia has had the one of the fastest growing economies in the Organization for Economic Co-operation and Development (OECD), comparing favourably and at times outperforming the United States, Canada and most of the European Union.

Australia has a strong skills base, high quality education and training institutions, advanced physical infrastructure, and adoption and usage rates for information technology which are among the highest in the world. Our strong civil institutions underpin a free society and encourage free enterprise. Australia’s cultural diversity gives Australian society a vigour and capacity to adapt rapidly to new opportunities. It is also a rich source of language and other skills which help us do business in a global economy.

2. THE ECONOMY

2.1 GENERAL DESCRIPTION

The Australian Economy is based on the free enterprise system, but is subject to some Government regulation over certain sectors. Public utilities are generally Government owned and controlled, but the trend in recent years is to privatize them.

Australian industry has for a long period of time been protected by a broadly based tariff system. This system is now being phased out, and is giving way to a largely deregulated economy, although minor tariffs still apply in some industries.

There is also a broad system of social services, including pensions and unemployment benefits.

Australia is now a highly developed country with a relatively high standard of living.

2.2 BASIC RESOURCES

The country is well endowed with natural resources and produces major quantities of bauxite, beach sand minerals, iron ore, lead and zinc, as well as significant quantities of nickel, copper, coal and uranium.

Water has always been a scarce resource, but continued development of dams and reservoirs has alleviated this problem to some extent.

2.3 MAJOR INDUSTRIES

Australia has a reasonable manufacturing industry, producing a wide range of goods, although comparatively high labour rates have forced some industries off-shore. There is also a large construction industry serving new development projects and buildings, including private housing.

With its abundance of natural resources, Australia has a significant mining industry which provides a reasonable percentage of the country's total export income.

In recent years there has been a dramatic growth in tourism in Australia.

2.4 FOREIGN TRADE

The economy is heavily dependent on high levels of exports and imports. Our major trading partners are Japan and the United States, followed by New Zealand, United Kingdom, Germany, Canada and China. Trade with countries in South East Asia and the Asian-Pacific Rim continues to grow in volume and in its importance to Australia.

2.5 EMPLOYMENT

Although there has historically been a strong commitment to full employment in Australia, this goal has not been achieved in recent years with the current level of unemployment approximately 6% of the workforce.

The pattern of employment has also changed in recent years with the following features standing out:-

- ✓ There has been strong growth in employment in the wholesale and retail trade.
- ✓ The construction industry has shown considerable volatility.
- ✓ There has been dramatic growth of employment in the finance industry and tourism.

- ✓ The services sector is now by far our biggest employer, employing over two-thirds of the workforce.
- ✓ In recent years there has been a tendency for multinational corporations to use Australia as a regional centre.

2.6 STANDARD OF LIVING

Considering the relatively small population, Australian living standards are quite high. Average weekly earnings are good by world standards as is the proportion of home ownership. Education standards are also high, resulting in a generally well trained workforce.

2.7 INFLATION

Over the past few years the underlying rate of inflation has fallen dramatically. It has fallen to its current level of less than 3%. There is a general feeling that comparatively low inflation will be a feature of the Australian economy for some time.

2.8 EXCHANGE CONTROLS

In December, 1983, the government floated the Australian dollar and abolished the majority of exchange controls. The essential purpose of the remaining controls is the prevention of international tax avoidance agreements.

Exchange control approval is not required for any transactions involving the inflow of funds to Australia with the exception of interest bearing investments by foreign governments, government agencies and international organizations.

Reporting of cash transactions is mandatory under the Cash Transactions Reports Act which is designed to counter money laundering and taxation evasion.

2.9 GOVERNMENT ECONOMIC AND FISCAL POLICY

The Government's main objectives have been to reduce inflation and to achieve moderate growth in the economy in order to maintain employment levels. The government has also moved substantially towards a deregulated economy in an attempt to make Australian industry, particularly manufacturing industry more competitive with the rest of the world.

3. FOREIGN INVESTMENT

3.1 REASONS TO INVEST IN AUSTRALIA

- [Strong Economical Credentials](#)
- [Democratic and Politically Stable](#)
- [Highly Skilled and Multilingual Workforce](#)
- [Sophisticated Telecommunications and Information Technology Systems](#)
- [Innovative Culture with Excellent R&D Infrastructure](#)
- [Cost Competitive Location](#)
- [Open and Efficient Regulatory Environment](#)
- [Strategic Time Zone](#)

3.2 GOVERNMENT ATTITUDES & CONTROLS

Australia actively seeks to attract investors to Australia which is evidenced by the activities of "Invest Australia" (<http://www.investaustralia.gov.au>), an Australian Government Agency.

Invest Australia is the Australian Government agency that helps international companies build their business in Australia. The agency offers free, comprehensive and confidential assistance, saving you valuable time and money. There are investment advisory specialists in 11 locations around the world, including New York, San Francisco, London, Paris, Frankfurt, Singapore, Tokyo, Shanghai, and Beijing.

The Government via the **Foreign Investment Review Board** and the "**Foreign Acquisitions and Takeovers Act 1975**", examines proposals by foreign interests to undertake direct investment in Australia and makes recommendations to the Government under its foreign investment policy. Certain investments must be notified to the FIRB. In particular the following :-

Generally acquisitions of shares in, or assets of, businesses or developed commercial properties valued at \$50 million or more, or \$800 million or more for a US investor, require approval, as well as all acquisitions in the **specific** industries that are considered sensitive to the economic well being of the country, in particular banking, telecommunications, shipping, civil aviation, airports the media and residential real estate. This is not an exhaustive list and there are other areas that are considered relevant to the national interest.

History has demonstrated that the Board usually approves most applications without extensive review, especially if the transaction value is less than AUD \$50 million.

The board web site is: <http://www.firb.gov.au/content/default.asp>

3.3 REGULATORY AGENCIES

Australian Securities and Investment Commission (ASIC)

(www.asic.gov.au)

Federal corporate regulator, company and financial services laws

The Australian Competition and Consumer Commission (ACCC)

www.accc.gov.au

This agency is responsible for anti competitive practices. The Australian equivalent of anti trust enforcement and it reviews areas such as:

Monopolistic practices

Misleading conduct in relation to marketing

Price discrimination

Mergers

The Australian Prudential Regulatory Authority (APRA)

(<http://www.apra.gov.au/>)

The Australian Prudential Regulation Authority (APRA) is the prudential regulator of the Australian financial services industry. It oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies, and most members of the superannuation industry.

IP Australia

(<http://www.ipaustralia.gov.au>)

IP Australia is the Australian Government agency responsible for administering patents, trade marks, designs and Plant Breeder's Rights.

By granting these rights, and contributing to the improvement of Australian and international IP systems, IP Australia is supporting Australia's economic development.

IP Australia incorporates the [Patent](#), [Designs](#), [Trade Marks](#) and [Plant Breeder's Rights \(PBR\)](#) Offices. It is a prescribed agency within the [Department of Industry, Tourism and Resources](#) (ITR) but operates independently and reports directly to the Minister.

Australian Stock Exchange (ASX)

(www.asx.com.au)

Whilst the ASX is not a regulatory agency, a company that wishes to list (offer shares to the public) must comply with the rules of the exchange in addition to other requirements that are required by statute such as the Corporations Law. The concept of transparency and keeping the markets informed of all matters that are likely to impact on the market pricing is a primary aim.

Australian Quarantine + Inspection Service (AQIS)

www.aqis.gov.au

In addition the quarantine laws in Australia are enforced by the Australian Quarantine + Inspection Service (AQIS). Australia has very strict regulation to ensure that we protect our borders from disease and pests.

Reserve Bank of Australia (RBA)

www.rba.gov.au/

The Reserve Bank of Australia which is 100% owned by the Federal Government is the statutory authority that undertakes the country's central bank functions. The Reserve Bank of Australia's (RBA) main responsibility is monetary policy, with the objective of achieving low and stable inflation over the medium term.

Other major roles are maintaining [financial system stability](#) and promoting the safety and efficiency of the [payments system](#). The Bank is an active participant in financial markets, manages Australia's foreign reserves, issues Australian [currency notes](#) and serves as banker to the Australian Government.

The RBA is governed by the Reserve Bank Board and the Payments System Board.

Foreign Investment Review Board www.firb.gov.au/content/default.asp

The Board's functions are advisory only. Responsibility for the Government's foreign investment policy and for making decisions on proposals rests with the Treasurer. The Board examines proposals by foreign interests to undertake direct investment in Australia and makes recommendations to the Government on whether those proposals are suitable for approval under the Government's policy.

