Doing business in Australia

Essential tax, compliance and reporting considerations
Introduction

This guidance outlines some of the key considerations to assist with the planning and implementation of your strategic growth and expansion into Australia. It also outlines some of the tax, compliance and reporting matters to consider once operations have been established.

In our experience, careful consideration of these matters at the outset is the most effective way of avoiding any issues or delays and ensuring you proceed with the most appropriate corporate structure.

This guidance is general in nature and has not been prepared as a comprehensive advice document. We strongly recommend this guidance be used in conjunction with appropriate professional advice from our specialist inbound services team who will take into consideration your specific circumstances and objectives.

This guidance is also focused on newly established operations in Australia on a standalone basis. Where the Australian operations are to operate as a regional headquarters or holding company for foreign subsidiaries, or there are existing operations in Australia, then there are a range of other considerations to take into account. In these scenarios, we recommend you seek specific professional advice.
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Registration requirements

When establishing a business in Australia, quite often the first issue to consider is whether the intended operations in Australia create a requirement to register with the appropriate Australian authorities. For many clients this is clear cut as there is a firm intention to establish substantial operations in Australia with significant investment. However, in some cases the operations may be limited or specific to a certain contract or project. In these cases it is necessary to establish whether there is a need to register. The key registrations are:

- Direct and Indirect Tax Registration with Australian Taxation Office ("ATO")
- Legal Registration with Australian Securities and Investment Commission ("ASIC")

Tax registration

Usually the first consideration when establishing a business in Australia is whether or not the proposed operations need to be registered for tax purposes with the ATO.

Liability to Income Tax

A taxable presence in Australia will exist if you are to derive Australian sourced income or carry on your enterprise in Australia. If you are from a country which has a tax treaty with Australia generally you will only have a tax liability if your activities constitute a “permanent establishment”. Whether the operations create a permanent establishment will be determined by reference to the specific activities in Australia in accordance with the Income Tax Assessment Act 1936 and 1997, relevant Double Tax Agreements and relevant case law. This is largely a question of fact and will require a detailed analysis. Some key indicators of a permanent establishment are, inter alia:

- Duration of staff physically in Australia
- Whether representatives are concluding contracts physically in Australia
- Whether there is a fixed place of business
- Whether there are large amounts of plant and equipment in Australia
- Whether the activities relate to construction projects

Registration requirements

If you are to carry on part of your enterprise in Australia (generally carrying on activities for the purpose of making a profit) then it will be necessary to apply to the ATO for an Australian Business Number ("ABN"). Registration for various categories of tax can be completed at this stage depending on intended activities (please see section 5) including Goods and Service Tax ("GST"), Fringe Benefits Tax ("FTB") and Payroll Tax. It is most important to obtain an ABN because if you are unable to quote an ABN then other residents paying money to you will need to withhold 46.5% tax from such payments (47% from 1 July 2014).

Registration process

Application to the ATO for an ABN, will usually take 2-3 weeks. You will generally need your Australian Company Number ("ACN") or Branch Office Number ("ARBN") in order to complete the registration and the ATO will also need information in respect of proposed operations. Businesses are required to deduct withholding tax from any payments exceeding $75 ($82.50 including GST) made to another business that does not advise its ABN.

Legal registration

The next step is to determine whether the intended operations in Australia will create a legal presence and need to be registered with ASIC.

Carrying on business

Whether the intended operations in Australia create a legal presence will be determined by reference to the specific activities and whether these activities can be interpreted as ‘carrying on business’, in accordance with section 21 of the Corporations Act 2001 (“Act”) and relevant case law. Determining factors when assessing whether there is a legal presence are:

- Whether a place of business has been or will be established in Australia
- The nature of both the business and operational activities in Australia
- The intended duration and frequency of those activities in Australia.

There is usually alignment between a taxable and a legal presence and a permanent establishment is an important consideration when determining whether a company is carrying on business. However, this is not always the case and a taxable presence without a legal presence is viable and vice versa. Advice should always be sought for guidance on these issues.

Registration requirements

If it is determined that the Australian operations require legal registration then it is necessary to register with ASIC. There are a variety of legal vehicles that can be registered but we will focus on the two primary corporate vehicles.
Choice of vehicle

When establishing a business in Australia, it is important to choose the most appropriate registration vehicle. As such, consideration should be given to the following factors:

- The global strategy of your group
- Funding and capital/repatriation requirements
- Expectations and conditions of any counterparty
- Tax, accounting, reporting and legal issues
- Risk and reputation issues.

