Investing in Australia

Tax and immigration issues for high-wealth individuals investing in or moving to Australia

March 2014
About EY’s resources for high-wealth individuals

EY’s Private Client Services practice offers tax related domestic and cross-border planning and compliance assistance to high-wealth individuals and their associated entities. In today’s global environment, cross-border services help meet the ever growing needs of internationally positioned clients. With dedicated resources in major markets around the world we assist individual clients and their associated entities with a wide range of tax services including tax compliance, tax planning and tax advice relating to their business interests, investments and other financial related assets. Our approach provides professionally prepared returns, related calculations and advice, as well as integrated tax planning. Our talented people and in-depth knowledge help high-wealth individuals to effectively manage their requirements on a global basis. We have experience working with individuals and companies of all sizes across many aspects of the tax life cycle – planning, provision, compliance and controversy.

Our cross-border service offering includes all the major cities throughout the world. Our people and cross-border service offering help clients develop and execute business strategies quickly and effectively. Our professionals blend local country technical knowledge with appropriate regional and global insight on the latest developments in tax policy, legislation and administration.

EY’s network of over 500 immigration professionals in 120 countries provides a wide range of services including the review of immigration eligibility, advice regarding appropriate immigration strategies, and preparation and processing of visas, work permits, permanent residence, extension, naturalization and other immigration applications.

With over 20 years’ experience providing business immigration services to some of the world’s largest international employers, we are highly regarded as one of the strongest and most comprehensive single brand business immigration networks in the world.

EY’s dedicated global immigration team in Australia is made up of over 50 solicitors, registered migration agents and support personnel specialising in the formulation of strategic immigration planning and compliance advice. We leverage best practice methodologies and deep technical knowledge to deliver market leading immigration services, with a dedicated service to support clients in the preparation, execution and lodgement of Significant Investor Visa applications. EY regularly participates in consultations held with the Department of Immigration and Border Protection and the Minister regarding Australia’s migration program and have made significant contributions to tax panel discussions.

We’re more than just a network of locally controlled national tax and immigration practices. We are a global team. We invite you to leverage our people, our knowledge and our insights. The world is changing. We’re here to help.

EY has over 500 immigration professionals in 120 countries providing regional and global insight and expertise.
Australia’s stable democracy, developed economy and quality of lifestyle have long made it an attractive destination for migrants and foreign visitors.

Recent changes to Australia's taxation and migration laws have now increased its attraction to high-wealth foreign citizens. In particular, the new Significant Investor Visa provides an attractive avenue for high-wealth individuals to come to Australia (requiring an AUD$5 million complying Australian investment). The Significant Investor Visa provides a pathway to permanent residency whilst also allowing some relaxed residency requirements (e.g. minimum 40 days annually). In addition, Significant Investor Visa holders are generally only subject to tax on Australian sourced income (i.e. not taxed in Australia on foreign business and investment assets).

Having said that, the Significant Investor Visa is not the only option available to foreign citizens considering a move to Australia, and EY's experienced immigration professionals can provide individualised strategic immigration and planning advice to establish an immigration pathway best suited to each individual's personal circumstances and objectives.

Similarly, even where the visa option chosen provides relief from Australian taxation on foreign business and investment interests for the individual, Australia's complex tax rules need to be carefully navigated. EY's Private Client Services team can provide advice to help ensure that the Australian investment and business interests are structured tax effectively from both an Australian and 'home country' perspective. They can also provide advice on how to protect against the risks that the individual's presence in Australia might have an impact on the Australian or home country tax position of associated foreign companies and trusts (e.g. if central management and control moved to Australia and caused some of the entities to become subject to Australian tax on foreign income).

This booklet provides a high level overview of the Australian tax and immigration rules relevant to high-wealth individuals looking to invest in or move to Australia, together with an indication of some planning opportunities.

