HD **Australia: Tax regulations**

WC 3,914 words

PD 29 August 2014

SN Economist Intelligence Unit - ViewsWire

SC EIUCP

ED ViewsWire

PG 11

LA English

LP

Corporate taxes: Overview

The federal government levies corporate income tax on **company** profits at a rate of 30%. Companies that are wholly owned by the same parent **company** may file a single tax return and be taxed as a single entity.

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A **company** is considered a resident of Australia for tax purposes if it is incorporated or operates in Australia and meets either of two criteria: its central management or shareholders controlling voting power are in Australia, or its voting power is controlled by shareholders who are residents of Australia. Australia resident companies must declare all profits earned in Australia and overseas. Offsets are available for taxes paid on foreign-sourced income in countries with which Australia has a double-tax treaty. A non-resident **company** that receives Australian-sourced income must file an Australian tax return and pay tax on income earned in Australia, except for interest, unfranked dividends (paid from untaxed profits) or royalties subject to withholding tax. The applicable tax rates for these forms of income are 10% for interest and 30% for unfranked dividends and royalties. These tax rates are reduced if a double-tax treaty applies. No Australian tax is payable on franked dividends since the local **company** already has paid the full amount of Australian tax on its profit (see Taxes on interest and dividends).

Foreign-owned companies or joint ventures with international corporations are usually treated as public companies for Australian tax purposes. Joint ventures can be either incorporated or unincorporated. Most joint ventures are incorporated; hence, a separate **company** conducts the **business** of the joint venture, and each joint-venture participant is a shareholder in that **company**. Because it is a separate **company**, any profits of the joint venture are taxed at the **company** level. Similarly, any losses suffered by the joint venture do not flow through to the shareholder participants but remain at the **company** level and may be carried forward to offset future profits. Unincorporated joint ventures are more prevalent when the **business** is not yet making profits (such as a biotech operation that focuses on research and development). In an unincorporated joint venture, each participant files a separate tax return.

The federal government applies a 40% resource rent tax (Petroleum Resource Rent Tax-PRRT) on taxable profits from the recovery of petroleum products from most offshore **oil**-and-gas fields. As from July 1st 2012 the PRRT extends to onshore petroleum projects, including **coal**-seam gas, **oil**-shale and tight-gas projects. In addition, the Minerals Resource Rent Tax (MRRT), approved in March 2012 and implemented on July 1st 2012, imposes a 30% tax on **coal** and **iron**-**ore mining** profits. The MRRT scheme includes an extraction allowance of 25% that offsets the tax, in effect reducing it to 22.5%. The MRRT applies only to yearly **mining** profits that exceed A$75m. A partial tax credit is available for miners with profits of A$75m-125m. The current administration of Tony Abbott, the prime minister, announced in October 2013 that it would repeal the MRRT with effect from July 1st 2014. As of August 2014 the repeal bill was still being reconciled in Parliament.

Corporate taxes: Corporate tax rates

The corporate tax is a flat-rate tax levied at 30% on the taxable income of a **company**. Basic tax rates and treatment are the same for all companies, including branches of foreign companies. There is no difference in the tax treatment of retained profits and distributed profits, and there is no excess-profits tax or alternative-minimum tax.

The Labor government of Julia Gillard, the former prime minister, had tried to cut the corporate tax rate to 28% during her administration that ended in June 2013. Since then, the Liberal-National coalition has pledged to cut the corporate tax rate to 28.5%, but legislation to this effect had yet to be proposed as of August 2014.

Corporate taxes, 2014/15*
The following is an example of the variation in tax burden for shareholders of a foreign-owned **company** in Australia, depending on whether dividends are franked (payable from taxed income) or unfranked (payable from untaxed income), and whether a tax treaty exists. Unfranked dividends are paid from income on which corporate tax has not been paid, typically because of the carry-forward of a prior year's losses. Taxable income is reduced, but the income available for distribution as dividends remains the same.
The table assumes that a **company** pays 50% of the income available for distribution as a dividend. Columns A and **B** relate to the payment of unfranked dividends. If the foreign shareholder resides in a country with which Australia does not have a tax treaty, withholding tax of 30% applies (Column A); if a tax treaty exists, this typically drops to 15% (Column **B**). If the dividends paid have been franked, no further tax is payable by the foreign shareholder (Column C).