Although there are a variety of corporate registration vehicles we will focus on the two most common types of registration which are:

- Australian Incorporated Subsidiary Company
- Registered Foreign Company (Branch Office)

Throughout this guide, we will outline the key compliance, reporting, tax and profit repatriation issues to consider and how the impact of each differs between a subsidiary company and a branch.

Australian incorporated subsidiary company

If it is determined that the preferred option is to establish a company, we generally recommend the registration of a private limited company, as they provide the greatest flexibility. This is usually the most appropriate vehicle providing the company has less than 50 shareholders, does not intend to make an offer of shares to the public and/or does not have charitable or not for profit objectives.

Legal status

An Australian subsidiary company is a separate legal entity with limited liability and has its own identity for tax and legal purposes. The Australian subsidiary must have at least one resident director in Australia but the company can be wholly owned by a foreign shareholder.

Registration process

The registration process for a subsidiary company can be completed on a same day basis providing all corporate information with respect to directors and shareholders is provided. EY can complete the registration of a company on a same day basis (transaction ready) and usually provides all post-incorporation documentation within two to three days.

Branch office

In some cases the registration of a branch office might be an appropriate alternative for example where the activities in Australia are limited in duration or scope (although a branch office does not limit the operational activities in Australia), or where a branch structure is in line with the group’s strategy.

Legal status

A branch office does not have limited liability and is not recognised as having a separate legal identity. A foreign company which registers a branch in Australia is effectively deemed as carrying on business in Australia and is therefore subject to Australian legislation.

Registration process

The registration process for a branch office is more complex and time consuming than for a subsidiary company with the company required to disclose both corporate information and supporting documentation to ASIC. The registration of a branch office can take up to 28 days from the date of lodgement however EY can generally assist to expedite the process.
Compliance and reporting

Subsidiary company

Once registered a subsidiary company is subject to the provisions of the Act. The Act stipulates certain annual compliance requirements which a subsidiary company must comply with in order to remain in good legal standing.

Annual meeting

Every year ASIC issues a company with an annual company statement on the company’s annual review date. For most companies, the annual review date will be the anniversary of the date of registration. As part of the annual review process, the directors are required to:

- Review the information contained in the statement to confirm that it is correct
- Pay the annual review fee
- Pass a solvency resolution

Reporting

Certain companies are required to prepare and lodge audited financial reports with ASIC (section 292 of the Act). The directors need to approve the financial reports, prior to lodgement with ASIC.

Foreign owned companies

Subject to the reporting exemptions outlined below, the Act prescribes that all subsidiary companies that are ‘foreign owned and controlled’ are required to lodge audited financial reports with ASIC (section 292(2)(b)). Once lodged with ASIC the financial report is available to the public.

Reporting period

The first financial year of a company can be for a period of up to 18 months (as determined by the directors). Thereafter, each subsequent financial year must be 12 months in length.

Where there is a need to change the financial year end of a company, there are certain exemptions available to the 12 months rule, including:

- An ability to shorten the financial year where the conditions of section 323D (2A) are met
- An option to extend the financial year so that it is up to 18 months in duration in order to synchronise the financial year with a foreign parent, provided the conditions of ASIC Class Order 98/96 are met.

Reporting exemption

There are certain exemptions available to foreign owned and controlled companies from the requirement to prepare and lodge audited financial reports with ASIC. These include:

(a) If the company is controlled by a foreign company that is registered with ASIC as a branch office and the branch office lodges consolidated financial reports that include the activities of the Australian company

(b) If the company is ‘small’ and is not part of a large ‘group’ and applies for the relief available under ASIC Class Order 98/98.

A company is classified as small if it meets two of the following three criteria:

- Consolidated gross operating revenue is less than $25 million for the year
- Consolidated gross assets are less than $12.5 million at year end
- The number of employees for the entity and all controlled entities is less than 50 at year end

With respect to exemption b) above we recommend that an analysis be undertaken during the first financial year of the company to determine if it will meet the criteria. Please note the criteria are applied to the ‘group’ and include all companies and operations in Australia under the same ultimate parent. EY can also assist with this analysis and any exemption applications to ASIC.

