

## AUSTRALIA ACCOUNTING & TAXATION

The advice below is of a general nature and covers a broad spectrum of issues that an Australian taxpayer may face.

### **CD & TL Accountants & Advisors ('CDTL')**

CDTL is an independent chartered accounting firm with offices in Sydney, Brisbane and London. We provide advice to local and international clients on domestic and international tax, accounting and auditing matters.

The firm is lead by Carl Dumbrell CA and Tina Loh CPA. Both partners have extensive accounting and tax experience with international firms in Australia and overseas.

#### **1. Tax system**

The Australian taxation system is based on statute law and case law. Australia is a member of the OECD. Australia has a double tax agreement with the United States of America (USA). Australia also has a Free Trade Agreement with the USA.

#### **2. Structures**

There are several trading structures available for use in Australia including sole trader, partnerships, companies and trusts.

##### **2.1 Sole trader**

A sole trader is the simplest form of business structure. A sole trading business is quick and easy to establish. It is not a separate legal entity, and offers no legal protection.

##### **2.2 Partnerships**

A partnership is a relationship existing between two or more people to carry on a business in common with a view to a profit. A partnership is not regarded as a legal entity separate from the partners who comprise it. This form of organisation offers certain advantages and disadvantages compared to the sole trader.

Advantages:

- **Ease of formation:** A partnership agreement is usually written, although a verbal agreement can be sufficient to constitute a partnership.
- **Limited rule and regulations:** a partnership is not subject to the requirements of the Corporations Law. The partners are not required to prepare financial statements which comply with the accounting standards.

- **Income tax:** As a partnership is not a separate legal entity it is not separately taxed as is the case for a company. The individual partners pay tax on their share of the profits and any losses are offset against any other income the individual partners receive.

#### Disadvantages:

- **Limited life:** Can end due to death, withdrawal, bankruptcy, etc of a partner, although the business may continue under a new partnership.
- **Unlimited liability:** Each partner is personally liable for all debts of the partnership.
- **Mutual agency:** Each partner, as an agent of the partnership has the authority to enter contracts on behalf of the partnership.

### 2.3 Company

A company is a separate legal entity to the owners, directors and employees. A company must have:

- Share capital
- Director and secretary
- Shareholders

Companies are either private or public. A public company is one that is required to be audited annually and lodged its audited accounts with the corporate regulatory as well as the tax office. A private company does not need to be audited though does need to lodge its accounts with the tax office.

#### Advantages:

- **Separate legal entity:** Unlike a partnership, a company is recognised as a separate legal entity quite distinct from its owners.
- **Limited liability:** Shareholders are liable only for the value of their shares. Directors may be held liable if they trade knowing they are insolvent.
- **Capital:** Has the potential to raise substantial amounts of capital.
- **Transfer of ownership:** Shares can be bought and sold without affecting the operations of the company.
- **Workers Compensation:** Available to all employees, whereas partners are not covered.
- **Continuous existence:** A company has an independent life.
- **Dividends:** A company can pay dividend to shareholder which include tax credits (i.e. franked dividends)

#### Disadvantages:

- **Taxation:** The company pays income tax on profits as a separate entity at the rate of 30%.
- **Regulations:** All company must comply with the Corporation Act 2001.
- **Initial cost:** The costs of forming a company are generally larger than other structures.

- Increased accountancy fees: Companies must comply with more rules and regulation which generally increases the compliance cost for accounting and tax services.
- On costs: Amounts paid to directors are subject to taxation (i.e. withholding) and other on costs such as workers compensation and superannuation. Distributions cannot be made as simply as done in a partnership.
- Fringe Benefits Tax: may apply.

## 2.4 Trusts

A trust is a entity which holds assets on behalf of a group of beneficiaries. Trust can have many legal forms including:

### Unit Trust

A unit trust issues units of ownership. Profits and distributions are made to unit holders in accordance with the number of units held. This type of trust is common for public investment (ie managed funds). The trust is not a legal entity and its not taxed. The unit holders are taxed instead.