	A	**B**	C
Income	100,000	100,000	100,000
Losses carried forward	100,000	100,000	0
Taxable income	0	0	100,000
Corporate tax (30%)	0	0	30,000
Distributable income	100,000	100,000	70,000
Dividend payment	50,000	50,000	35,000
Withholding tax	15,000	7,500	0
Tax paid by foreign shareholder	15,000	7,500	30,000

* July 1st-June 30th.
Source: Australian Taxation Office.

Corporate taxes: Taxable income defined

To compute taxable income, a **company** calculates gross income (for a resident **company**, income from worldwide sources; for a non-resident **company**, income from Australian sources) and deducts any exempt income.

The **company** then subtracts allowable expenses and deductions (including royalties, management fees and interest paid to non-residents if these expenses conform to **commercial** standards).
Thin-capitalisation rules apply to the Australian **operations** of foreign companies investing in Australia and to Australian companies investing overseas. The rules aim to prevent the application of an excessive amount of debt against income that is taxable in Australia. Generally, these rules disallow tax deductions for interest payments on debt when a **company**'s debt/**equity** ratio exceeds 3:1. When calculating their taxable income, companies may deduct most indirect taxes paid-such as payroll tax and fringe-benefits tax. Dividend payments are not deductible. Domestic losses generally may be carried forward indefinitely, but they may not be carried back.

Wholly owned groups of companies and trusts may choose to be taxed as consolidated entities but should note that this option is irrevocable. Consolidation reduces impediments to **group** restructuring, allows for pooling of losses within the **group** and allows for tax-free movement of assets within a **group** without any formal rollover requirements. This allows a **group** to **buy** back shares without triggering a capital gain or loss and to liquidate a member entity without triggering deemed dividends or capital gains or losses. It also eliminates double taxation, where gains are taxed when realised and then taxed again on the disposal of **equity**. Grouping concessions are not available for wholly owned groups that choose not to consolidate, and thus a **group** may not transfer losses of foreign tax credits or assets between entities without triggering a capital gain.

The tax regime aims to prevent the use of various tax-avoidance techniques, such as loss cascading (creating multiple tax losses where there is only one economic loss), value shifting (creating artificial losses where there is no actual economic loss) and tax avoidance through intra-**group** dealings.

Australia taxes foreign-sourced income earned by Australian residents under an accruals-based regime. A comprehensive foreign-tax-credit system applies to directly earned foreign income; credits are generally available for the lesser of the foreign taxes paid or the Australian tax payable. Foreign tax credits may be carried forward for five years but may not be carried back.

Most foreign income and capital gains derived by Australian companies via a permanent establishment overseas is exempt from Australian taxation. The exemption also applies to income earned overseas by Australian companies from investments in partnerships or trusts. In addition, the disposal by an Australian **company** of non-portfolio shares in a foreign **company** is exempt from capital-gains tax in Australia. Similarly, Australian investors enjoy an exemption on income from overseas investment funds if their holding amounts to 10% or less of the investment fund's capital.

Corporate taxes: Depreciation

A unified-capital-allowance system applies to the effective life depreciation of all capital investments, including patents and buildings. Spending on items associated with project development (such as feasibility studies, **site** preparation and environmental assessment) may be written off over the life of the project, whereas costs relating to establishing a **business** and raising **equity** may be written off over five years. Certain "black hole" expenditures that do not create or improve an asset are immediately deductible; these include costs such as export-market development and the cost of closing mines.

Small businesses with aggregated turnover of less than A$2m have access to a range of concessions, including simplified depreciation and trading stock rules, simplified goods and services tax (GST) accounting, tax credit apportionment and payment rules, and favourable capital gains tax exemptions and rollovers.

The Australian Taxation Office (ATO) continually reviews the effective lives of assets held by a large range of industries to ensure that they match with the rates at which the assets can be written off for tax purposes. Special depreciation rates apply for primary-producer assets, research-and-development expenditure and investment in Australian films. **Mining** companies enjoy immediate deductibility for expenses for removing **mining** overburden (that is, removing nonproducing earth before reaching the actual **ore**) and may roll over short-term hedging instruments without a taxation penalty.