Accounting

Where a company is not required to lodge audited statutory accounts, the directors still have an obligation under the Act to maintain accurate accounting records in order to explain the company’s financial transactions and financial position. Management accounts are necessary for tax and management purposes and to meet the director’s obligation to ensure the company can meet its debts as and when they fall due. EY can assist with bookkeeping, management accounts and/or the preparation of statutory accounts.
Branch office
A branch office is also subject to the provisions of the Act with respect to compliance and reporting.

Compliance
In addition to the financial reporting obligations outlined below, a branch office must also lodge a form each year with ASIC (at the same time the accounts are lodged), confirming the accuracy of the branch office corporate information. Any changes to the registered office address, directors and local agent details are to be included on the form.

Reporting
A branch office is required to lodge with ASIC, at least once each calendar year (including the year of registration), and at intervals of not more than 15 months:

- A copy of its balance sheet, cash flow statement and profit and loss account (all made up to the end of the last financial year) in such a form as the company is required to prepare in its place of origin
- Any other documents the company is required to prepare by the law applicable to the foreign company in its place of origin.

The financial reporting period will be the same as the foreign company that has registered a branch office in Australia. The financial information does not need to be specific to the branch office operations and a copy of the accounts of the foreign company as lodged in its place of origin will usually suffice. It is also not necessary that these accounts have been audited (if this is not a requirement in its place of origin). However, if ASIC is not satisfied that the documents sufficiently disclose the company’s financial position it can require that complying accounts be prepared in the form stipulated by ASIC, including audited financial statements if necessary (section 601CK (3)).

ASIC may grant relief from the lodgement of annual accounts in very specific circumstances but the criteria for exemption are very narrow. There are also specific exemption provisions for New Zealand companies that lodge accounts with the New Zealand Companies Office. In this scenario we recommend seeking advice from our specialist inbound team.

Accounting
The taxation rules regarding thin capitalisation require Australian branch offices to prepare accounts (statement of financial position (balance sheet) and statement of financial performance (profit and loss statement)) in accordance with Australian financial accounting standards for measurement and assessment purposes.

The thin capitalisation rules allow an entity to satisfy the record keeping requirements by preparing accounts for its Australian operations using the Australian accounting standards or the accounting standards of Germany, Japan, France, USA, UK, Canada, New Zealand (as is relevant) or the international accounting standards.

The financial statements will need to be prepared before the tax return for the relevant year is lodged.
Tax

In Australia the business tax environment is fairly complex and constantly evolving. To assist with the planning and implementation of your strategic growth this guidance note highlights some of the key Australian tax issues.

Again the information provided is general in nature and should not be relied upon as professional advice. Please also note that while many of the tax provisions will apply consistently to a subsidiary company and a branch office, some of the provisions will only apply to a subsidiary company. Many of the tax provisions will also only apply with respect to certain types of activities or transactions.

Income tax

Companies and branch offices which derive assessable income or have carry forward tax losses are required to lodge an annual income tax return with the ATO. The current company income tax rate is 30%.

All entities must have a fixed accounting period of 12 months except in the first year, where it can be extended to 23 months. The normal tax accounting year is 1 July to 30 June, however a substituted accounting period can be adopted to comply with a parent company’s accounting period.

Assessable income

A branch office will include as assessable income all Australian source income attributable to the branch and taxable capital gains from disposals of taxable Australian assets.

An Australian subsidiary will include as assessable income all worldwide income (a foreign tax credit system applies to residents where their income is taxed overseas) and taxable capital gains from disposal of all taxable capital assets.

Repatriation of profits

No withholding tax is payable on after tax profits remitted from a branch office.

Profits from an Australian subsidiary remitted to its offshore holding company as dividends will be subject to withholding tax to the extent to which the dividends are unfranked. Generally dividends will be franked to the extent they have been subjected to the 30% company tax rate albeit the dividend will need to be paid in the same (or later) year as the tax payment.

Timing of foreign taxation of income

Generally, income of a branch office is assessable in the foreign country when derived in Australia, not on a repatriation basis.

The income of an Australian subsidiary is generally taxable on a remittance basis unless it is subject to controlled foreign corporation rules in the foreign country (further advice should be sought in this country as to the specific rules for that country). We would recommend specific advice be sought in your country of origin to ensure the domestic taxation implications of the Australian operations are understood prior to establishment. In particular, the rate of withholding tax on dividends will be set in accordance with any international tax agreements that Australia may have with the country of the parent company.