### Discretionary Trust

A discretionary trust, is a trust established for the benefit of its beneficiaries, and gives power to the Trustee (normally a Proprietary Company) to distribute the net profit for the year to the beneficiaries at the trustee's discretion. The trust does not pay tax, however the beneficiaries may.

### Hybrid Trust

A hybrid trust is one that has the elements or two of more trusts (i.e. mixture of a unit trust and discretionary trust).

### Superannuation Trust

A superannuation fund is a trust. Its holds capital for the members until they are eligible under the superannuation industry supervision act and tax act to draw upon the funds (normally when they reach retirement age). A superannuation fund is generally taxed at 15% on profits.

### Advantages:

- Tax planning: trust can provide opportunities for tax planning as different sources of income and capital can be distributed to different beneficiaries
- Legal protection of assets: trust can offer protection to assets from legal claim.

### Disadvantages:

- Complex: Trust can be very complex
- Costs: Administration cost can be expensive

### 3. Residency

Residency for tax is different from residency laws from immigration. Individuals who spend 183 days or more in Australia in a tax year will be a resident of Australia for income tax.

A company which is incorporated in Australia with the Australian Securities and Investment Commission (ASIC) will be deemed a resident of Australia for income tax purposes.

A company not incorporated in Australia, carries on a business in Australia, and has its central management and control are in Australia, or its voting power controlled by shareholders who are residents of Australia will be deemed a resident of Australia for income tax.

Residents of Australia are taxed on world wide income and capital gains.

### 4. Incorporation

ASIC is the governing body responsible for the registration of companies in Australia. The registration process involves disclosing to ASIC particulars regarding ownership (who will own the shares in the company), management (who will run the company) and operations (where the business will be operating from, including place of registered office in Australia).

Australian companies can have individuals or incorporated entities as its shareholder. However, only an individual can take on the role as a company director. ASIC will require directors to disclose personal information such as full names, residential address, date of birth, place or birth and current occupation.

### 5. Government authorities

Businesses operating in Australia need to comply with legislation governed by the following authorities:

#### *a. Australian Securities and Investment Commission (ASIC)*

Responsible for Australian Incorporated entities, public investments, financial services licences company auditors and liquidators.

Companies are required to confirm details with ASIC on an annual basis, as well as notify ASIC of any changes to its place of business, shareholders and or officeholders by the specified time frame. Failure to report changes to ASIC by the relevant time period will lead to imposition of penalties.

There may be fees involved with lodgement of forms with ASIC. The minimum cost for a company each year will be the Annual review fee, currently set at \$212 per annum.

**b. Australian Taxation Office (ATO)**

The ATO governs all federal taxes which include income tax, fringe benefits tax, goods and services tax (GST). Companies are required to lodge various forms with the Tax Office each year.

**c. Office State Revenue (OSR)**

OSR is a state authority that governs levies on property transactions, payroll taxes and duties.

## 6. Taxes

The following is a list summarised list of taxes that apply to business and individuals in Australia.

**a. Income Tax**

The income tax year runs from 1 July – 30 June each year. All taxpayers are required to lodge an income tax return with the ATO.

*The current rates of tax imposed on resident individuals are:*

Taxable income	Tax payable
0 - 6,000	Nil
6,001 – 35,000	15% of excess over 6,000
35,001 – 80,000	4,350 + 30% of excess over 35,000
80,001 – 180,000	17,850 + 38% of excess over 80,000
180,000 +	55,850 + 45% of excess over 180,000

*The current rates of tax imposed on non resident individuals are:*

Taxable income	Tax payable
0 - 35,000	29%
35,001 – 80,000	10,150 + 30% of excess over 35,000
80,001 – 180,000	23,650 + 38% of excess over 80,000
180,000 +	61,650 + 45% of excess over 180,000

The company rate of tax is 30% of taxable profits.

**b. Medicare Levy**

Medicare levy of 1.5% of taxable income is generally charges to individual resident tax payers.