The main functions of the Board are:

- to examine proposals by foreign interests for investment in Australia and, against the background of the Government's foreign investment policy, to make recommendations to the Government on those proposals;
- to advise the Government on foreign investment matters generally;
- to foster an awareness and understanding, both in Australia and abroad, of the Government's foreign investment policy;
- to provide guidance, where necessary, to foreign investors so that their proposals may be in conformity with the policy; and
- to monitor and ensure compliance with foreign investment policy.

Australian Taxation office (ATO)

www.ato.gov.au/

The ATO is the statutory authority that administers the Federal taxation system via the various Acts of Parliament which comprises primarily (but not exclusively) of the:

Income Tax Assessment Act 1936 (Cth)

Income Tax assessment Act 1997 (Cth)

Taxation Administration Act 1953 (Cth)

Fringe Benefits Tax Act 1986 (Cth)

A New Tax System (Goods and Services Tax) Act 1999 (Act)

The ATO also is responsible for excise on Tobacco, Alcohol, and petrol.

3.4 POTENTIAL GROWTH INDUSTRIES

The natural resource area is still a growth area for the Australian economy. There are rich deposits of iron ore, natural gas and bauxite. Although there are large deposits of uranium, its mining is still subject to negotiation with environmental groups and indigenous peoples.

Growth in the service industries sector, including finance and computers, appears to also be an increasing trend.

Growth in the rural sector will be dependent on world markets.

Growth can also be expected as more multinational corporations use Australia as a regional centre.

4. GOVERNMENT INCENTIVES

4.1 INVESTMENT INCENTIVES

There are no direct incentives that are available specifically for foreign investors. There are however (both at the federal and the state or territorial level) various grants that are available to all businesses be they resident or foreign. Federal incentives are designed to encourage exports, local manufacture, research and development, and investment in particular sectors such as mining and the film industry. State and territorial incentives aim to attract new industry to the state or territory concerned. These incentives comprise both taxation relief as well as cash grants.

4.2 FEDERAL INCENTIVES

(a) GENERAL

EXPORT MARKET DEVELOPMENT GRANTS

The EMDG Scheme provides assistance to small and medium Australian exporters committed to, and capable of, seeking out and developing export business by repaying part of their promotional expenses. Applicants may qualify for reimbursement of eligible export marketing expenses above \$15,000 pa to a maximum of eight grants. Up to \$200,000 pa may be reimbursed.

RESEARCH AND DEVELOPMENT GRANTS

The R&D Tax Concession is administered jointly by the Industry Research and Development (IR&D) Board, through AusIndustry in the Department of Industry, Science and Resources, and the Australian Taxation Office.

Its key elements are:-

- ✓ it is broad-based and market-driven and supports much of the industry R&D spending in Australia;
- ✓ it is a permanent provision to enhance and increase the level of R&D being conducted within Australia;
- ✓ it enables companies to deduct up to 125% of eligible expenditure incurred on R&D activities from assessable income when lodging their tax returns;
- ✓ it can benefit companies which contract out R&D work to other companies or registered research agencies (RRA's) institutions shown to have the expertise and facilities to do certain types of R&D on behalf of others.

The concession aims to encourage increased investment in R&D by Australian companies in order to make them more innovative and increase the international competitiveness of Australian industry. The tax benefit derived from the concession can provide companies with the opportunity to reinvest resultant tax savings in their future. With new and improved products and services, companies can enjoy the benefits of greater competitiveness through increased sales and consequent profits.

Projects must involve R&D, but can also include related product development and market research activities. Projects should have clearly identified commercial potential and applicants need to be able to demonstrate that they are able to fund their share of project costs. Grants up to \$15 million are available, typically ranging between \$100,000 and \$5 million. Grants available are dependent on company size:-

- ✓ *Core Start* provides grants of up to 50% of project costs for Australian companies, with an annual turnover of less than \$50 million.
- ✓ *Start Plus* provides grants of up to 20% of project costs for larger Australian companies with group turnover of \$50 million or more.

High quality projects can obtain further assistance through *Start Premium* which offers companies an additional repayable amount which 'tops up' either *Core Start* or *Start Plus* assistance to a maximum of 56.25% of project costs. For larger companies which receive a grant of 20% of project costs, *Start Premium* can provide an additional 36.25% of repayable financial assistance. Applicants are required to provide a repayment plan as part of the application.

(b) TAX DEDUCTIONS FOR RESEARCH & DEVELOPMENT EXPENDITURE

Companies incorporated in Australia and specified types of partnerships that incur expenditure on research and development are eligible for various tax deductions. Individuals and trusts do not qualify. The expenditure concerned must have been incurred after July 1, 1985.

Companies which incur expenditure on R&D may claim a number of tax concessions:-

- ✓ A 125% or 150% deduction (subject to a \$20,000 threshold) is allowed for wages, salaries, other labour costs and expenditure incurred directly on R&D activities and for certain payments to approved outside bodies.
- ✓ A 100% deduction is allowed for expenditure incurred in acquiring rights to pre-existing "core technology", subject to limitations for expenditure incurred under a contract entered into after 5pm EST on 23 July 1996.
- ✓ Expenditure on R&D plant incurred after January 29, 2001 is eligible for the effective life depreciation at the rate of 125%. Expenditure incurred before that time is deductible at the rate of one-third of the applicable accelerated rate in the first year plus each of the following two years.
- ✓ A 100% deduction over 40 years is allowed for expenditure on R&D buildings.
- ✓ An incremental concession (175% rate of deduction) applies where companies increase their level of R & D expenditure.
- ✓ A refundable tax offset, equivalent to the value of the R & D deduction is available for small companies.

AUSTRALIAN FILMS

Investments in films that qualify as "Australian," are eligible for a deduction of 100 percent in the year in which the investment is made. The taxpayer must be an Australian resident to qualify for these incentives.

MINING

The principal incentive is an immediate write-off of expenditure incurred on exploration or prospecting for minerals and petroleum and in the initial rehabilitation of mining sites. The expenditure is deductible against income of any certain allowable capital expenditure may also be written off over a period of time.

PRIMARY PRODUCERS

Taxpayers engaged in the cultivation of land, the sale of animals or their produce, and forestry or fishing operations, may be entitled to the following tax benefits:-

- ✓ Income averaging for individual taxpayers.
- ✓ Unlimited carry-forward period for tax losses.
- ✓ Outright deduction for landcare, in the year it is incurred, of capital expenditure on soil conservation measures and the establishing of horticultural plants
- ✓ Accelerated writing off of specified items of capital expenditure including telephone lines, user storage and reticulation and establishing grapevines.
- ✓ 10% drought investment allowance for expenditure on drought mitigation property (assets) first used before July 1, 2001.
- ✓ Farm Management Deposits allow taxpayers to shift income from good to bad years.

There are many more incentives and concessions given by the Federal and State Governments and those listed are only examples of the major incentives and concessions available.

5. SETTING UP A BUSINESS

Before commencing business in Australia, every form of organisation needs to be aware of the following controls:-

5.1 BUSINESS NAMES ACT

Any organisation may not carry on business under a name other than its own name unless that other name is registered under the Business Names Act with appropriate State authority.

5.2 MISCELLANEOUS

A wide variety of activities require registration and specific permits. For example, construction companies, shops and factories have to register with the appropriate State authority.

5.3 ALTERNATIVE BUSINESS STRUCTURES

The principal forms of business organisations in the private sector in Australia are:-

- (a) Sole Proprietorship
- (b) Partnerships
- (c) Joint Ventures
- (d) Companies
- (e) Trusts

(a) SOLE PROPRIETORSHIP

A sole proprietorship is generally used for small scale operations utilising the personal qualities of the proprietor.

A person should carry on business as a **SOLE PROPRIETOR** where:-

- ✓ business is small and there are no immediate plans for expansion
- ✓ little risk involved
- ✓ minimal capital required
- ✓ owner prefers absolute control of business
- ✓ there are no family members, or family members have other income, so income splitting is not possible or not tax effective.

ADVANTAGES

- ✓ A sole proprietorship may be formed without legal formalities unless a business name other than that of the individual concerned is to be used. In this case registration is required under the Business Names Act and is a simple and inexpensive procedure.
- ✓ For example, if the persons name was John Smith, he would not have to register if he used "John Smith" or "J Smith" as his business name, but if he were to trade as "Smith's Newsagency", the name would have to be registered. Names which may be confused with an existing firm or which may be misleading may not be registered.
- ✓ Apart from an individual income tax return, there are generally no other reporting or disclosure requirements.
- ✓ Losses can be offset against other income for income tax purposes.

DISADVANTAGES

- ✓ The owner in such a business is personally liable for its debts.
- ✓ It is normally unattractive to foreign investors because of the difficulty in raising capital and its unlimited legal liability.
- ✓ Business ceases upon death of proprietor.
- ✓ Limits tax planning.

(b) PARTNERSHIPS

A partnership arises where two or more individuals or corporate entities agree to carry on business together.