The level of Australian tax impost will depend on the choice of investment structure, the Australian tax residence status of the persons or entities involved and the nature and source of income and gains received. This booklet provides an outline of the following matters:

1) Migration matters
2) Overview of the Australian tax system
3) Common structures used by high-wealth individuals to hold investments and the general tax rules and rates that apply to each.
4) The Australian residence tests for each type of entity
5) Australian tax rules applying to common types of investment income and gains, together with planning opportunities for each.

The information contained in this booklet should be used as a guide only. The booklet is based on Australian tax and immigration legislation current as at the date of publication. This legislation is complex and you should seek advice from an EY representative to clarify the Australian tax and immigration implications and planning opportunities relevant to your specific facts and circumstances.
Visit
Visitor visas permit individuals to visit Australia for holiday, tourism, social or recreational reasons, to visit relatives, friends or to conduct short stay business activity.
Eligible nationalities may apply for a visitor visa online or through a travel agent or airline. Visitor visas may permit a stay of up to 3, 6 or 12 months.

Investment
Business Innovation and Investment Visa
The Business Innovation and Investment Visa is state or territory nominated and is designed for business persons and investors seeking to own or manage their own business or make a substantial investment in Australia.
Applicants must submit an Expression of Interest through the immigration department’s online SkillSelect program, and must demonstrate successful business or investment experience, personal and business assets, and secure a nomination by a state or territory government. Health, character and age limitation criteria may also apply. Certain family members may be included in the application.
Once granted, visas are valid for an initial four year period. Visa holders must satisfy ongoing visa-specific obligations.
The Business Innovation and Investment Visa comprises of three streams:
A. The Investor Stream
The Investor Stream is designed for investors who wish to make a designated investment of at least A$1.5million in an Australian state or territory on an ongoing basis.
Applicants must secure State or Territory nomination, meet the innovation points test and provide evidence of skill and experience in managing a qualifying investment.
B. The Business Innovation Stream
The Business Innovation Stream is designed for business people seeking to own and manage a new or existing business in Australia.
Applicants must meet the innovation points test, and evidence ownership, skill and experience managing a business, making annual turnover of at least A$500,000 in at least two of the past four fiscal years.
C. Significant Investor Stream
The Significant Investor visa applies to high net-worth individuals seeking to make a complying investment of at least A$5 million in Australia. In general a complying investment may include:
> Australian State or Territory bonds
> Certain Australian Securities & Investments Commission regulated managed funds (including funds investing in real-estate)
> Direct investment into private, non-listed Australian companies, which carry on an active business.

Migration matters
All non-citizens seeking entry to Australia must obtain a visa prior to entry. Individual eligibility requirements and relevant immigration legislation for each visa category must be considered prior to making an application.

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> Australian State or Territory bonds
> Certain Australian Securities & Investments Commission regulated managed funds (including funds investing in real-estate)
> Direct investment into private, non-listed Australian companies, which carry on an active business.
Specific investment criteria for nomination are set at a state/territory government level.

The Significant Investor stream offers relaxed residency requirement and does not impose age restrictions.

**Investor Retirement Visa**
The Investor Retirement Visa offers temporary status for retirees over the age of 55 who wish to reside and work in Australia temporarily. Applicants must be self-funded, have no dependents (other than a partner) and evidence the ability to make significant long-term financial investment in Australia.

**Employment**
Temporary employment activity in Australia by non-citizens requires work authorisation and may be sponsored by an Australian or overseas employer.

**Temporary Short Stay Activity Visa**
The Temporary Short Stay Activity visa provides work authorisation for short term, highly specialised, non-ongoing work for up to three months.

**Temporary Work (Skilled) Visa**
The Temporary Work (Skilled) Visa provides work authorisation for skilled workers for periods of up to four years. Employer sponsorship, nomination and visa criteria apply.

