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Doing Business in Australia

By Accru Felters, Chartered Accountants & Business Advisers, Sydney, Australia
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Australia offers many advantages for investors, exporters and global companies looking for a base in the Asia Pacific Region.

Two decades of economic reforms have helped make Australia one of the strongest and most resilient economies in the world. This strength has been highlighted in recent years by the country's ability to withstand events like a major drought, a housing boom, the Asian financial crisis, and more recently the Global Financial Crisis (GFC).

Australia enjoys significant trade with China and boasts strong, highly capitalized banks. During the nadir of the GFC, Australia was the only country of 33 advanced economies to have recorded positive economic growth. 2012 data reveals that Australia has sustained its strong economy with positive GDP growth and relatively low unemployment rates. Australia's mining sector is firmly anchored to the fast growing economies of China, India and Asia broadly.

Australia also boasts affluent concentrated consumer markets, a highly educated workforce, a business-friendly regulatory environment, a stable political environment and sophisticated technology and professional support services.

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GENERAL DATA ON AUSTRALIA

Population:	Approximately 23,234,644 million ¹
GDP:	US\$1,589.16bn ²
GDP Per Capita:	US\$68,939 ³
Currency:	i) Australian dollars [approximately US\$1 = AUD0.94] ii) There is no foreign exchange control in Australia. However, AUSTRAC ⁴ (Australia's anti-money laundering regulator and specialist financial intelligence unit) regulates and oversees compliance with the reporting requirements of the Financial Transaction Reports Act 1988 by relevant financial service providers, the gambling industry etc.
Land Area:	Approximately 7.7m sq. km
Pillar Industries:	Mining - Coal, aluminium, iron ore, gold, petroleum, natural gas, copper, nickel and other ores Services – Education, tourism, business services, finance and investment, property Manufacturing - Pharmaceuticals, information and communications technology, paper products, steel, chemicals and plastics, machinery, motor vehicles, processed food Agriculture - Meat, wheat, wine, wool
Government:	Australia enjoys political stability and has a federal system of government, where the Australian Constitution gives express powers to the Federal Government and residual powers are left to the State Governments. There are six states in Australia, i.e., New South Wales, South Australia, Queensland, Tasmania, Victoria, Western Australia. In addition, there are two territories within the federal jurisdiction, i.e., the Australian Capital Territory and the Northern Territory. The Commonwealth, States and Territories are governed by elected Parliaments.
Natural environment:	Australia has a remarkable diversity of life forms, unique compared to the rest of the world. Examples include Australia's native marsupials (such as the kangaroos and koalas), Australia's native fauna and flora (such as the eucalyptus tree, commonly known as the gum tree) and Australia's world renowned marine life forming the Great Barrier Reef.

¹ Australia Bureau of Statistics September 2012

² Based on the 2012 fact sheet issued by the Australian Department of Foreign Affairs and Trade.

³ Ibid

⁴ Further information regarding AUSTRAC can be found on <http://www.austrac.gov.au>

Way of life:

Australia's diverse culture and lifestyle reflects its liberal democratic traditions and the influences of the millions of migrants who have settled in Australia since World War II. Australians generally enjoy an easy-going outdoor lifestyle in their leisure time and are passionate about sports. Most are relatively informal socially and in their relationships with work colleagues.

LEGAL SYSTEM

Briefly, the law in Australia consists of:

- The Australian Constitution which gives power to the Federal Legislature to pass laws that are connected to certain heads of power;
- Acts passed by the Federal Parliament;
- Acts passed by the State Parliaments and the Legislative Assemblies of the Northern Territory and the Australian Capital Territory;
- Ordinances made in respect of other Territories (such as Norfolk Island);
- The Australian common law as is interpreted by the Australian Courts.
- So much of the common or statute law of the United Kingdom that has been accepted by Australian law or remains persuasive.

Courts exist on both the federal and state level. Numerous tribunals administer different areas of law.