Ordinarily, partnerships are limited to 20 members except for certain professional partnerships such as public accountants, where the maximum number permitted is 1,000, and lawyers, 400. Usually partners set out their rights and liabilities in a specific partnership agreement but in the absence of such an agreement, the rights of each partner are regulated by the Partnership Acts of each State or Territory.

Queensland, Tasmania and Western Australia permit the formation of partnerships where the liability of some, but not all partners, is limited to the amount of capital contributed by those partners. The general partners normally manage the business and have unlimited liability while the limited partners usually must be dominant and take none or only a restricted part in the management of the business.

As with sole proprietors, if the business is carried out in another name other than that of the partners, the name must be registered under the Business Names Act. Where all the persons carrying on business under the business name in a State or Territory are resident elsewhere, an agent, who is resident in that State or Territory, must be appointed.

A **PARTNERSHIP** is appropriate where:-

- ✓ Number of persons involved is small.
- ✓ Degree of risk in the venture is such that limited liability is not considered necessary.
- ✓ Where regulations governing the industry do not permit incorporation.
- ✓ Prospective partners are confident in each others competence, loyalty and compatibility.

ADVANTAGES

- ✓ Reasonably simple to form and change.
- ✓ More capital available than under sole proprietor.
- ✓ Partners can contribute wider range of business skills.
- ✓ The arrangements need not be committed in writing.
- ✓ Degree of control among the partners can be agreed upon and management be vested in a particular partner or committee of partners.
- ✓ Partnership agreement can be flexible and tailored to meet specific needs.
- ✓ Partnership agreement may be altered by the mutual consent of the partners.
- ✓ Losses can be offset against other income of individual partners for income tax purposes.
- ✓ No public disclosure of the financial statements of a Partnership is required.
- ✓ There is no requirement that all or any of the partners must be Australian residents.

DISADVANTAGES

- ✓ A partnership is not a separate legal entity and the liability of the partners, except in a limited partnership, is joint and unlimited. It may extend to their private property if there are insufficient partnership assets to meet obligations.
- ✓ The interest of a partner is not freely transferable in that the consent of the other partners is necessary before a partnership interest can be transferred.

- ✓ There is lack of continuity in that dissolution may be necessary on the retirement, bankruptcy or death of a partner.
- ✓ The consent of all partners is required to admit a new partner.
- ✓ Personality conflicts may arise between partners.

(c) JOINT VENTURES

A joint venture differs from a partnership in that the parties do not carry on business in common, but rather pool their business capabilities and resources in order to earn income. For example, one party may provide the capital, another act as a buying agent and a third do the selling. Profits are usually divided in agreed proportions.

The parties may be individuals, companies or other entities and enter into a joint venture to carry out a specific business enterprise with a limited objective, such relationship being terminated on completion of the project. They usually have a detailed agreement prepared specifying their respective rights and obligations.

A company or partnership structure may be used as a vehicle for a joint venture. If a company is used it is necessary for the shareholders to enter into agreements between themselves to document arrangements that are special to the venture and cannot be handled inside the company structure. Where the joint venture is in the form of a partnership, the partnership agreement or State or Territory partnership laws would govern the venture.

ADVANTAGES

- ✓ Need not be incorporated as an entity separate from that of the co-venturers. They are therefore not regulated by specific statute as are companies and partnerships.
- ✓ An un-incorporated joint venture in many cases may be formed and managed such that each venturer's liability is limited to its agreed share of the venture.
- ✓ A joint venture, not using a company or partnership, is not required to lodge a separate income tax return.

DISADVANTAGES

- ✓ In cases where a company or partnership is used for a joint venture, the financial, accounting and legal considerations are the same as for any other company or partnership.

(d) COMPANIES

The Corporations Law came into operation throughout Australia on January 1, 1991. The Corporations Law succeeded the Companies Code of the various States and Territories which operated under the former co-operative scheme.

The Corporations Law has had the effect of changing our corporate system from a State-based system to a national system by the introduction of an individual 9 digit "Australian Company Number" (ACN) for every Australian Company and a nationwide data-based computer system. The ACN must be displayed on various public documents and negotiable instruments as contained in the Corporations Law.

Foreign companies trading within Australia are allocated an "Australian Registered Business Number" which must be displayed while trading within Australia.

The Corporations Law has seen a number of updates, the major amendments occurring with the introduction of the First Corporate Law Simplification Act in 1995 and more recently the Company Law Review Act of 1998. The current legislation is called the Corporations Act 2001.

The Australian Securities and Investments Commission (ASIC) has been formed as a regulatory body to administer the Corporations Law and ensure compliance by all companies. The main office and information processing centre is situated in Morwell, Victoria and business offices are situated in all capital cities and some other larger cities. Information regarding any Australian company may be obtained from all ASIC offices.

The different types of companies which may be incorporated under the Corporations Law are as follows:-

1. Company limited by shares. The liability of its members is limited to the amount unpaid on the shares held by them. I.e. Limited Liability Companies.
2. Company limited by guarantee. The liability of its shareholders is limited by the Memorandum to whatever they may respectively undertake to contribute to the assets of the company in the vent of its being wound up. Usually used for non-profit entities such as clubs and hospitals.
3. Unlimited companies are usually formed when a company structure is more satisfactory than a partnership agreement. No limit is placed on the liability of its shareholders.
4. A no-liability company does not have the right to recover calls made on its shares from a shareholder who defaults in payment of those calls. The use of this type of company is restricted to mining; however, it is not necessary for a mining company to be a no-liability company. A no-liability company must have "No-Liability" or the abbreviation "NL" at the end of its name.

5.4 LIMITED LIABILITY COMPANIES

The most common form is the first category mentioned above being limited liability companies. Overseas investors normally use this type of company. A limited liability company may be incorporated as a proprietary (private) or public company.

5.5 PROPRIETARY COMPANY

A proprietary company is a company having share capital with limits as to the number of members it may have to not more than fifty (50 non-employees), and is prohibited from inviting the public to subscribe for shares in, or debentures of the company and is also prohibited from inviting the public to deposit money with the company. It must use the word "Proprietary" or the abbreviation "Pty", as well as "Limited" or "Ltd" as part of its name.

Proprietary companies may be classified as either "large" or "small". This classification determines the level of reporting required by such companies.

Large companies are those that satisfy two of three criteria per Section 45A Corporations Legislation:-

- i) Consolidated Revenue > \$25m p.a.;
- ii) Consolidated Gross Assets > \$12.5m p.a.; and
- iii) Employees > 50.

These companies are required to lodge accounts with the Australian Securities and Investments Commission (ASIC) within four months of the end of the financial year. Generally such accounts must be audited.

Small proprietary companies are not required to produce financial statements unless 5% of the shareholders require them to be produced or there is a request from the ASIC.

Companies which are foreign owned or controlled, whether large or small are required to lodge annual accounts and reports with the ASIC.

Companies that disclose information overseas must also disclose that information in Australia on the next business day after it is disclosed overseas.

It should be noted that companies can move between the Large and Small classification on an annual basis if circumstances result in the abovementioned criteria being met.

5.6 PUBLIC COMPANIES

A public company is any company other than a proprietary company and is in essence one in which the public owns or may own shares. They have certain controls placed on them by the Australian Stock Exchange.

On April 1, 1987, the Stock Exchanges of Adelaide, Brisbane, Sydney, Melbourne, Hobart and Perth were incorporated federally under the Australian Stock Exchange and National Guarantee Fund Act 1987 into the Australian Stock Exchange Limited. Whilst each State continues to maintain its own second board listing rules, all companies seeking listing on the main board are governed by the ASX main board listing rules. The listing rules are additional and complementary to the requirements in the Corporations Law. They deal with the pre-requisites for admission to, and official quotation of marketable securities on the Official List of the ASX, reporting requirements of companies and regulate such things as the acquisition and disposal of securities and corporate assets, reconstructions, prospectuses and new marketable securities issues.

5.7 FORMATION

In order to form a limited liability company, an application form must be lodged with the Australian Securities & Investments Commission ([ASIC](#)). Directors and Secretaries are appointed automatically on registration of the company, provided their details are specified in the application with their consent. Once the company is registered shares can be issued.

The company may adopt a Constitution on registration, or if it decides not to, it shall be governed by 'replaceable rules' which are contained in the Corporations Act 2001 (as amended). As a general rule, it is recommended that a constitution be drafted in light of the specific circumstances that apply to the company.

Public companies are required, on registration, to lodge with the ASIC their Constitution where one has been adopted. There is no such requirement for proprietary companies.

A company with your choice of name and details of directors, shareholders, etc, can be set up for around \$1,000 and will take approximately 2-3 days from order to delivery.