Tax losses

Losses arising from the Australian operation (branch or subsidiary) can be carried forward indefinitely to be offset against future years’ profits. A deduction for prior years’ losses will be denied where the company cannot satisfy a ‘continuity of ownership’ test or, failing this, the alternative ‘same business test’.

Reference should be made to the foreign company’s domestic income tax laws as to the availability of tax losses incurred by a subsidiary or a branch in Australia.

Tax consolidation

The tax consolidations regime allows wholly owned Australian group companies to consolidate for tax purposes. Entry into tax consolidation is not compulsory for related companies as they can continue to file individual income tax returns, although very limited group relief is available if entities choose to remain outside of the tax consolidation regime. The rules may also apply to wholly owned Australian subsidiaries of a foreign parent, that is, wholly owned Australian subsidiaries entering into Australia through different points. It should be noted that the rules do not allow a branch office to be part of a tax consolidated group.

Entities that are part of a consolidated group are treated as one entity for income tax purposes and will lodge one income tax return that covers all members of the group. Each entity is treated as though it is a separate division of the consolidated group. Transactions between entities that are part of the same consolidated group are effectively ignored for income tax purposes. This effectively allows the losses of one group
member to be offset against the assessable income of another entity within the group. However, entities that form part of a consolidated group for tax purposes are still separate legal entities. As such, they are still required to maintain separate accounts, records etc.

Tax consolidations will require consideration should the group have multiple subsidiaries in Australia. As tax consolidations can have accounting, commercial and taxation implications we recommend you discuss in detail the impact that it will have on your Australian operations.

It should be noted that Goods and Services Tax, Fringe Benefits Tax and Withholding Tax are not included within the income tax consolidation regime and they will continue to be the responsibility of the individual entities in the group.

Tax incentives and government grants

A subsidiary company and a branch office can obtain income tax incentives for research and development ("R&D") expenditure and grants for exporting.

The R&D tax incentive provides generous benefits to entities undertaking eligible research and development activities in Australia. The two components of the program are:

- A 45% refundable tax offset for eligible companies with an aggregated turnover of less than $20 million per annum
- A non-refundable 40% tax offset for all other eligible companies.

**Capital gains tax ("CGT")**

Australian residents are generally liable for the tax on gains on the disposal of assets wherever situated, subject to relief from double taxation if the gain is derived and taxed in another country. One important exception to this rule is where an Australian company sells shares in an active foreign company. Any capital gains (or capital losses) which result from the sale of foreign shares may be reduced in certain situations. Assessable capital gains are included in a company's taxable income and are taxed at the same rate as ordinary income.

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

**Transfer pricing**

Legislation in Australia has been established to ensure that Australian businesses deal with international related parties under arm's length terms and conditions. These provisions apply to all Australian businesses and apply equally to a branch office and a subsidiary company.

Australia is in the midst of a fundamental and comprehensive re-write of its domestic transfer pricing legislation. Post 30 June 2012, companies (including permanent establishments), partnerships and trusts with international related party dealings greater than AUD 2 million are required to complete the International Dealings Schedule ("IDS") as part of their income tax return. The IDS requires disclosure of international related party dealings and whether they are sales and purchases of goods and services, capital dealings or loans. Taxpayers must also disclose whether transfer pricing documentation exists to support the pricing of the transactions and the transfer pricing methodology used to set or review the pricing of transactions.

Whilst there is no legal requirement to prepare contemporaneous transfer pricing documentation to support that international related party transactions have been conducted on arm's length terms, the existence of such documentation allows a positive disclosure on the IDS and may reduce the risk of ATO review or a review proceeding to an audit. Where an audit is conducted and concludes with a transfer pricing adjustment, the existence of good quality contemporaneous transfer pricing documentation may reduce or eliminate any penalties. The ATO has a recommended four step process which is generally used by taxpayers in their documentation.
The ATO is relatively sophisticated in the transfer pricing area and in the last decade has implemented a number of programs which target taxpayers in a particular sector or with certain attributes. It does not only focus on large corporations and has an active interest in the small to medium enterprise (“SME”) area.

