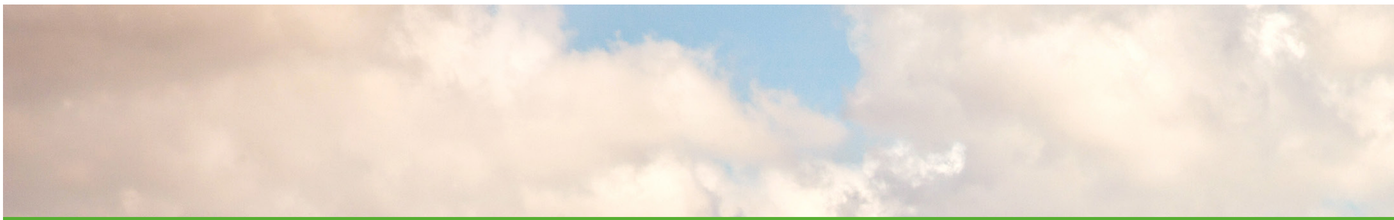

Doing Business in Australia

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in Australia.

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Background

Country overview

Australia is a Commonwealth country which recognises settlement by English Captain Cook in 1778. It was occupied for thousands of years prior to that by indigenous people. The country's land mass is as large as that of continental USA, but sparsely populated. The total population is around 25 million people, most living in cities on the East coast. Australia is an English language speaking country, governed by democratically elected local, State and Federal governments.

Economic overview

Australia's currency is the Australian dollar "AUD$". The currency is a floating currency available on the international money markets. Australia's modern free-market economy derives much wealth from primary industries (mining, farming); tourism and recreation; and knowledge services (computing, management).

The labour force is only partly unionised, with individual bargaining available as well as enterprise wide employment arrangements. Some occupations are more heavily regulated than others.

Transport infrastructure

Due to the large distances, travel throughout Australia is best done by air, with all capital cities and most major regional centres served by airlines. Travel to centres not served by air can be done by bus or train (in limited areas) or more often, by car.

Most capital cities and larger regional centres have efficient public bus, train, tram or ferry services. Goods are transported throughout Australia by deregulated but highly effective train and trucking industries.

Choice of Legal Form

Operating a business activity in Australia requires the operator to be registered with the Australian Federal Government (Australian Business Register) and to obtain and quote its Australian Business Number (ABN) in all its business dealings. There are a wide variety of legal forms that the business activity can take, including:

Limited liability company

These can either be public or private (proprietary) companies. The different types of companies can be identified by reference Pty Limited (or Pty Ltd) for private companies and Limited (or Ltd) for public companies. These entities require share capital to be paid up, although not necessarily in the form of cash – these could be contributed by way of some other form of asset (such as inventory).

Both types of company must have a board of directors, of which at least one must be a permanent resident of Australia. Private companies may have as a minimum one director allowing for single person businesses to operate through a company. Details concerning the shareholders and directors of the company are contained in the company's corporate register which is required to be kept up to date with changes in any details of the directors and shareholders (including personal addresses).

Both types of company continue into perpetuity and are considered a separate legal entity, capable of entering into legally binding contracts in their own name. Both types of company are governed by the Corporations Act, 2001 and are regulated by the Australian Securities and Investments Commission. The rules and regulations specific to each company are contained in their Constitution.

Partnerships

Partnerships are a much simpler structure and are formed when two or more individuals or entities come together to form a business venture. Partnerships are governed by the "Partnership Act" which is different in each Australian State and Territory. These Acts can be overruled by the partners if they enter into a formal written agreement (known as a partnership agreement). These partnership agreements operate in a similar fashion to the company's constitution in that they provide the ground rules for the operation of the entity.

The life of a partnership will be determined by who the partners are and the terms of the partnership agreement. If the partners are all companies then the partnership could continue into perpetuity, however if one of the partners is an individual then the partnership will have a limited life, although it could be reconstituted with alternate partners.

Partnerships, unlike companies, are not seen as a separate legal entity that can enter into legally binding contracts but rather it is the partners that enter into each contract and are held accountable for the terms of that contract.

Limited liability partnerships

Limited liability partnerships are not widely used in Australia. They are similar to normal partnerships but are required to have at least one company as a partner.