Any changes in the details as lodged with the ASIC on formation of the company must be reported within 14 days. In addition all companies must file an annual return and all public companies and most large proprietary companies must file a copy of their audited financial statements with the ASIC each year. Any member of the public may gain access to this information on payment of the appropriate fee.

Public companies are required to open their registered office to the public. Proprietary companies are not so required but must, on request, allow the inspection of relevant documents and registers.

Replaceable rules do not apply to single member companies with a sole director. There are specific general provisions in the Corporations Law which govern the conduct of business and the appointment of directors to such companies.

5.8 DIRECTORS

The Board of Directors usually manages the company. Its powers and duties are set out in the Corporations Act 2001 and in any Constitution the Company may have prepared. Only natural persons may be appointed as directors. A private company must have at least one director. At least one director must reside in Australia. A public company must have at least three directors with two being residents of Australia.

The procedure for appointment of the directors is set out in the Corporations Act 2001, unless a Constitution has been adopted which would then take precedence. There is usually a provision for a proportion of the directors to retire by rotation at each annual general meeting. A retiring director would normally be eligible for reappointment. There are restrictions on people over the age of 72 acting as directors of a public company.

The power to remove directors of a private company is also set out in the Corporations Act 2001, unless a Constitution has been adopted, but shareholders of a public company may remove a director before the expiration of his period of office, by a resolution in general meeting. Directors must act honestly and with reasonable diligence. They may be held personally liable for their actions where they have failed to keep proper accounts, contracted unpayable debts or carried on business to defraud creditors prior to the company becoming insolvent. The Act itself does not require a director to hold shares in a company, but an individual company's Constitution may require that they do.

Employees have no statutory right to appoint directors or to participate in corporate management.

5.9 COMPANY SECRETARY

A public company must have at least one secretary. The secretary must be a natural person, must be at least 18 years old and at least one of them if there are more must ordinarily reside in Australia. Private companies do not require a secretary but if that position exists, the secretary must be an Australian Resident.

5.10 PUBLIC OFFICER

Every company carrying on business in Australia or deriving Australian income from property must have a public officer for the purposes of the Income Tax Assessment Act. The Pay-roll Tax Acts and Land Tax Acts may also be relevant to his appointment. Such an officer must be a natural person, 18 years old and be ordinarily resident in Australia.

5.11 SHAREHOLDERS

Under the Corporations Act 2001, a company must have at least one member. An Annual General Meeting (AGM) must be held at least once in every calendar year and within five months of the end of the financial year for public companies. Proprietary companies are not required to hold an AGM. Other general meetings are held as circumstances require.

5.12 CAPITAL

No minimum share capital is prescribed for a proprietary or public company except where it is to be listed on the stock exchange. The types and classes of shares and the rights of their holders may be specified in a Company's Constitution.

5.13 REGISTERS

All companies must keep registers of members and where applicable, registers of charges (for example, mortgages), debentures and options.

5.14 ANNUAL GENERAL MEETING

Public companies are required to hold an AGM of members each calendar year. The holding of an AGM is optional for proprietary companies and they are not required to pass a resolution.

5.15 ANNUAL REVIEW

Public companies are required to lodge an annual review with the ASIC within one month of their AGM. In respect of private companies, annual reviews must be lodged by January 31, of the subsequent financial year.

A **COMPANY** is appropriate where:-

- ✓ The number of people in the business is such that a partnership is unworkable or not allowed by statute.
- ✓ The degree of risk is such that there is a need for limited liability.

ADVANTAGES

- ✓ A company has separate legal status which means third parties can generally only sue the company, not the shareholders.
- ✓ Continuity is preserved and is independent of members in that a company will last forever unless liquidated by due process under the Corporations Act 2001.
- ✓ A company is flexible in that its Constitution may be altered.
- ✓ Shareholders usually have limited liability although directors nowadays are often asked for personal guarantees. The Corporations Act 2001 imposes onerous responsibilities upon company directors and makes them personally liable for debts incurred by the company where there is not a reasonable expectation that the company is able to pay its debts as and when they fall due at the time when the debt was incurred.
- ✓ There is greater flexibility in introducing new members and in settling the affairs of deceased members.
- ✓ Employees can be given an interest in a business.
- ✓ Easier to provide for one's retirement with a superannuation fund.
- ✓ Larger amounts of capital can be raised, both as debt and equity.
- ✓ Small proprietary companies do not have to file annual financial statements or appoint auditors.

DISADVANTAGES

- ✓ The legal fees and registration fees for a company are such that most people do not incorporate companies until their business grows to a reasonable size.
- ✓ Members have less control and need not be part of management structure.
- ✓ Onerous regulatory responsibilities including keeping proper books of account.

TRUSTS

A trust may be private or public and the latter may be listed on a stock exchange on which the beneficiaries' interests are quoted. A deed regulates the operation of a trust and the flexibility of available trust structures means that a deed can be drawn to suit most applications and requirements.

The beneficiaries' entitlements may be fixed or variable at the discretion of the trustee according to the deed. The discretionary trust is usually used for family businesses and gives the trustee wide powers to acquire or dispose of property, carry on business, borrow money and to distribute income and capital among the beneficiaries.

A unit trust structure is normally used in non-family business where there are a number of separate individuals or companies involved. The beneficial ownership of the trust property is divided into a number of fixed units which may be further separated into income and capital units. The beneficiaries' entitlement to the income of the trust is dependent on the number of units he/she holds.

The trustee holds both the assets of the trust and runs the business for the benefit of the trust's beneficiaries. He/she/it is personally liable for his actions as trustee with a right of indemnity against the trust assets provided he acts within the scope of his authority. The courts are becoming increasingly concerned about this state of affairs and beneficiaries have been held personally liable for trust debts. Often the directors of the trustee company may be asked to sign guarantees.

A **TRUST** is appropriate where:-

- ✓ A person during a lifetime wishes to settle property for the benefit of another person.
- ✓ A person wants to carry on a business and wishes to spread income to minimise tax.
- ✓ Ideal for medium to large businesses.
- ✓ A person making a Will wishes to leave property in Trust for minors for their education and advancement until they reach maturity.

ADVANTAGES

- ✓ They are relatively easy to form and not subject to government controls on their formation or operation (except where a company acts as a trustee).
- ✓ Allow flexibility in determining the recipients of income distributions.
- ✓ The trustee's liability may be limited if it is a company.
- ✓ The beneficiaries may control the activities of the trust if they are also directors of the trust company.

DISADVANTAGES

- ✓ Must be strict adherence to the terms of the trust deed.
- ✓ If the trustee is a company, there are strict financial and legal considerations under Company Law and also to the company's own Memorandum and Articles of Association or Constitution.
- ✓ The courts have developed a complex set of rules against assessable income derived from other sources.
- ✓ Management disputes may arise with a unit trust where it is under the control of more than one person.

6. INCOME TAX AUSTRALIA

6.1 GENERAL PRINCIPLES

The Australian Income Tax system operates under the Income Tax Assessment Act (1936) and the "Income Tax Assessment Act (1997)". Broadly, the taxable income of a taxpayer is the excess of gross assessable income over all allowable deductions. The assessable income of a taxpayer could include capital gains, income from any business, salaries and wages, interest, rent and dividends.

The Australian taxation year runs from July 1 to June 30 each year. Alternative tax years are only granted in exceptional circumstances.

Taxpayers must lodge an income tax return by October 31 each year for the immediately preceding tax year, or in the case of an alternative tax year within two months after the end of the approved year. Extensions of the above time limits can be obtained by taxpayers who file their returns through a registered tax agent.

6.2 RESIDENCY

Residency for taxation purposes is a critical determination due to the fact that under current Australian legislation, a resident of Australia will be taxed on their global income from all sources. However, exemptions or foreign tax credits may apply in certain instances to reduce or eliminate tax on income derived offshore.

Residency for tax purposes should not be confused with immigration status, as the latter has no bearing on the taxation outcome.

Any person having his usual place of abode or domicile in Australia is deemed to be a resident unless he maintains a permanent residence outside Australia. The Tax Office applies a series of subjective tests for determination of this issue.

In practice, if a person takes up employment or establishes a business in Australia on a permanent basis, they will be treated as a resident from the date of arrival in Australia.

6.3 COMPANIES

OVERVIEW

A company is a taxable entity distinct and separate from its shareholders. The term company refers to Australian limited liability companies and the equivalent foreign corporate bodies.

A company is a resident of Australia if:-

- a) It is incorporated in Australia; or
- b) Carries on business in Australia and, either its central management or control is located in Australia.

Companies are subject to tax in the same manner as individuals, whereby the taxable income is calculated as assessable income minus allowable deductions. However, certain distinctions can be drawn in relation to the treatment of loans to shareholders and payments to related parties.