Corporate taxes: Capital taxes

The federal government does not levy taxes on land. State governments levy **property** taxes based on the improved value of **property** holdings (buildings and land). These are used to fund local services, such as parks, community facilities and activities, street lighting, rubbish collection and some roads.

Corporate taxes: Treatment of capital gains

Companies are liable for tax on the full amount of any increase in the capital value of their assets. Net capital gains are calculated by deducting the **purchase** price of an asset (no inflation indexing is available for assets **purchased** after September 1999) from proceeds of the **sale** of the asset. Capital losses can be carried forward to offset future capital gains.

Capital-gains tax (CGT) is not levied in some limited circumstances: where a fixed trust transfers all of its assets to a **company** and then ceases to exist; and where assets are transferred between a trust and a **company** as part of the process of converting the entity's structure from a trust to a **company**. In the latter case, owners must hold shares in the **company** in the same proportion as their interests in the trust.

Relief from CGT is available for de-mergers-that is, the restructuring of a corporate or trust **group** by splitting it into two or more entities or groups, with the underlying owners holding one or more of those entities or groups directly. The relief is available where underlying ownership is maintained and the de-merging entity divests at least 80% of its ownership interests in the de-merged entity. This allows CGT relief at both shareholder and entity levels and provides an exemption from the existing dividend rules, subject to integrity rules.

Shareholders who receive notional capital gains in a scrip-for-scrip takeover (for example, during an **acquisition** when new shares are issued to replace the shares of the **company** that was taken over) may opt not to pay CGT until the ultimate disposal of the acquired **company**'s assets. Special rules apply to non-resident shareholders, and the relief is not available to a non-resident acquiring an interest in an entity if it does not reside in Australia.

Holders of convertible notes pay CGT when the relevant shares are **sold**, not when the notes are converted into shares, as long as the notes were issued after May 14th 2002.

If assets were acquired prior to September 1999, eligible superannuation (pension) funds may choose between the discount-method capital-gains system introduced in September 1985 and the subsequent indexation-method system introduced in September 1999. (Capital gains were tax exempt until September 1985 and assets acquired before then do not pay capital-gains tax.) The discount method calculates the capital gain as the difference between the proceeds and the cost base; a discount of 33% for superannuation funds applies for assets held more than one year. The indexation method calculates the capital gain as the difference between proceeds and the indexed cost base, with indexation stopped at consumer prices in September 1999. For assets acquired after September 1999, Australian superannuation funds (which pay income tax at 15%) are taxed on two-thirds of the gain, yielding an effective CGT rate of 10%.

Australian residents are liable for tax on worldwide capital gains (subject to double-tax relief). Non-residents are taxed on capital gains from Australian assets, including land, assets used in Australian **business**, shares or interests in Australian private companies and trusts, and holdings of 10% or more of the issued capital of Australian public companies. Holdings of less than 10% in Australian public companies are not counted as Australian assets and any capital gain realised on the holding is not included when CGT is assessed.

Special, complex rules apply when a taxpayer changes residency. Where non-residents are residents of a country with which Australia has a double-tax treaty, there may be limited scope for using treaty protection to limit Australian CGT in certain circumstances.

Some non-resident pension funds are exempt from CGT on gains from venture-capital investments in Australia.

The disposal by an Australian **company** of non-portfolio shares in a foreign **company** is exempt from CGT in Australia.

Since July 2003 businesses with international **operations** can take advantage of optional functional-currency provisions and alternative options for calculating foreign-currency gains and losses on certain foreign-currency-denominated bank accounts. For example, one optional method removes the need to calculate gains and losses from certain accounts with a total balance of not more than the equivalent of A$250,000.

Corporate taxes: Taxes on interest and dividends

Interest paid from an Australian **business** to an Australian resident **business** is not subject to withholding tax. However, interest paid from an Australian **business** to a non-resident **business** is generally subject to a 10% domestic withholding tax (less if there is a double-tax treaty).