There is no limit to the number of historical years the ATO can review when making a transfer pricing adjustment. It is therefore in a taxpayer’s interest to ensure that its international related party dealings are conducted at arm’s length and that supporting documentation has been prepared and maintained from the outset.

EY can provide advice and support with respect to appropriate transfer pricing methodology.

**Customs and Indirect Tax**

**Goods and services tax (“GST”)**

Australia currently has a 10% GST. GST is an indirect broad based consumption tax. GST is payable on the tax exclusive price of most goods and services supplied within Australia. GST is also generally payable on the importation of goods. Registered suppliers will obtain a credit for GST paid on most inputs (purchases), subject to certain exemptions. A business is required to register for GST if its annual GST turnover is $75,000 or more. A registered business must lodge GST returns either monthly or quarterly via a Business Activity Statement (“BAS”, see below). The net GST (GST payable minus input tax credits) is paid to the ATO at the same time.

Some supplies, such as financial supplies and residential rent, are ‘input taxed’. Input taxed supplies are not subject to GST. However the supplier is liable for GST on their inputs and is not entitled to a refund of the input tax. There is also a limited range of GST-free supplies where GST is not required to be charged on the supplies but the supplier is entitled to a refund of GST paid on the inputs.

Wholly owned group companies are able to group for GST purposes, though this GST grouping must be applied for separately.

**Business activity statement (“BAS”)**

Most taxes collected or payable by a business must be aggregated and paid to the ATO either monthly or quarterly. The business must lodge a BAS to record each tax paid. That is, splitting up aggregated payments into PAYG instalments (company tax instalments), Pay as You Go withholdings (employee taxes), Fringe Benefits Tax, GST etc.

To complete the BAS the company must keep up to date records of income and expenditure. The records should be designed to provide the required information for the BAS as well as to meet your internal reporting requirements.

EY can assist with the preparation and submission of monthly or quarterly BAS disclosures.

**Customs duties**

Australia is a member of the World Trade Organization (“WTO”) and World Customs Organization (“WCO”), and its customs laws and procedures are consistent with their respective principles.

Customs duty is imposed by the Australian Customs Service on the importation of goods. Customs duty is payable at the time the goods enter into Australia. This can be the date the goods are cleared at the border or the date they are withdrawn from a customs bonded warehouse.

With the exception of excisable products, e.g., alcohol and tobacco, customs duty is levied on an ad valorem basis at rates of 0%, 5% or 10%. The determination of the specific rate for an import depends on the tariff classification of the goods.

Australia has several concessional programs where goods can be imported duty free. These concessions are mainly granted where it can be demonstrated that there is no substitutable product manufactured in Australia.

Australia is party to a number of Free Trade Agreements (“FTA’s”), most notably with the US and the Association of Southeast Asian Nations (ASEAN). This is a dynamic area as Australia is actively seeking to negotiate new FTAs with other countries. These FTAs generally allow duty free importation. Each agreement has specific rules of origin, which are the requirements to qualify for preferential duty rates.
Funding operations

As part of establishing business operations in Australia, it’s crucial to consider how the business will be funded on an ongoing basis.

The key question is whether to fund the operations by way of debt or equity or a combination of both.

**Debt versus equity rules**

Australia has a particular approach to the classification of debt and equity instruments. Appropriate classification of the relevant instrument is important as returns paid on debt interests are tax deductible (provided the amount qualifies for deductibility under the general tax law including the thin capitalisation provisions) and returns paid on equity interests are not tax deductible.

The legislation prescribes a number of tests to determine if an instrument is classified as a ‘debt’ instrument or an ‘equity’ instrument. Factors such as the applicable interest rate (or interest free nature of the loan), the terms of the loan, the existence of a formal loan document and the existence of other debt or equity instruments can impact the classification of the loan. If a loan is determined to be equity, any interest will be treated as a dividend and not deductible. As such it is recommended to determine how you will fund your Australian entity prior to establishing a presence.

**Thin capitalisation rules**

Broadly, Australia’s thin capitalisation provisions operate to limit the amount of tax deductible debt used to finance an entity’s Australian operations. These rules limit tax deductions for interest if debt exceeds a prescribed proportion of the entity’s net Australian assets, generally being 75% (reducing to 60% for income years commencing from 1 July, 2014) of the total average value of the Australian assets of the entity, adjusted for certain non-debt liabilities. In practice, this means a company should be able to fund approximately 75% (60% for income years commencing from 1 July, 2014) of its investment in an Australian project by way of debt. The rules apply equally to a branch office and a subsidiary company, however if the company is part of a tax consolidated group the tests are applied to the overall group.