Branches

A foreign company may operate in Australia through a branch operation rather than having to set up a separate entity. Foreign companies wishing to operate in Australia must register and obtain an Australian Registered Business Number (ARBN).

The foreign company is required to submit its audited financial statements to the Australian Securities and Investments Commission annually.

Sole traders

These are individuals carrying on a business in their own right. Apart from the requirement to obtain and quote their ABN there are no nation-wide regulations that apply to sole traders, however Australian States and Territories do have their own regulations pertaining to sole traders.

Subsidiary

Subsidiaries are regarded as companies in their own right and are subject to the rules and regulations noted above, irrespective of whether they are subsidiaries of Australian or foreign companies. See Limited liability company above.

Joint venture

Joint ventures operate in a similar manner to partnerships. See Partnerships.

Corporation

See Limited liability company above.

Trusts

Trusts can be fixed or discretionary in nature. Fixed trusts usually involve the issue of units which can be bought and sold in the same manner as shares in a company. The entitlement to the income of the trust is in proportion to the units held in the trust.

Discretionary trusts, also known as family trusts, do not have any issued capital and the entitlements to the income of the trust cannot be traded. The entitlement to the income of the trust is determined annually at the discretion of the trustees.

Superannuation funds

Superannuation funds are also known as pension schemes or retirement schemes. Superannuation funds generally fall into two main types, the public offer fund and the Self-Managed Superannuation Fund (SMSF). Self-managed superannuation funds are private based retirement schemes where the administration and ongoing investment decisions are made directly by the members of the retirement fund. Self-managed superannuation funds can have a maximum of four (4) members.

Superannuation funds are subject to strict regulation under the Superannuation Industry (Supervision) Act 1993 and are administered by the Australian Prudential Regulation Authority and the Australian Taxation Office.

Audit Requirements

The standard financial reporting year end is 1 July through to 30 June, although this can be amended to align with that of the parent entity. The level of financial reporting is dependent upon the type and size of the entity involved.

Large private and public companies

These entities must prepare their financial statements in accordance with Australian Equivalents to International Reporting Standards. These financial statements must be audited and published with the Australian Securities and Investments Commission (ASIC). Upon lodgement of the audited financial statements with ASIC the company's results will be available to the public.

Small private companies

These entities do not have any specific reporting framework that they must adhere to and as such may publish their results in any format. These financial statements are not required to be audited unless specifically stipulated in their constitution or the members request that they be audited. The financial statements are not required to be lodged with ASIC and they are also not made available to the public.