TAXATION OF COMPANIES

Company tax is payable at the rate of 30% of the net taxable income. Dividends can be partially or fully franked

DIVIDENDS PAID

Dividends paid to shareholders are taxable income in the hands of the shareholder but as from July 1, 1987, a dividend imputation system has applied.

Briefly, this system has the effect of grossing up the dividend by the amount of company tax paid and allowing the shareholder an offset of tax for the equivalent company tax. Such a dividend is called a franked dividend. Effectively this means that only shareholders who pay tax at rates in excess of the company rate pay any tax on dividends. Problems arise where companies pay dividends from either exempt income, non taxable income or from foreign income which does not have an "imputation credit". In these circumstances the dividend is taxable income in the hands of the shareholder, however, no imputation credit is available to be offset against the resultant tax liability.

The operation and record keeping requirements of the dividend imputation system are reasonably complex. Please contact one of our offices if you require further information.

PRIVATE & PUBLIC COMPANIES

For taxation purposes, a distinction is made between private and public companies. Broadly, a company is a public company for tax purposes if:-

- ✓ Its shares are listed on an official stock exchange on the last day of its year of income; and
- ✓ Twenty or fewer persons do not at any time during the income year, own or have the right to acquire 75% or more of the capital in the company. A person, his relatives and nominees are counted as one person.

A private company is one that is not a public company. The Commissioner of Taxation can, if he considers it reasonable, deem a company as public even though it may not strictly meet the tests for public status.

Private and public companies in general are taxed in the same manner, however, the following disadvantages attach to private company status:-

- ✓ Loans and advances made by a private company to a shareholder are deemed to be a dividend for tax purposes if they are considered to represent a distribution of profit.
- ✓ Gratuities, termination and retirement allowances, fees and salaries paid to a director or shareholder by a private company, may if considered excessive, be deemed to be a dividend to that extent and will not be deductible to the company.

A subsidiary company follows the status of its parent.

A company is a subsidiary for tax purposes where at all times during the year of income another company held control of the voting power and had the right to receive more than 50% of any dividend declared or distribution of capital.

6.4 PARTNERSHIPS

A partnership is not a separate taxable entity under Australian income tax law; however it is required to lodge a tax return annually. This return determines what the net partnership income or loss is and each partner includes in his personal return his share of this amount.

As a partnership is not a separate and distinct entity for taxation purposes, a partner cannot be an employee of a partnership. Therefore, payments to partners of salaries are not allowable deductions in computing a net partnership income or loss. If a partner (or partners) is entitled to a salary, this means he is merely entitled to an allocation of profits prior to the general division among the partners. The salary paid to the partner is included in his personal income tax return.

Where a partnership incurs a loss, each partner may offset his share of the loss against his other income. If the partner has no other income he can carry forward the loss to offset against future assessable income.

The concept of limited liability partnerships does exist in certain states.

6.5 TRUSTS

A trust for income tax purposes is property or an interest in property which is vested in and under the control of a person who is the trustee and which produces income.

A trust is not a separate legal entity though a tax return must be prepared and lodged by the trustee. Broadly, it is the beneficiaries who are ultimately entitled to receive and retain the trust income, who are taxed on it. The trustee is generally taxed only on any balance to which no beneficiary is immediately entitled or to which a beneficiary is entitled but cannot immediately receive because of some legal incapability such as infancy or insanity.

Trust income is taxable in the year it is derived by the trust. The beneficiaries and/or trustee are taxed on their respective shares of the net trust income even though the trustee may not physically distribute the income to them before the end of the year in which it was derived.

The net income of a trust is defined under income tax law to be calculated as if the trust were a resident taxpayer in respect of that income, minus allowable deductions. Generally, all deductions for expenses which would be allowable if a resident taxpayer had derived the trust's assessable income are taken into account in computing the net income of a trust.

Where the allowable deductions of a trust exceed the assessable income, the loss, which results cannot be distributed amongst the beneficiaries, but must be retained in the trust and offset against net income of the trust in succeeding years. The losses are never available to reduce the other income of a beneficiary. This position is different from that of individuals, partnerships and companies as discussed below.

The trustee of a trust is usually either an individual or a company. A common practice, where the trust is used to operate a business undertaking, for example, is to have what is termed a two dollar company as trustee as this affords some limited liability status on the business undertaking.

The most commonly used types of trusts in Australia are:-

- ✓ **Discretionary Trust** - where the trustee has the power to distribute the net trust income to the beneficiaries at his discretion. The manner in which the net trust income is distributed in one year does not bind the trustee to distribute the net income in a similar manner in succeeding years. This type of trust is commonly used in family business undertakings or arrangements.
- ✓ **Unit Trusts** - where either individuals or companies subscribe for a specific number of units in the trust. The right of each unit holder to the net income of the trust is fixed to their percentage of units held in the total units issued by the trust. The trustee does not have the power to distribute income at his discretion. This type of trust is common in business undertakings operated by non related, or independent persons.

6.6 INDIVIDUALS

OVERVIEW

A resident of Australia is liable to Australian income tax on his income from all sources, i.e., both Australian and overseas income. The rules regarding who is and is not a resident of Australia are set out above.

The rates of tax payable by individuals are set out below; however, certain classes of taxpayers obtain concessions with respect to the amount of tax payable.

AVERAGING OF INCOME

Taxpayers who are involved in the business of primary production, are entitled to average their income from the current year and the last four preceding years. Briefly, where the taxpayer's "average" income is less than the taxable income, the taxpayer is granted a rebate and where average income exceeds taxable income the taxpayer is required to pay complementary tax. The purpose of this system is to ensure that primary producers who have fluctuating income do not pay greater tax over a number of years than those on comparable but steady incomes. A taxpayer who has primary production income can elect out of averaging, however once made this election is irrevocable.

Artists, composers, inventors, performers, production associates, sports persons and writers are also entitled to average their income from these activities which is in excess of \$2,500. This method of averaging is different from primary production averaging, but its purpose is the same, i.e., to reduce the effects of fluctuating income.

PAY AS YOU GO (PAYG)

The PAYG instalment system requires most taxpayers to pay a quarterly instalment after the end of the quarter, to which it relates, based on the income derived during that quarter. Some taxpayers pay annually rather than quarterly.

For quarterly payers, a PAYG instalment is the instalment rate given by the Commissioner (or a rate chosen by the taxpayer) multiplied by the taxpayer's instalment income for the quarter. For annual payers, the instalment is the Commissioner's instalment rate multiplied by the taxpayer's instalment income for the year. Instalment income is broadly the taxpayer's gross assessable business and investment income.

Alternatively, individuals who satisfy certain criteria can have their quarterly instalments based on prior year income with an adjustment for any movement in GDP. A taxpayer who does not consider this an accurate reflection of tax liability may be able to pay instalments based on an estimate of the current year's tax liability. Annual instalment payers may also be able to estimate their instalment based on the prior year's tax liability or on their own estimate of the current year's liability.

6.7 DEDUCTIONS

GENERALLY

Broadly speaking a deduction is allowed for losses and outgoings to the extent to which they are:-

- i) incurred in gaining or producing assessable income (available to all taxpayers, whether in business or not), or
- ii) are necessarily incurred in carrying on a business for the purposes of gaining or producing assessable income (applies only where the taxpayer is carrying on a business).

No deduction is allowed for expenses to the extent to which they are of a private, capital or domestic nature or which are incurred to produce exempt income.

An employee is allowed a deduction for expenditure such as the cost of technical books, subscriptions to professional associations, travelling between places of business, home office expenses and so on. However, the cost of travelling between home and work is generally not deductible.

The same deductions may be claimed by an individual with business income as those which are available to companies deriving that type of income.

Special substantiation rules apply in respect of employment related expenses, motor vehicle expenses, expenses of overseas or extended domestic travel and expenses of self employed persons. Briefly, these deductions will be disallowed and penalties invoked when taxpayers fail to produce documentation in support of such expenses when requested or fail to maintain documentation in the required form.

Some common items of expense which are not allowed as deductions under the Income Tax Assessment Act are:-

- ✓ Fines - including those for late payment of tax.
- ✓ Entertainment expenses (although these may be subject to Fringe Benefits Tax provisions).
- ✓ Amortisation of goodwill.
- ✓ Amortisation of leased assets.

There are a number of specific deductions provided for under income tax law in addition to those allowable under the general rule.

TRADING STOCK

Special provisions apply in respect of trading stock. This is the expression usually used in Australia when referring to inventories and is the term used in taxation laws dealing with these assets. The value of trading stock must be determined for tax purposes at the end of the year and is taken into account in determining the income of a trading business, whether conducted by an individual, partnership, trust or company. Any difference between the value of inventory at the end of the current tax year and the preceding tax year must either be added to or deducted from assessable income, i.e., if trading stock has increased during the year the increase is assessable and if trading stock has decreased during the year the decrease is deductible.