**Permanent Residence**
Australian permanent residents may live, work and study in Australia on a permanent basis. The benefits of Australian permanent residency include:

- Access to government-subsidised healthcare (Medicare)
- Access to social security benefits
- Access to local education and real estate ownership
- Pathways to Australian citizenship

**Employer Nomination Scheme**
Under the employer nomination scheme, eligible Australian employers may nominate skilled individuals for permanent positions. Skill requirements and an age threshold of 50 years with some exceptions apply.

**General Skilled Migration**
Under the general skilled migration program applicants are assessed under a points test for eligible occupations based on individual skills, qualifications and experience. An age threshold of 50 years applies.

**Business Innovation and Investment Visa**
Where provisional Business Innovation and Investment visa holders have met the objectives of the provisional visa and meet ongoing investment or business ownership criteria a permanent residence pathway exists.

**Business talent**
The Business Talent visa is a state or territory nominated visa offering two streams:

A. **The Significant Business History stream**
This stream offers permanent residency to established business owners or part owners of a business with substantial turnover who have commitment to the management of a new or existing business in Australia.

B. **The Venture Capital Entrepreneur stream**
This stream offers permanent residency to entrepreneurs who have obtained at least AUD1 million in venture funding capital from an Australian venture capital firm.
Overview of the Australian tax system

Income and capital gains tax
- Income and capital gains are subject to Australian tax at the federal level (no state taxes on income/capital gains).
- As a general rule Australian tax residents (but not ‘temporary residents’) are liable to pay Australian tax on their worldwide income whereas an Australian tax non-resident is liable to pay Australian tax on their income from Australian sources only.
- Special rules apply to individuals who qualify as temporary residents.
- Income tax is calculated on taxable income (assessable income less allowable deductions) at progressive tax rates for individuals and at flat rates for other entities.
- A resident individual is entitled to reduce a capital gain by 50% where the asset is owned for at least 12 months (non-residents are not entitled to this discount with effect from 8 May 2012).
- The Australian tax year commences on 1 July and concludes 30 June.
- Each taxpayer needs to obtain a tax file number (TFN).

Other taxes
- There is no estate, gift or inheritance taxes.
- There are no “wealth taxes”.
- There are a range of taxes imposed by state and local governments, particularly on real estate (e.g. land tax, stamp duties, rates).
- A goods and services tax (GST) at the rate of 10% is imposed on most goods and services supplied in Australia.

Double tax agreements
- Australia has entered into taxation agreements with more than 40 countries which prevent double taxation and fosters co-operation between Australia and other international tax authorities.
- Tax treaties do not impose tax, rather, they generally override domestic income tax law provisions that produce an outcome that is not consistent with the terms of the treaty.
- A list of countries with which Australia has entered into a double tax agreement can be found at Appendix 1.
- Australia also has a range of reciprocal health agreements which provide varying degrees of health cover for foreign citizens living in Australia.
Investment structures

Common investment ownership structures used in Australia by high-wealth individuals include:
- Individual
- Company
- Superannuation Fund (pension or retirement fund)
- Trust
- Partnership

Individuals, companies and superannuation funds are assessed and are liable for income tax on their taxable income for an income year.

Trusts and partnerships are generally “flow-through” or “fiscally transparent” vehicles for Australian income tax purposes. The taxable income from these entities will usually be taxed in the hands of the ultimate beneficiary/partner that has an interest in the entity (e.g. individual, company).

Individual
The most simple form of investment holding is an investment in an individual’s own name.

The income tax rates for a resident individual taxpayer for 2013 | 2014 are:

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax payable</th>
<th>Marginal tax rate % on excess</th>
</tr>
</thead>
<tbody>
<tr>
<td>$18,200</td>
<td>Nil</td>
<td>19</td>
</tr>
<tr>
<td>$37,000</td>
<td>$3,572</td>
<td>32.5</td>
</tr>
<tr>
<td>$80,000</td>
<td>$17,547</td>
<td>37</td>
</tr>
<tr>
<td>$180,000</td>
<td>$54,547</td>
<td>45</td>
</tr>
</tbody>
</table>

In addition to the above tax rates a Medicare levy applies to resident individuals (1.5% for the 2014 year). The levy is applied pro-rata for part year residents.