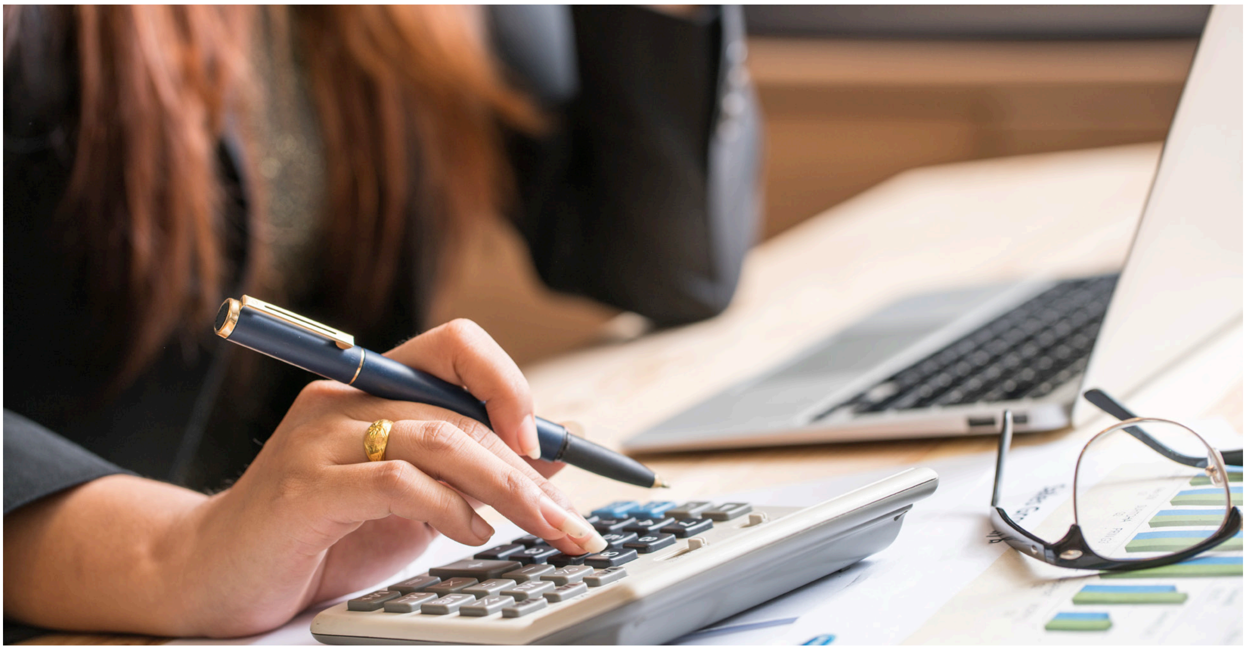
Subsidiaries of foreign companies

Where 10% or more of a company's shareholders are non-residents, the company will be required to prepare their financial statements in accordance with Australian Equivalents to International Reporting Standards. Unless relief is sought from the Australian Securities and Investments Commission (ASIC) these financial statements must be audited.

Sole traders, partnerships and trusts

These entities do not have any regulatory reporting requirements and can publish their results in any format. These financial statements are not required to be audited unless specifically stipulated in their agreements or deeds.

Taxation



Like most other countries around the world Australia has its own taxation rules and regulations that are designed to ensure that each taxpayer pays their appropriate share of taxes. There are several different forms of taxation in Australia including income tax, Goods and Services Tax (a value-added tax), land tax and payroll tax.

Income tax is governed by the Income Tax Assessment Act, 1997 which prescribes that income tax shall be payable on taxable income. Taxable income is determined by deducting from assessable income all allowable deductions, irrespective of the legal form that the business is conducted (although the rate of tax may differ).

Australian resident taxpayer's assessable income includes world-wide income. Generally, all expenses incurred by a business will be deductible if it is incurred in producing or maintaining assessable business income. Included in assessable income will be the net taxable capital gains made during the income tax year. However, the reverse is not the case for net taxable capital losses, as these are quarantined and carried forward to future years to be offset against subsequent net taxable capital gains.

Whilst Australian resident taxpayers are assessed on their world-wide income, Australia has number of International Tax Agreements with foreign jurisdictions which eliminates the double taxing of some income. The standard income tax year runs from 1 July through to 30 June, however this can be amended to align with the parent entities year end date.

Corporate income tax

The corporate rate of income tax is determined based upon the active revenues of the corporation. Small companies (those with an annual turnover of less than $2 million) have an income tax rate of 28.5% whilst companies with turnover of $2 million or more have an income tax rate of 30%. In addition to the lower income tax rates there are also several other tax concessions afforded to small business taxpayers.

Income tax is prepaid throughout the year each quarter (September, December, March and June) with a final reconciliation performed after the end of the income tax year. Where a holding company / subsidiary company relationship exists, the companies can elect to form a tax consolidated group so that any inter-group transactions are ignored for income tax purposes and only one entity (the head entity) pays the income tax for the group.

Tax losses can also be shared with other entities within a tax consolidated group.

Partnerships

Generally, partnerships do not pay income tax but rather it is the partners that are liable for income tax on their share of the taxable income of the partnership. The exception to this general rule is where one of the partners is a company and the partnership is regarded as a Limited Liability Partnership in which case the partnership would pay tax on the same basis as if it were a company.

Branch profits tax

Generally, branches of foreign companies are taxed on the Australian sourced income and are taxed on the same basis as companies, subject to any international tax treaty.

Personal income tax

The income tax rates applicable to individuals is on a progressive basis such that the higher the taxable income of the individual the greater rate of tax is payable. The table overleaf sets out the income tax rates applicable to Australian resident individuals for the 2016-2017 taxation year.

Australian Resident Individual Income Tax Rates ($AUD)

Taxable Income		Tax Payable	
From	To	Minimum Tax	Rate
nil	$18,200	nil	nil
$18,201	$37,000	nil	19% of excess over $18,200
$37,001	$87,000	$3,572	32.5% of excess over $37,000
$87,001	$180,000	$19,822	37% of excess over $87,000
$180,001*	above	$54,232	45%* of excess over $180,000

*for taxable incomes over $180,000 there is a temporary budget repair levy of 2% which increases the rate to 47% of the excess over $180,000.