A taxpayer has the option of selecting, for each item of trading stock, the following methods of valuation.

- a) Cost Price
- b) Market Selling Value
- c) Replacement Value
 - Special rules apply to primary producers, whereby the value of inventory can be calculated only on the cost price or market selling methods.
 - Under certain circumstances absorption costing is required, both for manufacturing and retailing enterprises.

LOSSES

A loss occurs where a taxpayer's allowable deductions exceed assessable income. Broadly, where a loss is incurred in the year ended June 30, 1990 and subsequent years, it can be carried forward indefinitely, but it cannot be carried back to a prior year.

Capital losses can be carried forward indefinitely, but can only be offset against capital gains. This will be discussed further in a separate section on Capital Gains Tax.

Where a partnership incurs a loss, the partners include their share of the loss in their respective income tax returns to offset against any other income with the balance to be carried forward as above.

Where a trust incurs a tax loss for the year, that loss is not distributed to the respective beneficiaries, but is retained in the trust to offset against future taxable income.

A company may not be allowed a deduction for a prior year loss unless shares with the rights to more than 50% of the voting power, and dividend distributions and return of capital on liquidation are held by the same persons, during the income year in which the deduction is sought and the income year in which the loss was incurred. This is called the continuity of ownership test. If the company is not able to satisfy this test, then it will still be allowed a deduction for the loss if, at all times during the income year in which the deduction is sought, the company carried on the same business as it carried on immediately before the change in shareholding which prevented it from satisfying the continuity of ownership test. This is called the continuity of business test.

Since July 1, 2002 the main provisions for the new consolidations regime has been introduced. The main features of the new consolidations legislation and utilization of losses is:-

- ✓ The "Head Company" of a wholly owned group of entities will be able to make an irrevocable choice to consolidate with its wholly owned Australian subsidiaries for income tax purposes. All of the wholly owned subsidiaries will become "subsidiary members" of the consolidated group and together with the Head Company, will constitute the "members" of the group.
- ✓ A consolidated group will be treated as a single entity for income tax purposes during the period of consolidation.
- ✓ The thin capitalisation rules treat a consolidated group as a single entity. There are special rules for foreign banks.

Non income tax matters are excluded from consolidations regime, (e.g. FBT and GST.)

DEPRECIATION (Uniform Capital Allowance)

Under the Uniform Capital Allowance Regime a deduction for depreciation is allowed on plant (machinery and equipment, but not including buildings) and articles which are used in the income year for the purpose of producing assessable income or are installed ready for use.

In the case of some minor types of equipment (e.g. loose tools) a deduction is allowed in full for replacements when purchased and no depreciation is applicable.

The basis for depreciation of a unit of property is the cost of the unit to the taxpayer which is spread over the useful or effective life of that asset. The effective rates can be estimated or alternatively the taxation office guide can be utilised. Cost includes purchase price, transportation costs, in-transit insurance and installation costs. A taxpayer may elect to calculate depreciation using either the prime cost method or diminishing value method. The option to alter the depreciation method at any time is no longer available. The rates of depreciation allowable vary depending on the effective life of the property. From July 1, 2001, taxpayers may estimate the effective life of a unit of plant purchased or constructed, although the Commissioner of Taxation is required to publish recommended periods of effective life.

In respect of motor vehicles, a limit is placed on the cost on which depreciation can be calculated. The limit is increased each year in line with the Consumer Price Index. The car depreciation cost limits is:-

2010 - 2011	\$57,466
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An immediate deduction for assets costing less than \$1,000 applies for small business taxpayers (turnover less than \$2 million) under the Small Business Entities Provisions if they choose to enter this system. Taxpayers other than small business taxpayers may allocate expenditure on items costing less than \$1,000 to a low-value pool.

Where a depreciable asset is used partly for business, depreciation is allowable only to the extent the asset is used to produce assessable income (i.e. depreciation is allowed on a pro-rata basis).

Although not specifically classed as depreciation, a deduction is allowed for capital expenditure on construction, extension, alteration and improvement of buildings used for the purpose of producing assessable income. Expenditure on purchasing land, demolition and clearing costs is not eligible for the deduction.

The amount of the deduction allowable depends on when the eligible capital expenditure was incurred, as listed and varies from time to time.

Where an income producing building is purchased from an owner before the construction cost has been fully written off, the right to the remaining allowance is transferred to the purchaser.

SPECIAL INCENTIVE DEDUCTIONS

- ✓ The capital cost of income producing structural improvements, (e.g., roads, bridges, dams, etc) may be written off at 2½% or 4% per annum, depending when the construction commences.
- ✓ Infrastructure borrowings provide certain tax benefits.
- ✓ Certain environmental expenditure is deductible.

International Taxation

Double taxation Agreements

Australia has entered into numerous double taxation agreements to ensure that double taxation does not arise as well as protecting Australian revenue.

The Income Tax Assessment Act provides relief from double taxation via a foreign tax credit. Under this system, foreign source income derived by Australian residents is subject to Australian tax. Credit is then allowed against the Australian tax payable for foreign tax paid on the foreign income. The credit allowed cannot exceed the Australian tax payable on that income.

In respect of companies that are not members of a "consolidated group" there is no entitlement to transfer foreign tax credits between members of the same company group.

Foreign taxes against which credit is allowed are income tax and capital gains tax.

Australia has comprehensive tax treaties with the following countries to avoid double taxation:-

✓ Argentina	✓ Ireland	✓ Russia
✓ Austria	✓ Italy	✓ Singapore
✓ Belgium	✓ Japan	✓ Slovakia
✓ Canada	✓ Kiribati	✓ South Africa
✓ China	✓ Korea	✓ Spain
✓ Czech Republic	✓ Malaysia	✓ Sri Lanka
✓ Denmark	✓ Malta	✓ Sweden
✓ Fiji	✓ Mexico	✓ Switzerland
✓ Finland	✓ Netherlands	✓ Taiwan
✓ France	✓ New Zealand	✓ Thailand
✓ Germany	✓ Norway	✓ United Kingdom
✓ Greece	✓ Papua New Guinea	✓ United States
✓ Hungary	✓ Philippines	✓ Vietnam
✓ India	✓ Poland	
✓ Indonesia	✓ Romania	

Where a conflict arises between a tax treaty and the Income Tax Assessment Act, the tax treaty is to prevail, but tax treaties generally do not substantially alter the basis of Australian Income Tax.

Transfer Pricing

Transfer pricing is a focal point requiring consideration to be given to Transfer Pricing Agreements (TPA's). Australia basis its TP rules on the OECD model but in many respects is more onerous .Related party transaction must be undertaken at commercially realistic arms length values that can be supported by contemporaneous support documentation where possible.

Debt Equity & Thin Capitalisation

Debt Equity rules and the Thin Capitalisation rules work in tandem and can result in the denial of interest deductions where specific ratios or safe harbour provisions cannot be met. These are complex rules and require ongoing vigilance to ensure compliance.

Withholding Taxes

Withholding taxes are payable on dividends, interest and royalties. The taxing regime will vary depending on whether the payment is to a country with a comparable taxation system and the specific treaty provisions. See section 8 below for the specific rates that apply to specific jurisdictions.

6.8 SUPERANNUATION

A deduction is allowed for contributions made by a taxpayer to regulated superannuation funds, however this area of law is very complex and has been subject to many restrictions and changes.

(a) EMPLOYER SPONSORED FUND

An employer is allowed a deduction for all contributions paid to any number of superannuation funds to provide benefits for any employee (including in the case of a company, a director), or to provide benefits for dependants of any employee in the event of the employee's death.

The employer can be an individual, partnership or company. The deduction is available for contributions paid to a complying fund, one in which the sole purpose is the provision of retirement benefits and is deemed properly "regulated" under the Superannuation Industry (Supervision) Act, and is liable to income tax on contributions and profits at the rate of 15%.

There are pre-set limits for contributions for which the employer can make for each employee otherwise excess contribution tax will become tax payable at a high penalty rate.

As of 1st July 2009 the threshold level is \$25,000 p.a. for everyone under 50 years of age. People aged 50 at 30th June 2007 will be entitled to a \$50,000 deduction under transitional rules that will apply up to 30th June 2013.

(b) SELF EMPLOYED AND UNSUPPORTED FUNDS

Self employed persons are entitled to a tax deduction for their own contribution if contribution is made to a complying Superannuation Fund.

A person, whose sole superannuation support is that from an industrial award or under the superannuation guarantee scheme will be considered to be receiving employer support.

However, a substantially self employed person will be treated as wholly "self employed" where that persons income from employment in respect of which employer financed superannuation is provided, is less than 10% of the person's assessable income.