The income tax rates for a non-resident individual taxpayer for the 2013 | 2014 year are:

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Tax payable</th>
<th>Marginal tax rate % on excess</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td>Nil</td>
<td>32.5</td>
</tr>
<tr>
<td>$80,000</td>
<td>$26,000</td>
<td>37</td>
</tr>
<tr>
<td>$180,000</td>
<td>$63,000</td>
<td>45</td>
</tr>
</tbody>
</table>

Non-residents are not required to pay the Medicare levy.

Company
A company is a body corporate. It is a legal entity that is separate from its shareholders. A company is a common structure for operating a business. It is not a common structure for Australian residents to hold appreciating capital assets (e.g. real estate) as it does not receive the same capital gains tax concessions as individuals and trusts.

A company pays income tax at the corporate tax rate of 30%. This rate of tax applies to resident and non-resident companies.

Superannuation fund (pension fund)
Superannuation funds are a form of trust. The essential characteristics of a superannuation fund include a separate and identifiable fund of money set aside for the purpose of providing benefit to members upon retirement after a prescribed age (or to their beneficiaries on death).

A complying superannuation fund is one that is regulated, resident in Australia and fully compliant with superannuation legislation. Self-managed superannuation funds – personal funds with 1-4 members – are very common investment structures for Australian residents. Any other superannuation fund (including a foreign pension fund) is treated as a non-complying fund.

A complying superannuation fund is taxed at 15% on ordinary income and capital gains on assets held for less than 12 months. Capital gains on assets held for more than 12 months are taxed at 10%. Income from assets set aside to pay pensions or income streams for member are exempt (i.e. 0% tax rate). Because of the very concessional tax rates applicable to complying funds there are limits on the amounts that can be contributed to such funds.

Trust
A trust is not a legal entity or person, it is a fiduciary obligation accepted by a person (known as the “trustee”) in relation to property (known as “trust property”). Such obligations are to be exercised for the benefit of another person (“beneficiaries”).

A trust is the most common vehicle used by high-wealth individuals in Australia to hold investments. The reasons for this include asset protection (separation of legal ownership from the “at risk” individuals), flexibility in distribution of income to beneficiaries in a tax efficient manner and the ability to pass on the benefit of the 50% discount on capital gains to resident individual beneficiaries.

The Australian tax system recognises many different forms of trusts, including bare trusts, unit trusts and discretionary trusts.
Generally, the trust/trustee will have no tax liability where the whole of the income of the trust is distributed to resident beneficiaries.

Where no beneficiary is ‘presently entitled’ to part of the taxable income of the trust (referred to as the ‘net income’), the trustee may be liable to Australian income tax on that part at the top marginal rate (plus the Medicare Levy). The trustee may be required to withhold tax or may be liable to income tax where a resident trust estate distributes income of a trust to a non-resident beneficiary.

**Partnership**

A partnership is an association of persons or entities carrying on an activity together.

The definition of partnership includes:

▸ An association of persons carrying on business as partners (a general law partnership)

▸ An association of persons in receipt of income jointly (tax law partnership)

A partnership must lodge an income tax return. Once the partnership return is lodged each individual partner must declare their share of the net taxable income from the partnership in their tax return. Income tax will be applicable depending on the type of entity that is the partner in the partnership.

A limited partnership (defined as a partnership where the liability of at least one of the partners is limited) is taxed like a company (30% tax rate).

**Tax residency**

Residency is an important consideration in Australian tax law. An Australian resident is generally subject to tax in Australia on all income whatever its source (whether from Australia or overseas); whereas a non-resident should only be taxed in Australia on Australian sourced income.