In addition to the income tax rates applicable above, Australian resident taxpayers are also liable to a surcharge (Medicare Levy) which is a contribution to the federally funded basic health system. The rate of the Medicare levy is 2.0% or 3.0% depending upon whether an individual has private health insurance with hospital cover.

The following table sets out the income tax rates applicable to non-Australian resident individuals for the 2016-2017 taxation year:

Non-Resident Individual Income Tax Rates ($AUD)

Taxable Income		Tax Payable	
From	To	Minimum Tax	Rate
nil	$18,200	nil	nil
$18,201	$37,000	nil	19% of excess over $18,200

Employers are obligated to withhold income tax at prescribed rates from the salary and wages paid to employees.

Trusts

Generally, trusts are considered to be transparent in nature from an income tax point of view in that it is the unit holders or beneficiaries that are liable for their share of the taxable income of the trust. The exception to this rule is for public unit trusts which are taxed in the same manner as companies.

Superannuation funds

Superannuation funds receive a concessional rate of tax. This is 15% whilst the members are continuing to introduce funds via contributions (Accumulation Phase) and this is reduced to nil when the members start to draw a pension from the fund (Pension Phase). Recent changes were legislated whereby from 1 July 2017 members of superannuation funds will be limited to having $1.6 M of their account balance in Pension Phase, with the excess being retained in the Accumulation Phase where the income will be taxed at 15%.

Dividends

Dividends are paid from after-tax profits by a company and, to avoid the double taxation of this income, taxpayers receive a credit for the income tax already paid by the company (an imputation credit). This effectively limits any additional tax to the difference between the tax rate and the company tax rate.

Capital gains tax

Capital Gains Tax (CGT) applies to all non-trading assets acquired (or deemed acquired) on or after 20 September 1985.

Whilst CGT is not a tax in its own right, it requires a taxpayer to include gains made upon the disposal of assets in their assessable income. An exemption applies for an individual's principal place of residence and their private motor vehicle.

The amount to be included in the taxpayer's assessable income will be determined by the type of taxpayer and the length of time that they have held the asset. The following table shows the rate at which a capital gain is to be included in a taxpayer's assessable income:

Type of Taxpayer	Asset Held for less than 12 months	Asset Held for more than 12 months
Individuals	100%	50%
Companies	100%	100%
Superannuation Fund	100%	67%

Once the "taxable capital gain" is determined this is added to the taxpayer's other taxable income and income tax is calculated in accordance with their applicable income tax rates. Capital losses are quarantined and carried forward to future years to be offset against subsequent capital gains.

There are numerous concessions and roll-overs for forced disposals, corporate restructures, death, divorce and certain small business disposals. It is important to note that there is a deemed acquisition on becoming an Australian resident and a deemed disposal upon ceasing to be an Australian resident which could lead to a CGT liability. However, these harsh rules can be overcome in certain circumstances.

Value added tax

The value-added tax in Australia is the Goods and Services Tax but is more commonly referred to as the GST and is currently applied at the rate of 10% on most goods and services provided in Australia. Exemptions from the GST include exports, health, staple foods, education and certain other goods and services.

Each entity providing goods and services where the annual turnover is, or is likely to be, greater than $75,000 is required to be registered for GST. Entities with an annual turnover under this threshold may elect to register.

Most registered business enterprises are entitled to claim back the GST (known as input tax credits) for goods and services acquired and used in the operation of their business.

Each quarter (or monthly for large clients) registered businesses are required to report their GST transactions in a summary form (Business Activity Statement or BAS) and remit the difference between the GST charged to customers and the input tax credits claimed.

GST is normally included in the displayed or quoted price of goods and services. If the price does not include GST it must be clearly displayed as such.

Sales tax

Predominantly sales tax is levied through the application of the GST discussed above, however special excise duties are applied to certain goods such as fuel, tobacco and alcohol. These duties are imposed by each State at varying rates.

Local taxes

All income taxes and Value Added Tax are imposed at the Federal level. There are no local income taxes or Value Added Taxes. Each Australian State and Territory raises revenue through the imposition of land tax, payroll tax and limited sales taxes as noted above. Local authorities raise revenue through various real estate and other levies which are generally imposed on the home owner.