FOREIGN INVESTMENT

Australia's foreign investment policy is generally to encourage foreign investment that is consistent with community interests. However, the Government is empowered under the Foreign Acquisition and Takeovers Act 1975 to block proposals that are not in line with the national interest. In this regard, the Foreign Investment Review Board (FIRB) is the Federal Government agency that is responsible for making recommendations to the Government on foreign investment proposals.

Certain foreign investments are subject to review, requiring registration with or approval from the FIRB⁵.

1. Foreign Governments and their Related Entities

- The Australian Government should be notified and approval should be sought before making a direct investment in Australia.
- The Australian Government should be notified and approval should be sought if a new business is to be established or there is an acquisition of an interest in land.
- The Australian Government will consider, amongst other things, factors such as national security, competition, other Australian Government policies and the impact on Australia's economy and community.

2. Business Acquisitions by Privately-Owned Foreign Investors

- The Australian Government should be notified if the acquisition involves a transfer of greater than 15% interest in an Australian business or corporation valued above \$244 million.
- The Australian Government should also be notified if the acquisition involves the transfer of interest in an offshore company; the Australian subsidiaries of which are valued above \$244 million.
- US investors will only need to notify the Australian Government if the relevant corporation is valued at more than \$1062 million or the acquisition involves an investment in prescribed sensitive sectors such as, amongst other things, media, telecommunications or transport.
- All foreign persons will need to notify the Australian Government and receive prior approval for investments of greater than 5% in the media sector regardless of investment.
- Various other legislations also impose limits on foreign investment.

3. Real Estate Investments by Privately-Owned Foreign Investors

- The Australian Government should be notified and approval should be sought before acquiring an interest in certain types of real estate.

⁵ Further information regarding the FIRB can be found on <http://www.firb.gov.au>.

MOST COMMON FORMS OF BUSINESS ENTITIES

Companies Incorporated in Australia

Companies in Australia are regulated by the Corporations Act 2001, which is administered by the Australian Securities and Investment Commission (ASIC). There are various types of companies, the most common being a company limited by shares (either a proprietary company requiring at least 1 director and 1 member but not exceeding 50 non-employee members, or, public company requiring at least 3 directors and 5 members).

All Australian companies must have a registered office in Australia (but not post box addresses). Companies are also required to lodge a return with ASIC on an annual basis.

Companies who intend to use Australia as regional headquarters ("RHQ") to provide regional support services can apply to the Treasurer to become a RHQ to avail themselves of certain incentives.

Registered Foreign Companies

Foreign companies may carry on business in Australia directly as a branch office in Australia but must, amongst other things, be registered with ASIC, maintain a registered office in Australia and appoint a local agent.

Partnerships, including limited partnerships

Partners may be individuals or companies (resident in Australia or otherwise) and are jointly and severally liable for all liabilities (unlimited) of the partnership.

However, partnerships may also take the form of a limited partnership, which consist of at least 1 general partner (unlimited liability) and at least one limited partner (a limited partner contributes to the capital of the partnership but does not take part in its management, cannot bind the firm and has limited liability to contribute to the debts or obligations of the partnership is limited).

Joint Ventures ("JV")

JVs can generally take the form of an incorporated JV (i.e., a company incorporated to pursue the interests of the participants in the JV who are the shareholders of the company) or unincorporated JV (i.e., one where the participants have a contractual association which may or may not be a partnership for tax purposes). A JV can also take the form of a unit trust whereby the trust property is divided into units to be dealt with individually by the participants.

Trusts

Generally, trusts used to carry on businesses are usually in the form of unit trusts or discretionary trusts. Unit trusts can be used when a beneficiary's entitlement to income of the trust is dependant upon the number of units held by the beneficiary.

*Other than the above, businesses can also be conducted through sole proprietorships and other forms of representations (such as sales representatives, distributors, licensees or franchisees).