A foreign individual (whether an Australian resident or non-resident) may also qualify as a ‘temporary resident’. This is an important classification for foreign individuals who become a resident as it means they are only subject to tax on Australian sourced income, plus any foreign sourced employment income (i.e., their foreign investments remain outside the Australian system).

A company, superannuation fund, trust or partnership cannot be a temporary resident.

**Individual**

An Australian tax resident is a person who:

▸ “Resides” in Australia, according to the ordinary meaning of the word

▸ Is domiciled in Australia, unless their “permanent place of abode” is outside Australia

▸ Is physically present in Australia for more than one half of the income year, unless their usual place of abode is outside Australia or

▸ Is an active member of a Commonwealth superannuation scheme.

Whether a person “resides” in Australia will depend on the extent to which they have established their lifestyle whilst in Australia and relevant considerations including the individual’s:

▸ Intention or purpose of presence in Australia

▸ Family and business/employment ties

▸ Maintenance and location of assets

▸ Social and living arrangements

The weight given to each factor varies depending on the situation and no one factor is conclusive. The individual’s immigration status is a relevant factor although not a determinative consideration.

As a general rule, individuals who enter Australia with the intention of being here (e.g. establishing their usual lifestyle here) for more than six months will be regarded as tax residents from the day of their arrival. However, individuals who enter Australia with the intention of being here for less than six months may also be considered a tax resident from the day of their arrival if their behaviour is consistent with residing in Australia. This determination depends on the individual’s facts and circumstances.

Where applicable, Australia’s double tax agreements include a ‘tie-breaker’ provision to determine which residence prevails where an individual is a tax resident of both Australia and another foreign jurisdiction (i.e., a dual resident).
Temporary resident
Most foreign nationals who are temporarily living or working in Australia are likely to be regarded as temporary residents for Australian tax purposes. An individual who qualifies as a temporary resident is eligible for certain concessions and exemptions from Australian tax.

A person is a temporary resident if:
- They are the holder of a temporary visa granted under the Migration Act 1958.
- They are not an Australian resident within the meaning of the Social Security Act 1991; and
- The taxpayer’s spouse (if he or she has one) is not an Australian resident within the meaning of the Social Security Act.

An “Australian resident”, for the purposes of the Social Security Act, is a person who resides in Australia and is an Australian citizen, the holder of a permanent visa or special protected category visa holder.

An individual can be regarded as a temporary resident indefinitely provided the above conditions continue to be met.

If an individual is granted Australian permanent residency, they will cease to be regarded as a temporary resident for tax purposes from the date the permanent residency is granted. From that date, the individual will be taxed as a tax resident.

Non-resident
An individual will be considered a non-resident of Australia for tax purposes if they do not meet the definition of resident.

Company
A company incorporated in Australia is a resident of Australia for income tax. Companies incorporated outside Australia will be resident if they carry on business in Australia with either their central management and control in Australia or their voting power controlled by Australian residents.

A company which is not resident will be a non-resident.

Superannuation fund
A superannuation fund is an Australian superannuation fund if:
- The fund is established in Australia, or any asset of the fund is situated in Australia;
- The central management and control of the fund is in Australia; and
- At least 50% of the market value of the fund’s assets attributable to contributing members relate to Australian resident members.

A non-resident superannuation fund is defined as a fund that is not an Australian superannuation fund.

Trust
A trust estate will be considered an Australian resident trust estate in any given income year if:
- A trustee of the trust estate was a resident at any time during the year, or
- The central management and control of the trust estate was in Australia at any time during the year.

A trust estate will be considered a non-resident trust estate if it is not a resident trust estate.

The residence of the trust estate can impact the Australian tax position in a number of ways. For example, a resident trust will need to ‘distribute’ the trust income to beneficiaries otherwise the trustee will be taxed on worldwide income at the top marginal tax rate (45% plus Medicare levy).