Land tax

This is a tax imposed on the unimproved value of land owned by taxpayers. The thresholds and rates of tax are governed by each Australian State and Territory. Subject to certain thresholds, a person's private residence will generally be exempt from land tax.

Payroll tax

This is a tax imposed on employers whose payroll exceeds certain thresholds. The applicable thresholds and rates of tax are governed by each Australian State and Territory. There are grouping provisions which effectively allow a group of entities to claim one threshold. If a business enterprise operates in multiple states a national threshold is applied.

Fringe benefits tax

Fringe Benefits Tax (FBT) is a tax levied on employers where non-cash remuneration is paid to employees.

The rate of Fringe Benefits Tax is equal to the highest marginal tax rate applicable to Australian resident individuals (inclusive of the Medicare Levy), currently this is 47%. Generally, tax is levied on the GST inclusive value of benefits (i.e. the gross amount paid by the employer in providing the benefit).

International agreements

Australia has entered into International tax agreements with many countries around the world. The agreements are largely in standard form, but there are subtle differences in the details of each. Australia does not condone the use of "tax havens" and has powerful disclosure rules to reduce the effectiveness of offshore tax havens.

Transfer pricing

Transfer pricing involves the transfer of profit from one entity to another by manipulating the amount paid for goods and services. Australia like most countries has strict rules in relation to transfer pricing, especially where cross borders are involved, and require that all transactions between associated parties be on and arm's length basis.

Sufficient documentary evidence is required to be retained by Australian taxpayers supporting the premise that transactions with related parties are on an arm's length basis.

Thin capitalization

This is a relatively complex area, however it essentially applies where equity is injected into an entity in the disguise of a loan so that they can shift profit to the other entity by way of an interest charge. In these situations, the entity receiving the contributions will be denied a deduction for the interest paid on the loan.

International taxation

An Australian resident is liable to pay Australian tax on the net financial income of a non-resident controlled entity ("Controlled Foreign Company" or CFC). Similarly, Australian residents with interests in Foreign Investment Funds (FIF's) are taxed in Australia if not caught under the CFC rules.

Allowances

Depreciation

Depreciation is generally determined by the taxpayer and represents the write off of the asset over its estimated useful economic life. There were temporary concessions available to small businesses which allowed them to claim an immediate deduction for assets they started to use provided the cost of each depreciable asset was less than $20,000. These concessions ended on 30 June 2017.

Buildings used for income producing purposes are eligible to a 2.5% capital allowance which is deductible against rental or business income. Some intangible assets such as goodwill, patents, trademarks and copyrights may be depreciated over varying periods.

Investment allowances

Australia provides limited allowances for investments in Research & Development, primary production, mining, films, and certain other industries.

Tax losses

Income Tax losses may be carried forward indefinitely to be offset against subsequent profits or capital gains. The ability of companies and trusts to utilize prior year tax losses are subject to certain conditions being met. There are no carry-back provisions.

Capital losses may be carried forward indefinitely but can only be utilized to offset subsequent capital gains.

Employment

The Australian labour market is generally flexible, however there are a number of specific rules and regulations that are peculiar to Australia especially around the dismissal of employees. A summary these are detailed below:

Social security contribution

Employers are required to make an after-salary contribution to a retirement fund (superannuation fund) for each employee. These contributions are held in an account in the name of the employee with any after-tax income generated by the fund being attributed to each member. Upon retirement from the work force, the employee is entitled to be paid the balance standing in their account in the superannuation fund. This may be paid by way of a pension or lump sum.

Generally, the employers do not control the retirement fund or exert any influence over where the funds are to be invested. The current rate of contribution is 9.5% of the employee's earnings. Depending upon the employee's personal circumstances at retirement from the workforce they may also be entitled to a Federal Government Pension (the age pension).

Employee pay rates

Whilst the rate that employees are paid is subject to negotiation, there are certain minimum entitlements that must be paid. These minimum entitlements are determined by the nature of the employee's occupation and are covered in Industrial Awards.

Employee entitlements

All employees are entitled to receive a certain amount of paid annual (holiday) leave (generally 4 weeks), paid personal leave (generally 10 days), and long service leave (generally 8 weeks leave after 10 years' continual service). These entitlements are cumulative if not taken by the employee during the year. Upon termination, any unused annual leave and unused long service leave must be paid to the terminating employee.