GRANTS AND INCENTIVES

Some of the incentives available in Australia include:

- Reduction of foreign income tax paid on the offshore banking income of an offshore banking unit to a third of the amount of foreign income tax actually paid.
- Special incentives in the form of a tax deduction in relation to the capital invested in specified scientific research and local manufacturing activities. Other incentives for such activities include reduced rate of payroll tax, discounted cost of industrial land, access to cheaper financing and the provision of Government guarantees.
- Various grants and tax rebates for developing export markets with the Export Development Grant Scheme. This is administered by Austrade.
- Various incentives (including tax deduction for setup costs) for the establishment of Regional Headquarters in Australia.
- Non-assessability of any proceeds from infrastructure borrowings.
- Research and development tax incentives: a tax offset for eligible R&D activities targeted towards R&D that benefits Australia. Available for R&D entities engaging in eligible activities with notional R&D deductions of at least \$20,000. For entities with an aggregated turnover of less than \$20 million per annum, a 45% refundable tax offset (equivalent to a 150% deduction) is available. For other entities, a 40% non-refundable tax offset (equivalent to a 133% deduction) is available.

TAXATION

Australia's taxation regime encompasses a vast variety of taxes including corporate income tax, individual income tax, withholding tax (WHT), fringe benefits tax (FBT), superannuation guarantee levy, goods and services tax (GST), excise tax and various state taxes (such as payroll tax and stamp duties).

Corporate income tax

Australian resident companies are subject to corporate income tax at 30% on income derived from all sources.

A company is generally taken to be an Australian tax resident if it is incorporated in Australia, or, if it is not incorporated in Australia, it carries on business in Australia and has either its central management and control in Australia or its voting power controlled by Australian resident shareholders.

Generally, companies are required to lodge an income tax return for the period of 1 July to 30 June each year (or any 12 months period to be agreed upon with the tax authorities). With effect from 1 July 2002, a wholly owned group of companies may make an irrevocable election to lodge a consolidated income tax return for the group.

Limited partnerships, public unit trusts and corporate unit trusts are generally taxed as companies.

If you employ a full-time, part-time or casual worker or a contractor wholly or principally for labour in Australia, you may have Australian superannuation obligations and pay as you go (PAYG) withholding obligations.

If you provide benefits to them or their associates (typically family members) in place of, or in addition to, salary or wages, you may have fringe benefits tax (FBT) obligations.

Individual income tax

Australian resident individuals are subject to income tax at progressive tax rate (maximum of 45% + 1.5% medicare levy⁶) on their worldwide income. Non-resident individuals are subject to progressive tax rate (maximum of 45%) on their Australian sourced income.

An individual is generally taken to be an Australian tax resident if the individual resides in Australia within its ordinary meaning. However, there are also statutory tests to determine whether an individual is an Australian tax resident. This includes where an individual is in Australia (continuously or intermittently) for more than one half of the year of income commencing 1 July to 30 June the following year (i.e., 183 days during that period), unless the Commissioner is satisfied that the individual's usual place of abode is outside Australia and that individual does not intend to take up residence in Australia

Generally, individuals are required to lodge an income tax return each year for the income year of 1 July to 30 June.

⁶ High income earners who are not covered by private health insurance which provides basic hospital cover are generally subject to an additional surcharge of 1% medicare levy.

WHT

Generally, certain payments (such as interest and royalties) sourced in Australia made to non-residents of Australia are subject to WHT to be deducted at source. The rate of WHT on interest and royalties is 10% and 30% respectively, with both rates subject to reductions based on applicable Double Tax Agreements.

As Australian companies are generally subject to an imputation system for the distribution of dividends, only unfranked dividends paid to non-residents are generally subject to WHT at 30%, subject to reductions based on applicable Double Tax Agreements.

FBT

Generally, employers are subject to fringe benefit tax at 46.5% on non-cash employment-related benefits provided (such as motor vehicles made available for private use of an employee, certain residential accommodation and interest-free or low interest loans provided to an employee). However, the cost of such benefits and the fringe benefit tax is deductible for income tax purposes to the employer.