(c) MEMBERS WITH EMPLOYER SUPERANNUATION SUPPORT

Employees are normally not entitled to a deduction for their personal contribution. However, they may be eligible for other tax concessions for superannuation contributions:

From July 1, 2003, a Government co-contribution for low income earners who make superannuation contributions, provided:

- ✓ the person makes one or more eligible superannuation contributions during the income year;
- ✓ the person has employer supported superannuation for the income year;
- ✓ the persons total income for the year is less than the prescribed threshold limit, provided below;
- ✓ an income tax return for the person for the income year is lodged;

- ✓ the person is less than 71 years old at the end of the income year; and
- ✓ the person does not hold an eligible temporary residents visa at any time during the income year.

Year	Maximum Total Income	Maximum Co-Contribution Amount
2010/2011	61,920	1,000

A self employed person's deduction for contributions to a superannuation fund cannot exceed this assessable income for the year and it cannot create or increase a loss to be carried forward to future years.

Contribution splitting to a spouse was introduced in the 2006 financial year. This basically allows a working person to redirect their contributions to their spouse.

(d) SUPERANNUATION GUARANTEE CHARGE (SGC)

All employers are required to provide a minimum level of superannuation support for each of their employees, subject to limited exemptions.

The basic aim of the SGC is to ensure that all workers have an adequate and secure level of income in retirement.

The minimum level of employer support in respect of employees is 9% of the employee's salary.

Employers who fail to provide the prescribed minimum level of support are liable to a tax called the Superannuation Guarantee Charge (SGC) equivalent to the amount of the shortfall, plus the interest component and an administrative charge which will be non-deductible to the employer.

The scheme is administered on a self-assessment basis, with employers with a superannuation guarantee shortfall being required to lodge a superannuation guarantee statement with the Australian Taxation Office, together with a payment of the charge by August 14 after the end of the financial year.

6.9 CURRENT RATES OF TAXATION

The current rates of tax are as follows:-

Company Income Tax	30.00%
Fringe Benefits Tax	46.50%

RESIDENT INDIVIDUALS/BENEFICIARIES**Applying for 2009/2010 Tax Year**

TAXABLE INCOME 2009/2010		TAX ON TAXABLE INCOME before Medicare Levy
EXCEEDING	NOT EXCEEDING	
0	6,000	Nil
6,001	35,000	15c for each \$1 over \$6,000
35,001	80,000	\$4,350 plus 30c for each \$1 over \$35,000
80,001	180,000	\$17,850 plus 38c for each \$1 over \$80,000
180,001 and over	-	\$55,850 plus 45c for each \$1 over \$180,000

Medicare Levy at the rate of 1.5% of total taxable income is payable in addition to the above rates, with phasing in provisions for low income earners.

Applying for the 2010/2011 Tax Year

RESIDENTS: RATES AND TAX PAYABLE FROM 1 JULY 2010	
TAXABLE INCOME (\$)	TAX PAYABLE (\$)
0 – 6,000	Nil
6,001 – 37,000	15c for each \$1 over 6,000
37,001 – 80,000	4,650 plus 30c for each \$1 over 37,000
80,001 – 180,000	17,550 plus 37c for each \$1 over 80,000
180,001 and over	54,550 plus 45c for each \$1 over 180,000

NON-RESIDENT INDIVIDUALS/BENEFICIARIES**Applying for 2009/2010 Tax Year**

TAXABLE INCOME		TAX ON TAXABLE INCOME
EXCEEDING	NOT EXCEEDING	
0	35,000	29c for each \$1
35,001	80,000	\$10,150 plus 30c for each \$1 over \$35,000
80,001	180,000	\$23,650 plus 38c for each \$1 over \$80,000
180,001 and over	-	\$61,650 plus 45c for each \$1 over \$180,000

Medicare Levy does not apply to non-residents.

Applying for the 2010/2011 Tax Year

NON-RESIDENTS: PERSONAL TAX RATES AND THRESHOLDS			
CURRENT		FROM 1 JULY 2010	
TAXABLE INCOME (\$)	RATE (%)	TAXABLE INCOME (\$)	RATE (%)
0 – 35,000	29	0 – 37,000	29
35,001 – 80,000	30	37,001 – 80,000	30
80,001 – 180,000	38	80,001 – 180,000	37
180,001+	45	180,001 and over	45

7. TAXES OTHER THAN INCOME TAX

7.1 GENERAL

The Federal Government is responsible for Goods & Services Tax (GST), Capital Gains Tax (CGT), Fringe Benefits Tax (FBT), Withholding Tax as well as Income Tax, which was discussed in the previous section.

The State Governments levy Stamp Duty, Land Tax, Water Rates and Payroll Tax.

Workers' Compensation Insurance is payable to State Government instrumentalities which administer various compensation schemes for employees.

Local Government bodies raise much of their revenue through local Property Rates.

Gift Duty and Death Duty are not payable in Australia, but import duties and excise can be levied.

7.2 GOODS & SERVICES TAX (GST)

A 10% goods and services tax (GST) started full operation in Australia on July 1, 2000. GST replaces sales tax (formally known as the wholesale sales tax). The introduction of GST was accompanied by a series of other tax measures, including personal tax cuts, collectively forming part of the New Tax System.

GST is an indirect, broad based consumption tax, which is levied on the supply of most goods and services in Australia and on goods imported into Australia. GST is not just limited to goods and services, it also extends to cover the transactions such as real estate and creation of rights.

You must register for GST if you are an individual or an entity carrying on an enterprise in Australia and your annual turnover is \$75,000 or more (\$150,000 or more for non-profit organisations).

You may choose to register if you are an entity carrying on an enterprise with an annual turnover less than \$75,000.

Most goods, services and anything else consumed in Australia are subject to GST. These are defined as taxable supplies.

There are other types of supplies that are not subject to GST. These are called GST free supplies and input taxed supplies.

If supplies are GST free you do not charge GST for them, but you are entitled to claim input taxed credits for anything acquired or imported for use in your enterprise. GST free supplies include most food, exports and most education and health services.

If supplies are input taxed you do not charge GST on the supply, but neither are you entitled to claim input taxed credits for anything acquired or imported to make the supply. Input taxed supplies include financial supplies, supplies of residential rent and residential premises.

GST is charged on imported goods, but not on wages or salaries. Everyone has to pay GST on taxable importations. This includes entities that are registered for GST as well as those that are not, including individuals and other entities that may not even be carrying on an enterprise.

A registered entity must lodge a GST return for each tax period, normally by the 21st day of the following month.

The GST return is incorporated into a Business Activity Statement (BAS).

For businesses with turnovers less than \$20 million, Business Activity Statements are required to be lodged quarterly being due 21 days after the end of the quarter.

Businesses with turnover of more than \$20 million are required to remit a monthly Business Activity Statement.

The amount that the entity is liable to pay for each tax period is the GST for that period less the input tax credits for that period. If the credits exceed the GST, the entity is eligible for a refund or credit against any other tax due.

If you acquire something for the purposes of your enterprise, you are entitled to an input tax credit for the GST included in the price you paid for the acquisition. Similarly the amount of GST collected on supplies made or services provided by your business is required to be remitted to the Australian Taxation Office.

Input tax credits and GST collected are included on your Business Activity Statement and the net amount is either payable or refundable to/by the Australian Taxation Office.

7.3 CAPITAL GAINS TAX (CGT)

From September 1985 the Income Tax Assessment Act assesses gains made in relation to a CGT event happening after that date.

The definition of an "asset" for Capital Gains Tax (CGT) purposes is very broad which includes gains made on the following assets:

- ✓ Land or buildings in Australia.
- ✓ An option, a debt, a chose in action, goodwill and any other legal or equitable rights.
- ✓ Assets used by a taxpayer in carrying on a business in Australia.
- ✓ Currency of a foreign country.
- ✓ Personal use assets costing over \$10,000
- ✓ Any other form of property created or constructed, or otherwise coming to be owned without being acquired.

Certain motor vehicles are exempted from CGT, as are gains made on the taxpayer's main residence, proceeds of life insurance and superannuation policies, and most personal use assets (where the aggregate sale price in a financial year does not exceed \$10,000).

There are four concessions available specifically for small business relief for CGT events occurring after September 21, 1999.

These are:-

- ✓ The 15-year asset exemption
- ✓ The 50% active asset reduction
- ✓ The retirement exemption; and
- ✓ The roll-over

To qualify for the concessions a taxpayer must satisfy a number of basic conditions.

For individuals and some trusts a 50% discount on the capital gain is available when disposal of the asset is post September 21, 1999 and the asset has been acquired by the taxpayer at least 12 months before the disposal.

Alternatively, 100% of the gain between the sale price of the asset and its original cost, including indexation (adjustment for inflation to September 30, 1999), may be subject to CGT.

7.4 FRINGE BENEFITS TAX (FBT)

The value of non-cash benefits provided by employers to their employees or associates of their employees is subject to Fringe Benefits Tax.