Partnership
There are no specific provisions relating to the residence of ordinary partnerships as they are not taxpaying entities. The impact of Australian tax on partnership income is determined by the reference to the residence of the partners themselves and the source of the partnership income.

A limited partnership will be resident if it was formed in Australia, it carries on business in Australia or it has central management and control in Australia.
Taxation of investment income

This section provides an outline of the Australian tax treatment of common investments held by resident entities, non-resident entities and temporary resident individuals.

Where the entity is a fiscally transparent entity (e.g. trust or partnership) the tax consequences outlined are those of the ultimate beneficiary (e.g. individual or company).

Residents

An Australian tax resident (who is not a temporary resident) is liable to pay Australian tax on worldwide income and capital gains (subject to certain concessions and exemptions). The tax position for temporary residents is dealt with in the next section.

The way in which different types of income from assets are taxed in Australia can be summarised as follows:

<table>
<thead>
<tr>
<th>Type of asset</th>
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</tr>
<tr>
<td>Australian cash, fixed interest</td>
<td>Taxable</td>
</tr>
<tr>
<td>Foreign assets</td>
<td>Taxable with an offset allowed for any foreign taxes paid</td>
</tr>
</tbody>
</table>

Real estate

Rental income derived from an Australian investment property is assessable in Australia. Expenses incurred in connection with renting that property can be deducted from that income. For example, interest expense, repairs and maintenance, depreciation, capital allowances and real estate agent fees.

Any net revenue losses on rental properties may be used to offset other assessable or exempt income earned in that income year. However, where the taxpayer is in an overall tax loss position for an income year, the tax loss may be carried forward and offset against future assessable income provided certain loss recoupment tests are satisfied.

A capital loss may not be applied against a revenue loss. Rather, capital losses are required to be quarantined and may only be applied against future capital gains.

To the extent rental income from a foreign property is also taxed in a foreign country, a foreign income tax offset may be available to reduce any Australian tax payable.

A capital gain derived from the sale of real estate in Australia or overseas is subject to capital gains tax in Australia. An assessable capital gain may be reduced by the capital gains tax discount. The capital gains tax discount only applies to resident individuals (50%), trusts (50%) and superannuation funds (33.33%). The capital gains tax discount is not available to companies. The taxpayer is assessed on the net capital gain (i.e. gross capital gains less gross capital losses), after any relevant capital gains tax discount.

Share investments

Dividends received from Australian or foreign companies are included in assessable income. Australia has a dividend imputation system where credits are available to resident shareholders for Australian taxes paid by a resident company on profits out of which the dividend is paid (franked dividends). The franking credit is refundable to individuals where it exceeds the tax payable by the individual.
A resident is liable for capital gains tax on their worldwide assets subject to various exemptions and other concessions. If a foreign individual or entity becomes a resident of Australia, all the capital gains tax assets owned at that time (other than taxable Australian property) become subject to the Australian capital gains tax system and are deemed to have a capital gains tax cost base equal to the market value of the asset at the date of becoming a resident (that is, only gains made while a resident are subject to Australian tax).

To the extent that dividend income from a foreign company is deemed to have disposed of all assets acquired on or after 19 September 1985 (except taxable Australian property) for the market value of the asset on the date of becoming a non-resident, Australian capital gains tax is payable on the value of the gain accruing whilst a tax resident. For individuals, there is a choice to disregard a deemed capital gain or loss by electing to treat the assets as taxable Australian property assets. The Australian capital gains tax is therefore deferred until actual disposal of the asset.

Foreign currency issues
In determining the Australian tax liability, all amounts (e.g. income and expenses) in a foreign currency must be converted to Australian dollars using a specific methodology (in some limited circumstances a different currency can be chosen as the functional currency).