Termination of employees

The Australian labour market is generally flexible and transient in nature, however there are substantial legal procedures that must be adhered to when terminating an employee, especially where their dismissal is not amicable.

Worker insurance

Every employer in Australia is required to take out an insurance policy for injuries sustained by an employee whilst performing their employment duties. This type of insurance is commonly referred to as Workers Compensation Insurance. Each Australian State and Territory has their own Workers Compensation legislation and where an employer has employees in a State or Territory they are required to take out Workers Compensation Insurance in that State or Territory.

The premiums levied are calculated by reference to the remuneration paid to employees and the nature of the industry in which the business operates.

Employment of foreign personnel

Foreigners seeking to work in Australia must hold a relevant visa which allows work. During the first-year foreigners are generally taxed at non-resident tax rates and then revert to resident tax rates in subsequent years. Foreign workers are entitled to have superannuation (social security) contributions made on their behalf in the same manner as resident employees.

Upon permanently exiting Australia they can cash out that superannuation, but taxes will apply to that payment. Foreign workers changing tax residence to Australia should seek advice about the deemed acquisition rules that may impact on their assets.

Medical

Australia runs a Federally funded basic health system known as Medicare with contributions made by taxpayers at 2.0% of taxable income. Individuals can also choose to supplement this system with private health insurance. High income resident individuals without such private health insurance pay a higher Medicare levy.

Non-residents will need to obtain private health insurance.

Withholding Taxes

There are several rules pertaining to transactions involving cross border interests. This includes the requirement to withhold tax from payments made to non-residents which are in the form of interest, unfranked dividends (dividends where no company tax has been paid) and royalties. The rate of the withholding can range from nil to 30% depending upon whether a Double Tax Agreement exists between Australia and the country of residence of the recipient.

Interest

Subject to any tax treaty provisions, a final withholding tax of 10% applies to interest payments made to non-residents.

Royalties

Subject to any tax treaty provisions, a final withholding tax of 20% applies to royalty payments made to non-residents.

Dividends

Franked dividends are not subject to any withholding when paid to non-residents. Subject to any tax treaty provisions, a final withholding tax between 0% and 30% applies to unfranked dividends paid to non-residents. The rate of withholding is determined by the country of residence of the recipient of the unfranked dividend.

Miscellaneous

In addition to the matters discussed above there are a number of other issues that foreign entities wishing to operate in Australia should take into consideration. These include:

Investing in Australia

Foreigners wishing to undertake direct investment in Australia must obtain approval from the Foreign Investment Review Board. There are some exceptions where approval is not required, but the following table sets out when approval is required:

Investment Type	Non-US Investors	US Investors
Vacant non-residential land	All acquisitions	All acquisitions
Residential real estate	All acquisitions (some exemptions apply)	All acquisitions (some exemptions apply)
Shares or units in Australian urban land corporations or trusts	All acquisitions	All acquisitions
Developed non-residential commercial real estate subject to heritage listing	Valued over AUD$5 million	
Developed non-residential commercial real estate **not** subject to heritage listing	Valued over AUD$55 million	
An interest in an Australian business	Valued over AUD$252 million	Acquisitions involving AUSFTA prescribed sensitive sectors valued over AUD$252 million. Acquisitions **not** involving AUSFTA prescribed sensitive sectors valued over AUD$1,005 million.
An interest in an offshore company that holds Australian assets or conducts a business in Australia where the Australian assets or businesses of the target company	Valued over AUD$252 million	Acquisitions involving AUSFTA prescribed sensitive sectors valued over AUD$252 million. Acquisitions **not** involving AUSFTA prescribed sensitive sectors valued over AUD$1,094 million.

Public liability insurance

Where businesses interact with the general public there may also be a requirement to take out a public liability insurance policy. This insurance policy provides protection to the business owner against injuries sustained by the general public whilst on business premises. Generally public liability insurance will be a requirement under the lease of business premises.

Local knowledge

Australia operates an open-market flexible economy with complex regulatory imposts. However, as there are Commonwealth, State and local governments there are subtle but important variations to the rules in each location in which a business operates. Seeking local advice is of great importance.