Dividends paid by Australia-resident companies that come out of profits already taxed at the corporate rate carry imputation credits for the tax paid. Dividends are referred to as "fully franked", "partially franked" or "unfranked" depending on whether they are paid from fully taxed, tax-preferred or untaxed profits. Given the opportunities for reducing tax liability through accelerated depreciation, loss carry-forwards and the like, dividends might not always be fully taxable. All unfranked distributions are taxable in the hands of the recipient, unless the distribution is within a wholly owned **group** that has elected to consolidate its accounts. Where the corporate tax rate exceeds the marginal tax rate of the shareholder, a tax refund is payable to the shareholder. Hence, Australian superannuation (pension) funds, which pay income tax at 15%, receive refunds for imputation credits that exceed their tax liability.

Australia's double-tax treaties generally allow for a withholding tax of 15% on dividends paid to non-resident shareholders, though a lower rate sometimes applies (for example, under a protocol to the Australia-US treaty, implemented in mid-2003). Australia and New Zealand agreed in early 2003 to extend their dividend-imputation systems to include companies residing in the other country. Otherwise, the withholding tax is 30% if no double-tax treaty exists (see Double-tax treaties).

Corporate taxes: Taxes on royalties and fees

Royalties are subject to withholding tax of 30% on the gross royalty. This is generally reduced to 15% if the recipient of the royalty resides in a country with which Australia has a double-tax treaty (see Double-tax treaties).

Royalties are defined very broadly to include fees paid for the use or supply of certain **property** or rights. Royalties paid by Australian businesses are generally allowable as deductions against taxable income. The deductibility of royalties paid by an Australian **business** to a non-resident related party (such as a foreign parent **company**) is subject to Australia's transfer-pricing rules. States levy royalty taxes on most mineral and onshore **oil** production; these payments are deductible as expenses for income-tax purposes.

Royalty withholding tax applies to rental payments to non-residents under arrangements in which cross-border leases are structured as hire-purchase arrangements. Typically, these involve using tax havens and round-robin financial transactions under which it is claimed that little or no interest is subject to interest withholding tax.

Corporate taxes: Double-tax treaties

Australia has tax treaties in force with 43 countries, and it has separate airline-profits agreements with China, France and Italy. Australia also has an airline-profits agreement with Greece, with which it has no double-tax treaty. It signed tax treaties in 2010 with Chile (March) and Turkey (April). The agreement with Chile went into force in February 2013, while the treaty with Turkey entered into force in June 2013.

The treaties generally reduce withholding tax on dividends, interest and royalties paid to residents of signatory countries. All observe the principles that the country where income originates has a prior right to charge income tax and the recipient's country of residence should allow credit for taxes already paid.

New double-tax arrangements with New Zealand came into force in March 2010; these cut the dividend withholding rate from 15% to zero on dividends where residents of either country have holdings of 80% or more in a company and 5% where the inter-country holdings are least 10%. The new arrangements also provide for lower withholding tax on interest (zero or 10%, down from a flat 10%) and royalties (5%, down from 10%).

Withholding tax rates under Australia’s double-tax treaties (%)

Country of recipient	Dividends(%)	Interest (%)	Royalties (%)
Argentina	10/15	12	10/15
Austria	15	10	10
Belgium	15	10	10
Canada	5/15	10	10
Chile	5/15	5/10	5/10
China	15	10	10
Czech Republic	5/15	10	10
Denmark	15	10	10
Fiji	20	10	15
Finland	0/5/15	0/10	5
France	0/5/15	0/10	5
Germany	15	10	10
Hungary	15	10	10
India	15	15	10/15/20
Indonesia	15	15	10/15
Ireland	15	10	10
Italy	15	0/10	10
Japan	0/5/10	0/10	5
Kiribati	20	10	15
Malaysia	0/15	15	15
Malta	15	15	10
Mexico	0/15	10/15	10
Netherlands	15	10	10
New Zealand	0/5/15	0/10	5
Norway	0/5/15	0/10	5
Papua New Guinea	15/20	10	10
Philippines	15/25	15	15/25
Poland	15	10	10
Romania	5/15	10	10
Russia	5/15	10	10
Singapore	0/15	10	10
Slovakia	15	10	10
South Africa	5/15	0/10	5
South Korea	5/15	15	5
Spain	15	10	10
Sri Lanka	15	10	10
Sweden	15	0/10	10
Switzerland	15	10	10
Taipei	10/15	10	12.5
Thailand	15/20	10/25	15
Turkey	5/15	0/10	10