In addition, gains and losses arising from movements in foreign exchange rates can give rise to assessable income or allowable deductions. The rules are summarised below:

- The foreign currency rules will generally apply to foreign currency accounts (e.g. foreign bank accounts) and foreign currency liabilities (e.g. foreign currency loans)
- Where part of the account balance is withdrawn or any loan repayments are made whilst an Australian resident and the transaction is not for private purposes, any gain or loss arising on the foreign currency movement may be included in assessable income.

Interests in foreign companies and trusts
Australian law contains several attribution rules that seek to tax residents (but not temporary residents) on income and gains accumulating in certain foreign companies and foreign trusts, even though no actual distribution of income or gains is received by the resident. These rules are known as the Controlled Foreign Company (CFC) and Transferor Trust rules.

Broadly, the attribution rules prevent resident investors from deferring tax by accumulating income offshore through controlling and non controlling interests in foreign entities (for example, offshore companies and trusts).

If a resident becomes a non-resident of Australia they are deemed to have disposed of all assets acquired on or after 19 September 1985 (except taxable Australian property) for the market value of the asset on the date of becoming a non-resident, Australian capital gains tax is payable on the value of the gain accruing whilst a tax resident. For individuals, there is a choice to disregard a deemed capital gain or loss by electing to treat the assets as taxable Australian property assets. The Australian capital gains tax is therefore deferred until actual disposal of the asset.

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- Where part of the account balance is withdrawn or any loan repayments are made whilst an Australian resident and the transaction is not for private purposes, any gain or loss arising on the foreign currency movement may be included in assessable income.

- In certain circumstances, you may reduce your compliance costs by choosing an alternate treatment for calculating gains and losses (a retranslation election)
- In certain circumstances, you may choose to ignore gains and losses arising on foreign currency denominated bank and credit card accounts that have a combined balance up to $250,000 (a limited balance election)
- Special rules apply to the acquisition and disposal of capital assets

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<td>Taxable</td>
</tr>
<tr>
<td>Australian shares</td>
<td>Taxable on dividends. Capital gains are only subject to tax where the share investment is taxable Australia property</td>
</tr>
<tr>
<td>Australian cash, fixed interest</td>
<td>Taxable</td>
</tr>
<tr>
<td>Foreign assets</td>
<td>Not taxable</td>
</tr>
</tbody>
</table>

### Australian share investments

The tax treatment of dividends from Australian share investments will depend on whether the individual is considered resident or non-resident for tax purposes (i.e. a temporary resident can be either resident or non-resident).

A temporary resident who is resident will be taxed on the dividend income in the same manner outlined above for a resident (i.e. dividends are assessable income).

In contrast, dividends paid by an Australian company to a non-resident temporary resident will be subject to dividend withholding tax (10% for franked dividends and 30% for unfranked dividends, subject to reduction under a double tax agreement (DTA) as discussed below for non-residents).

A capital gain derived from the sale of an Australian share investment is only subject to capital gains tax in Australia where the investment is considered taxable Australian property.

In broad terms this covers Australian real estate or mineral rights or non-portfolio shareholdings (i.e. 10% or greater) in companies where more than 50% of the market value of the company’s assets are attributable to Australian real estate or mineral rights.

Where a gain is subject to capital gains tax, the capital gains tax discount is not available to the extent the gain accrued after 8 May 2012.

### Australian cash/fixed interest

Temporary residents are liable to pay tax on income from Australian cash and fixed interest securities (e.g. Bonds). If the temporary resident is a non-resident, interest withholding tax at the rate of 10% will apply. If the temporary resident is resident, the interest will be taxed at normal marginal tax rates.