Superannuation

Employers are required to make superannuation contribution for the benefit of all its employees (the levy is currently at the minimum of 9.25% of the employee's payroll increasing yearly to 12% between 2013- 2019).

GST

Generally the consumption based value added tax is at the rate of 10% and is levied on transactions relating to the provision of most goods and services supplied in Australia.

Excise tax

Selected items such as cigarettes and alcoholic beverages are subject to excise taxes.

Payroll tax

Generally, payrolls exceeding specified amounts are subject to payroll tax which is imposed on employers by the state governments. The rates and threshold depends on the particular state.

Stamp duty

Generally, stamp duties are levied by the state governments on certain documents and transactions.

EMPLOYMENT

Written employment contracts between employers and employees generally govern the terms of employment in Australia which is subject to various Federal, State and Territory legislation and the common law.

Minimum terms and conditions of employment are generally covered by the Federal Workplace Relations Act 1996, with the majority of employees in Australia being subject to the provision of Federal or State Industrial Awards or Agreements. However, some managerial and professional employees fall outside the ambit of such awards.

Discrimination is generally not tolerated in the Australian workplace and equal opportunity legislation prevents discrimination on such grounds as sex and race. Other than this, employers generally have a free-hand in hiring any employees of their choice. However, unfair termination of employment is prohibited and employees who have been terminated unfairly can seek damages or reinstatement.

ABOUT ACCRU FELSERS

Accru Felsers is a medium sized firm of Chartered Accountants with seven partners and two consultants. Established in Sydney in 1941, we presently employ more than 60 professional staff in Sydney. We have a wide range of commercial and public sector clients for whom we provide audit, taxation, management, accounting, secretarial, consulting and advisory services.

Our clients include ASX listed public companies, retailers, manufacturers, local subsidiaries of (predominantly German) foreign companies, importers, distributors, prominent Sydney Hotels, private schools, charitable associations, registered investment schemes, Australian Financial Service Licensees, and government grant recipient organisations.

Intellectual capital is the key to our success. Our commitment to employee selection, training and career development has ensured that we continue to attract and retain talented employees to provide clients with a consistent professional service.

Accru has offices situated in Adelaide, Brisbane, Melbourne, Perth, Hobart and Auckland. We also have representation in 140 firms in 41 countries around the world as part of our membership of CPA Associates International Inc.

If you would like more information or have specific business requirements, please contact Glenda Nixon on 61 02 8226 1655 or your local Accru advisor:

Accru Felsers
Level 6,
1 Chifley Square
Sydney, 2000
New South Wales, Australia
Tel +61 2 8226 1655
Fax +61 2 8226 1616
info@accrusyd.com.au

Accru Harris Orchard
172 Fullarton Road
Dulwich, 5065
South Australia, Australia
Tel +61 8 8431 1488
Fax +61 8 8431 1441
info@accruadel.com.au

Accru Melbourne
1st Floor,
123 Camberwell Road
Hawthorn East, 3123
Victoria, Australia
Tel +61 3 9835 8200
Fax +61 3 9882 1932
info@accrumelb.com.au

Accru Hobart
Level 1,
18 Ross Avenue
Rosny Park, 7018
Tasmania, Australia
Tel +61 3 6244 5044
Fax +61 3 6244 7319
info@accruhob.com.au

Accru Rawsons
160 Wharf Street
Brisbane, 4000
Queensland, Australia
Tel +61 7 3839 3666
Fax +61 7 3839 3599
info@accrubris.com.au

Accru Smith Chilcott Ltd
Level 5,
57 Fort Street
PO Box 5545
Wellesley Street
Auckland, 1141
New Zealand
Tel + 64 9 379 8035
Fax + 64 9 307 8892
info@accrusc.co.nz

Accru Page Kirk & Jennings
Level 2, 52 Kings Park Road
West Perth, 6005
Western Australia, Australia
Tel +61 8 9424 5700
Fax +61 8 9481 0609
info@accruper.com.au