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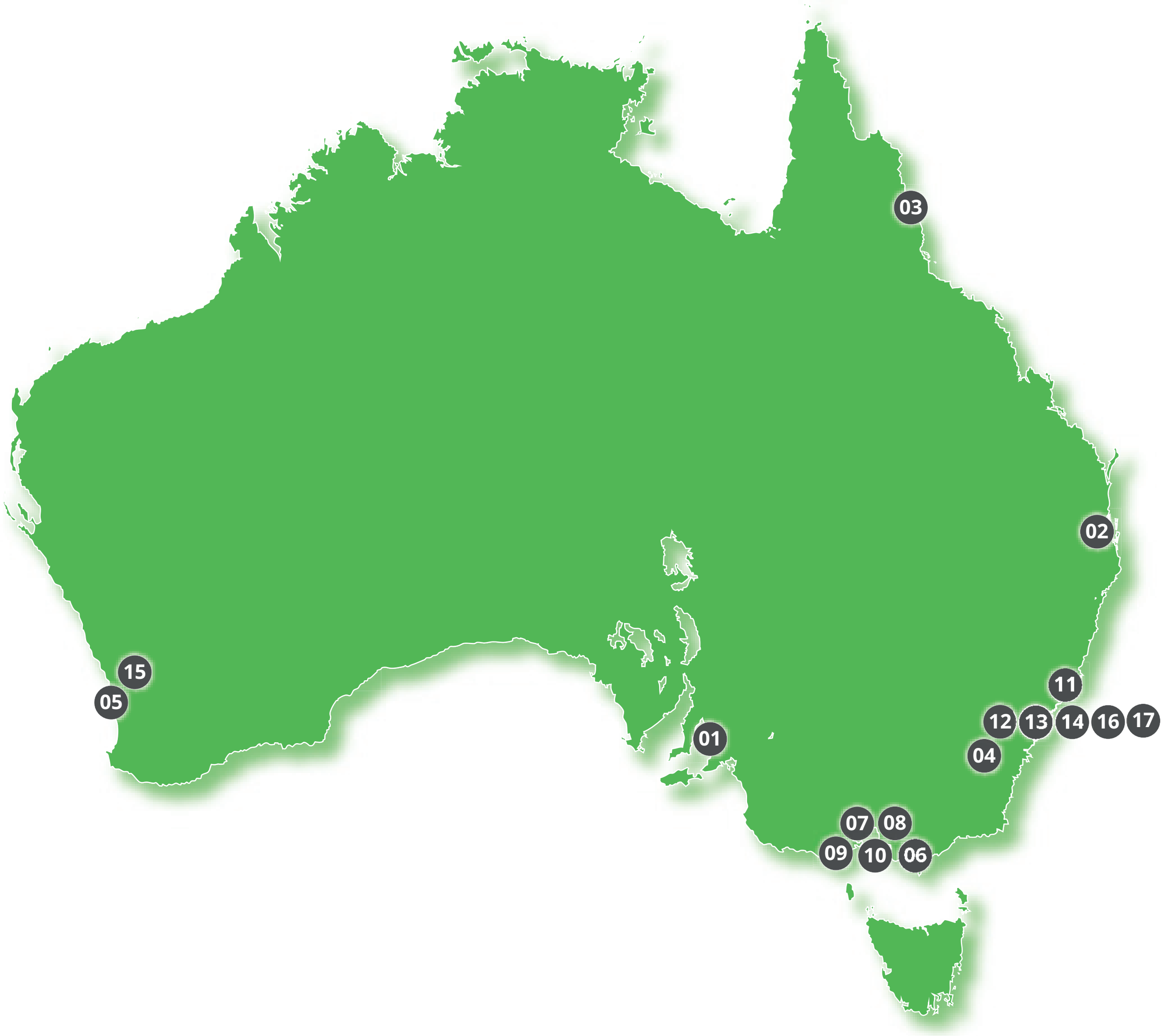

This document is provided by CA SMSF Specialist CIB Accountants & Advisers as a general overview of matters to be considered when setting up an overseas business in Australia. It is essential to take advice on specific issues. No liability can be accepted for any action taken or not taken arising from the information provided in this publication.

If you are setting up a business in Australia, the members of DFK International can help you to achieve this efficiently. You will receive practical advice on business issues, tailored to meet your objectives, from experienced business advisers.

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Last updated October 2017