### Foreign assets

Income and gains from assets located outside Australia are not subject to tax in Australia for a temporary resident. Similarly, the foreign accruals rules applicable to interests held by residents in offshore companies and trusts do not apply to temporary residents.
Non-resident

An entity that is an Australian tax non-resident, is liable to pay Australian tax on Australian sourced income only. The way in which different types of income from assets are taxed in Australia can be summarised as follows:

<table>
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<td>Australian shares</td>
<td>Franked dividends are not taxable</td>
</tr>
<tr>
<td></td>
<td>Unfranked dividends are subject to dividend withholding tax.</td>
</tr>
<tr>
<td></td>
<td>Capital gains are only taxable</td>
</tr>
<tr>
<td></td>
<td>where the share investment is taxable</td>
</tr>
<tr>
<td>Australian cash/fixed interest</td>
<td>Interest is subject to withholding tax.</td>
</tr>
<tr>
<td>Foreign assets</td>
<td>Not taxable</td>
</tr>
</tbody>
</table>

Real estate

Income and gains from Australian real property investments are subject to tax in Australia in a similar manner to residents as outlined above (albeit the applicable tax rate is likely to differ). That is, such income and gains are fully taxable in Australia.

For this reason, it is quite common for non-resident investors to fund the investment partially with loans from a non-resident related party. The interest paid on these is generally deductible for the property owner (subject to certain ‘thin capitalisation’ limits).

Thin Capitalisation

See comments above under ‘Residents’.

Australian shares

A franked dividend (paid out of taxed profits) by an Australian company to a non-resident is not subject to withholding tax and is also not assessable in Australia.

An unfranked dividend (paid out of untaxed profits) by an Australian company to a non-resident is subject to withholding tax (unless it qualifies as conduit foreign income). The withholding tax rate depends on the overseas address of the shareholder and whether Australia has a double tax agreement with that country. The withholding tax rates under Australia’s double tax agreements are outlined in Appendix 1. The withholding tax rate to a non-resident on dividends paid from a country with no double tax agreement is 30%.

A capital gain derived from the sale of shares is only subject to capital gains tax in Australia where the shares are taxable Australian property (e.g. Australian real estate or mineral rights).

Non-resident individuals are not eligible for the 50% discount on capital gains earned after 8 May 2012.

Non-residents will still be entitled to a discount on capital gains accrued up to 8 May 2012 (after offsetting any capital losses), provided they choose to value the asset as at 8 May 2012.

Australian cash/fixed interest

Interest is subject to withholding tax where interest is derived by a non-resident and is paid by a resident.

If interest withholding tax applies, the relevant rate of tax is 10% of the gross interest payment. Most of Australia’s double tax agreements provide for a rate of withholding tax at 10%, but in some instances, the rate is 15%. In these cases, if the interest is paid in circumstances under which Australian tax is payable, the withholding tax rate remains at 10%, notwithstanding the provision in the agreement authorising the higher rate.

Foreign assets

Non-residents should not be subject to tax in Australia on income and gains on foreign assets.
Appendix 1 – Tax treaties

The following is a list of countries with which Australia has a double tax treaty and the maximum withholding tax rates agreed between Australia and the foreign country on dividend and interest income.

<table>
<thead>
<tr>
<th>Country</th>
<th>Dividend withholding tax (%)</th>
<th>Interest withholding tax (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>Austria</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canada</td>
<td></td>
<td></td>
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<tr>
<td>Chile</td>
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<tr>
<td>China</td>
<td></td>
<td></td>
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<tr>
<td>Czech Republic</td>
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<tr>
<td>Denmark</td>
<td></td>
<td></td>
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<tr>
<td>East Timor</td>
<td></td>
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<tr>
<td>Finland</td>
<td></td>
<td></td>
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<tr>
<td>France</td>
<td></td>
<td></td>
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<tr>
<td>Germany</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fiji, Kiribati,</td>
<td>Papua New Guinea</td>
<td>20</td>
</tr>
<tr>
<td>Korea, Malta,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Japan</td>
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<td>10</td>
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<tr>
<td>Malaysia</td>
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<td>15</td>
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<tr>
<td>Philippines</td>
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<td>25</td>
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<tr>
<td>Thailand</td>
<td></td>
<td>20</td>
</tr>
</tbody>
</table>

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