Fringe Benefits specifically subject to the tax include private use of an employer owned car, waiver of a debt, interest-free or low interest loans, payment of expenses, free or cheap housing or board, some living-away-from-home allowances, airline transport provided to airline and travel industry employees, and entertainment expenses. Any other benefits provided are known as property or residual benefits and are also subject to FBT.

In order for a benefit to be taxable, it must be provided in connection with the recipient's employment.

The FBT Act specifically excludes:-

- ✓ Superannuation fund contributions (except contributions to a non-complying fund).
- ✓ Payments from superannuation funds.
- ✓ Benefits from employee share acquisition schemes.
- ✓ Payments on termination of employment.
- ✓ Capital payments for personal injury.
- ✓ Payments deemed to be dividends for income tax purposes.

The current rate of tax is 46.5% on the grossed up value of the benefit. The amount of Fringe Benefits Tax paid will be deductible against taxable income of the employer.

7.5 WITHHOLDING TAX

Withholding Tax is payable on dividends paid by resident Australian companies to non-residents. Tax of up to 15% is payable where the dividend is paid to a resident of a country with which Australia has a double taxation treaty. Where dividends are fully franked the tax is reduced to zero. Otherwise, Withholding Tax of up to 30% may apply.

Franked dividends are not subject to Withholding Tax. A franked dividend is one where the shareholder is allowed credit for tax paid at a company level.

Interest derived by a non-resident is subject to Withholding Tax to the extent the interest is an outgoing of an Australian business. A rate of 10% of the gross amount paid applies.

Withholding tax on interest and dividends is remitted monthly as income is derived.

Royalties derived by non-residents are also subject to Withholding Tax.

- ✓ 5% Finland, France, Japan, Norway, South Africa, United Kingdom and USA.
- ✓ 10% Austria, Belgium, Canada, China, Czech Republic, Denmark, East Timor, Germany, Hungary, Ireland, Italy, Malta, Mexico, Netherlands, New Zealand, Papua New Guinea, Poland, Romania, Singapore, Slovakia, Spain, Sri Lanka, Sweden, Switzerland, and Vietnam.
- ✓ 12.5% Taipei.
- ✓ 10 or 15% Argentina, India, Indonesia.
- ✓ 10 or 30% Russia.
- ✓ 15% Korea, Fiji, Kiribati and Thailand.
- ✓ 15 or 25% Philippines.
- ✓ 15 or 30% Malaysia.

Where there is no double-tax treaty the 30% tax rates apply.

7.6 STAMP DUTY

Stamp Duty is imposed on certain transactions at either a fixed rate or at an "ad valorem" rate calculated on the amount of consideration in the transaction, or the value of the property being transferred.

Stamp Duty is generally payable on conveyance and transfer of property, transfer of shares or units in a unit trust scheme, lease agreements, deeds, insurance policies, sale documents, and goodwill generated on the sale of a business.

Transfers of shares or units quoted on the Australian Stock Exchange or other recognised stock exchanges are not subject to duty.

Each State has its own Duties Act. Transactions subject to Stamp Duty and the rate of duty payable varies from State to State.

Duty is payable in most States on bank account debits (Bank Account Debits Tax). Bank account credits tax (Financial Institutions Duty) was abolished from July 1, 2001.

7.7 LAND TAX

Land Tax is imposed by States on the unimproved value of taxable land held. The rates of tax payable vary between States with Queensland, South Australia, and Western Australia exempting the principal residence from the calculation.

Land used for primary production is exempted (except in Tasmania), as is land owned and used by charitable institutions, religious bodies and schools.

7.8 PAYROLL TAX

Employers whose annual wages bill exceeds minimum limits set by the various State Governments are liable for Payroll Tax. The tax is payable on wages, commissions, allowances and bonuses paid to employees of the employer.

The rate of tax ranges from 3% to 7% depending on which state it is.

Provisions exist to group related businesses (as defined by the Payroll Tax Acts), and apply throughout Australia.

7.9 PROPERTY RATES

Local councils and Shires levy annual rates based on the taxable value of properties within their municipality. Various State Government bodies levy water rates on property owners based normally on taxable value of properties.

8. ACCOUNTING & AUDIT REQUIREMENTS

8.1 BOOKS & RECORDS

Every company is required to keep in the English language and in Australian currency such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time.

A company is also required to keep certain other records, such as a register of shareholders, minute books and a register of charges.

A company's accounting records (which for this purpose include such working papers and other documents as are necessary to explain the methods and calculations by which the accounts can be made up) must be retained for seven years after the completion of the transactions to which they relate.

8.2 ACCOUNTING STANDARDS

The Corporations Law sets out accounting standards which must be followed by all companies when preparing their financial statements. These standards are incorporated into accounting standards set by the accounting profession. In addition, the accounting profession has established additional accounting standards which must be followed by its members in the preparation of financial statements. However, "non-reporting entities", which usually encompass privately owned companies, do not have to comply with any particular additional accounting standard if the directors are of the opinion that any users of the financial statements have a full and free access to all financial information. In recent times the International Financial Reporting Standards (IFRS) have been adopted as a consequence of a major rewrite of the existing standards .IFRS has far reaching consequences on entities that are required to report under these standards.

8.3 FINANCIAL STATEMENTS

Financial statements prepared by "reporting entities" normally include:-

- ✓ Directors' Report
- ✓ Directors' Declaration
- ✓ Auditor's Report
- ✓ Statement of Financial Position
- ✓ Statement of Financial Performance
- ✓ Notes to the Financial Statements
- ✓ Statement of Cash Flows

The disclosure requirements for financial statements are set out in the Australian Accounting Standards.

"Non-reporting entities" need only disclose abridged financial information.

The normal financial year is from July 1 to June 30, but there is provision for companies to adopt alternative balancing dates.

8.4 AUDIT REQUIREMENTS

Every company except a small proprietary company generally is required to appoint an auditor who must report to the shareholders on the annual financial statements. The auditor must be a registered company auditor.

A proprietary company is a company that restricts the right to transfer shares, has no more than 50 non-employees shareholders, and prohibits the invitation to subscribe in shares or debentures of the company.

A public company is a company that is not a proprietary company or is a body corporate that is a public company for the purposes of the Corporations Law of another jurisdiction.

Under certain circumstances a subsidiary of a foreign parent or a foreign corporation may have reduced audit reporting compliance requirements if appropriate class orders are applied for.

8.5 MEETINGS AND RETURNS

A public company is required to hold an annual general meeting of shareholders within five months of the date to which the financial statements have been drawn up. At least one annual general meeting must be held each calendar year.

Private companies are not required to hold an annual general meeting of shareholders but may do so if they wish.

A company must file an annual return with the Australian Securities Commission showing details of capital, shareholders, directors and charges on the company's assets. Except in the case of small proprietary companies, a copy of the audited financial statements must also be filed.

8.6 ACCOUNTANCY PROFESSION

There are two principal professional bodies in Australia, namely the Institute of Chartered Accountants in Australia and CPA Australia.

Members of both bodies are bound by their respective codes of professional ethics and must meet continuing professional development requirements.

Useful Links

AUDA	www.auda.org.au
AusIndustry	www.ausindustry.gov.au
Austrade	www.austrade.gov.au
Australian Accounting Standards Board	www.aasb.com.au
Australian Bureau of Statistics	www.abs.gov.au
Australian Financial Review	www.afr.com
Australian Competition and Consumer Commission	www.accc.gov.au
Australian Government's Business Entry Point	www.business.gov.au
Australian Newspaper	
Australian Prudential Regulation Authority	www.apra.gov.au
Australian Securities & Investments Commission	www.asic.gov.au
Australian Stock Exchange	www.asx.com.au
Australian Taxation Office	www.ato.gov.au
Australian Tourist Commission	www.atc.net.au
CSIRO (Commonwealth Scientific Industrial Research Organisation)	www.csiro.au
Environment Australia On-line	www.environment.gov.au
Foreign Investment Review Board	www.firb.gov.au/content/default.asp
IGAF Worldwide	www.igafworldwide.com
Institute of Chartered Accountants in Australia	www.icaa.com.au
International Accounting Standards Board	www.iasb.org
Invest Australia	www.investaustralia.gov.au
Reserve Bank of Australia	www.rba.gov.au
Taxation Institute of Australia	www.taxinstitute.com.au
Treasury Department	www.treasury.gov.au
State Revenue Offices:	
Office of State Revenue Western Australia	www.dtf.wa.gov.au
Office of State Revenue Victoria	www.sro.vic.gov.au
Office of State Revenue South Australia	www.revenuesa.sa.gov.au
Office of State Revenue Queensland	www.osr.qld.gov.au
Office of State Revenue NSW	www.osr.nsw.gov.au