Importantly, the thin capitalisation legislation includes a de minims threshold below which the thin capitalisation rules do not apply. This test allows entities with “debt deductions” being interest and other debt costs of less than $250,000 (to increase to $2 million for income years commencing from 1 July 2014) per annum to claim a tax deduction for the debt deductions without having to satisfy any of the thin capitalisation tests.

Due to the complexity of this area we recommend that detailed advice is sought prior to the finalisation of the funding structure of the Australian operations.
Employee considerations

Employer obligations

Once an entity has hired employees in Australia it is subject to a range of additional legislative and regulatory provisions as well as additional tax requirements. These provisions apply equally to both a branch office and a subsidiary company.

Pay-As-You-Go (PAYG) withholding tax

PAYG is required to be withheld from payments of salary and wages, including bonuses, to employees subject to tax in Australia. The rate of tax depends on the employee’s Australian tax residency status and level of cash remuneration. PAYG withholding tax is the responsibility of the payer, regardless of whether the payer is in Australia or overseas. Consequently, the payer should register for PAYG withholding and remit tax by the required due dates to the ATO.

The payer should also issue payslips each pay period and an annual PAYG Payment Summary to employees (due 14 July following the 30 June year-end). An annual PAYG Summary Report is also due to the ATO by 14 August.

Generally PAYG withholding tax should be remitted on a monthly basis via the BAS. There are substantial penalties for failing to withhold and remit PAYG tax or for late payment to the ATO.

EY can assist with the PAYG aspects of the BAS statement and disclosure requirements.

Fringe benefits tax (“FBT”)

FBT will arise when an employer, an associate or other party (in certain circumstances) provides a non-cash benefit to an employee. A benefit includes any right, privilege, service or facility. The employer providing the benefit does not need to be a resident of Australia for a FBT liability to arise. It should also be noted that it’s the employer who is liable for FBT, not the employee. The FBT rate is 46.5% and a FBT return is required to be lodged with the ATO for the FBT year, being 1 April to 31 March.

Before negotiating an employee’s package ensure you are aware of the full cost of the package, including FBT to the employer. It’s advisable to consider the potential FBT concessions available when establishing employees’ remuneration packages. EY can provide advice with respect to appropriate salary packaging and benefits.

Superannuation guarantee (“SG”)

Where an individual (whether resident or non-resident of Australia) performs works within Australia, the employer (whether resident or non-resident of Australia) will generally be obliged to provide a minimum level of pension support by way of the superannuation guarantee. These contributions must be paid into an Australian complying superannuation fund. Contributions are required at least quarterly. Some exemptions may apply for employees carrying out certain roles and responsibilities.

The superannuation payments must be made within 28 days of the end of each quarter and are fully deductible. There are limited exemptions to this requirement. If an employer fails to pay the required amount they are subject to a charge (SGC) which is paid to the ATO, and the payment becomes non tax deductible.

Payroll tax

Each state government in Australia imposes payroll tax (4.25% to 6.85%) on employers for wages paid or payable in respect of services that are rendered in that state. Payroll tax is levied once the aggregate amount of annual wages paid to employees exceeds a certain threshold level. The minimum threshold is approx. $550,000 and may be higher depending on the state in which the employees are located.

Taxable wages include such items as wages, salary, commissions, bonuses, allowances and fringe benefits. Generally monthly payroll tax returns are required to be lodged in each jurisdiction together with a payment for that month. At year end (30 June) a payroll tax annual reconciliation return is required to be lodged to reconcile the payroll tax payable for the financial year.

EY can assist with the registration for payroll tax with the relevant state governments and with lodgement of the monthly and annual returns.

Workers’ compensation

Employers are liable to pay their employees’ WorkCover premiums to cover employees for any workplace accidents and/or illnesses. WorkCover regimes vary from state to state. EY can assist with registration with the company’s chosen insurance provider.
Employee obligations

Expatriate employees who perform employment services in Australia may be liable for tax and other contributions in Australia.