**c. Goods and Services Tax**

Goods and Services Tax (GST) of 10% is charged on all taxable supplies.

d. Fringe Benefits Tax (FBT)

FBT is imposed on businesses that provide benefits to employees or their associates (eg private use of a motor vehicle, housing, entertainment etc). The FBT year runs from 1 April – 31 March each year. The rate of tax imposed on fringe benefits is 46.5% (maximum rate of tax in Australia).

e. PAYG Withholding

Employers are required to withhold tax from gross payments made to employees.

e. Capital Gains Tax

Gains realised on capital account are subject to capital gains tax.

## 7. Tax File Number

All parties dealing with the Australian Taxation system need to have a Tax File Number (TFN). The Australian Taxation Office issues tax file numbers. You need to provide the ATO with at least three forms of identification before a tax file number can be issued.

A company will need to disclose its incorporation details.

## 8. Australian Business Number

Taxpayers who earn income from business sources or incorporate tax structures will need to apply for a Australian Business Number. This can be done with the TFN application.

## 9. Tax Treaty

Australia has a double tax agreement (tax treaty) with the USA. The agreement is based on the OECD model agreement. It is design to prevent taxpayers from been double taxed. The treaty provides a tax payer who is a resident of Australia credit for taxes paid in the USA and vice versa for residents of the USA paying tax in Australia.

## 10. Research and Development

Companies that incur expenditure on Research and Development may claim a number of tax concessions. However, the company must firstly be considered a 'eligible company'. To meet the eligibility test, the company must be incorporated in Australia and it must also apply to the Industry and Research Development Board.

Qualifying companies can obtain tax deductions up to 125% for certain costs incurred in research and development.

## 11. Transfer Pricing

Transfer pricing is the policy of valuing transactions of goods or services provided to customers or related parties across international borders. These transactions can move the tax base of a company's profits in or out of a country. Transfer pricing policy requires that all transactions are completed at 'arms length'. A business who fails to develop policies and records for these transactions could be double taxed.

## 12. Free Trade Agreement

Negotiations on the AUSFTA were finalised in February 2004 after 11 months of negotiations. The final text of the AUSFTA was signed in Washington DC on 18 May 2004, and it entered into force on 1 January 2005.

Prior to entry into force, both Australia and the United States passed enabling legislation giving effect to their respective commitments under the Agreement. On 17 November 2004 our governments exchanged notes in Washington DC accepting each others' implementation processes for the Agreement.

The agreement covers agriculture, manufacturing, services, financial services, government procurement, intellectual property, investment, health, audio visual, automotive, telecommunications and ecommerce.

The agreement provides USA Company's the opportunity to invest in Australia business on a level playing field to Australian companies.

## 13. Employment & Industrial Relations

Labour laws in Australia are very complex. There are several authorities who can provide information on employment and your responsibilities as an employer or your rights as an employee (i.e. NSW Dept of Industrial Relations).

All employment agreements should be in writing and should specify as much information as possible about the duration of employment, responsibilities of employee and employer, salary, hours of operation etc.

## 14. Superannuation

Superannuation is a compulsory savings plan for an employee's retirement. All employers are required to invest 9% of employee's gross salary or wages into an approved superannuation fund. Payments must be made quarterly.

## 15. Legal

Should you wish to engage a legal firm our office can introduce you to a number of respected firms in Sydney NSW.

## 16. Banking

Opening a bank account in Australia is relatively simple. You do not require a letter of introduction to the bank, you generally only need to provide your identity on two or more items of identification (i.e. passport and driver licence).

A company can open a bank account once it has received a certificate of incorporation from ASIC. Australia's banking system consists of four major banks, several smaller banks and credit union facilities. Most financial institutions offer internet and telephone banking services.

## 17. Accounting

All taxpayers need to lodge tax returns. Businesses need to deal with the tax office on a regular basis. Our firm can assist you with all your personal and corporate accounting and tax matters as well as auditing of financial statements.

Should you have any queries please do not hesitate to contact our office.

Kind regards

**CD & TL Accountants & Advisors**

**Carl Dumbrell**

**Partner**

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