Income tax

Factors which determine whether an employee is subject to Australian personal income tax include the duration of their stay, the terms of any applicable double taxation agreements, their residency and whether they are employed locally or by an overseas company.

The imposition of tax on an individual will differ in numerous ways depending on whether an employee is an Australian resident or non-resident. A resident is subject to Australian income tax on worldwide income (including capital gains and interests in foreign investment funds). A non-resident however is subject to only Australian income tax on Australian sourced income. There are also different income tax rates and thresholds that apply to residents and non-residents. Concessional tax treatment may be available to individuals who qualify as a 'temporary resident' whereby income (excluding employment income) from foreign sources is not taxable in Australia.

It is essential for individuals to review their personal investments and other related matters prior to becoming an Australian resident to identify planning opportunities as well as their overall tax exposure. A comprehensive review should also include a discussion around how to effectively structure their employment and remuneration package for tax purposes.

Tax file number (TFN) and tax compliance

Employees required to pay tax, must have a TFN. If they do not have a TFN, the employer or payer is required to deduct PAYG withholding tax at the rate of 46.5% (47% from 1 July 2014). Employees are also required to lodge annual income tax returns based on a 30 June year-end. An individual's tax return lodgment due date is generally 31 October for individuals filing their own returns. Individuals lodging through a registered tax agent (e.g., EY) will have an extended lodgment due date to file their tax return.

EY can assist all expatriate employees with respect to tax disclosures.

Medicare levy

If employees are non-residents of Australia for income tax purposes, they are exempt from paying the Medicare levy, irrespective of whether or not their income is taxable for Australian tax purposes. However, employees who are tax residents are generally subject to the Medicare levy (currently 1.5% increasing to 2% from 1 July 2014) and eligible for Medicare (i.e., health care) benefits. An exemption may apply for individuals arriving in Australia from certain countries that do not have a reciprocal health care agreement with Australia.

Private health insurance

Expatriate employees may not be eligible for medical cover under the national Medicare scheme while working in Australia. Australia has health care agreements with some countries including Great Britain, New Zealand, Italy, Netherlands, Malta, Sweden, Norway, Belgium, New Zealand, Slovenia and Finland. Residents of these countries are entitled to limited access to Medicare, but only in emergency situations. These individuals do not have cover for a private hospital or their choice of doctor.

It is therefore necessary for temporary residents on working visas to consider taking out private health insurance to cover themselves in the event of sickness or a medical emergency even if partial health cover is available via one of the health care agreements mentioned above. There is a condition placed on a subclass 457 visa which requires the individual to hold and maintain a minimum level of health insurance for the validity of their visa. There are a number of private health funds operating throughout Australia which provide such insurance. EY can advise upon request the current relevant premiums applicable to non-resident employees.

Immigration and visa

An entity wishing to bring foreign nationals to Australia to work is required to apply for business sponsorship status with the Australian Department of Immigration and Border Protection as a sponsoring employer. There are a number of preconditions to obtaining such a status including that the entity is lawfully and actively operating, has a reputable business, is in good financial standing to meet the sponsorship obligations and meets certain training benchmarks. The entity must also demonstrate the benefits to Australia in sponsoring skilled workers.

Providing an entity is approved as a business sponsor, individual employees will usually come to Australia on a subclass 457 visa, which allows a stay in Australia of up to 4 years (or 12 months for newly established Australian businesses). If the individual is required to stay beyond this time frame, they can reapply for the subclass 457 visa assuming all legal criteria is met. Subclass 457 visa holders are only permitted to work in the approved position for which they have been nominated and cannot change employers within Australia without prior approval from the immigration department.

The immigration department has an active monitoring and compliance program. Failure to comply with the sponsorship undertakings may result in penalties and revocation of business sponsorship status and any subclass 457 visas obtained under that sponsorship.

EY has a dedicated immigration team who can provide advice and support with respect to immigration issues.
Foreign investment considerations

Under the Foreign Acquisition and Takeovers Act 1975 foreign individuals or foreign owned companies must seek approval from the Foreign Investment Review Board (“FIRB”) before purchasing significant interests in residential and commercial real estate, certain shares of Australian privately owned companies or shares in foreign companies that own Australian assets.

The thresholds vary, depending on the type of assets acquired, the type of investment being made and the identity of the foreign investor.

EY can assist with any FIRB queries.
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