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United Kingdom        0/5/15       0/10         5
United States         0/5/15       0/10         5
Vietnam               10/15        10           10
Applies to the
unfranked portion of dividends only. Treaty allows for a
15% withholding tax on interest, but Australia levies the tax at a rate of
10%.
Rate varies with category of royalty: 10% on rents and
royalties for the use of industrial, commercial and scientific equipment; 15%
on
royalties paid by the Australian government or a public-sector body; and 20%
for
other royalties and fees during the first five years of an agreement (15%
thereafter). Rate on dividends is 15% for companies and
25% for others; 15% may apply to preferred areas of activity (not specified),
25% for other activities. All limits apply to companies
only; the limit on dividends—15% for industrial undertakings, 20% for
others—applies only if the recipient company directly owns 25% or more of
a paying company; rate on interest is 10% where the recipient is a financial
institution, and 25% otherwise.
Source: Australian Taxation Office.
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Corporate taxes: Intercompany charges

Business expenses paid by companies operating in Australia to foreign affiliates are tax deductible, subject to transfer-pricing provisions in Australia's tax laws. Transfer-pricing rules authorise the Australian Taxation Office (ATO) to examine international agreements in order to verify that **transactions** are conducted at arm's length and apply equally to branches and subsidiaries. The ATO may order tax adjustments if **transactions** do not meet these standards.

The ATO has adopted the OECD's Transfer-Pricing Guidelines for Multinational Enterprises and Tax Administrations. It invites multinational companies with significant international related-party dealings to enter into advance-pricing arrangements (APAs), which set out the transfer-pricing treatment of the taxpayer's future international related-party dealings. An APA must illustrate the application of an approved ATO methodology to support the **company**'s contention that the prices charged are at arm's length.

The ATO requires Australian taxpayers to provide information in their income tax returns on the nature and extent of cross-border **transactions** involving affiliated parties, to help in audit selection. Penalties for tax avoidance through profit shifting are usually 25% of outstanding tax, falling to 10% if the **company** had a reasonably arguable position and there was no tax avoidance.

Corporate taxes: Turnover, sales and excise taxes

The federal government levies a multistage, 10% goods and services tax (GST) on the value-added component of a broad range of goods and services, and it passes the revenue on to the states. Consumers do not pay GST on certain items (such as exports and "basic foods"), and the final vendor may claim a GST refund from the Australian Taxation Office. Other items, such as financial services and **residential** rents, are "input taxed"-that is, the consumer is not charged GST, but the vendor may not claim a credit for GST paid on inputs. Special equalisation taxes have been introduced to make up the difference between the GST and the previous wholesale sales tax, on goods including beer, luxury cars, spirits, tobacco and **wine**.

Excise duty applies on some goods manufactured in Australia, mainly, alcohol, petroleum products and tobacco. These may be manufactured only under a government licence. Customs duty is also imposed on imports of these goods to ensure that they are treated consistently with locally manufactured products.

Corporate taxes: Other taxes

Governments in the states and territories have limited taxing powers since the Australian constitution does not permit them to levy taxes on income. They can impose a payroll tax (levied at up to 7% on wages and salaries) and a land tax. These tax payments are deductible expenses for income-tax purposes.

A carbon tax, part of Australia's carbon-pricing programme approved in November 2011, came into force on July 1st 2012, but was repealed as of July 1st 2014.

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CO autaxo : Australian Taxation Office

NS e211 : Government Taxation/Revenue | c184 : Joint Ventures | e2111 : Direct Taxation | c1512 : Dividends | ccptax : Corporate Taxation | c13 : Regulation/Government Policy | gpol : Domestic Politics | c15 : Performance | c151 : Earnings | c18 : Ownership Changes | cactio : Corporate Actions | ccat : Corporate/Industrial News | e21 : Government Finance | ecat : Economic News | gcat : Political/General News | gpir : Politics/International Relations | ncat : Content Types | nfact : Factiva Filters | nfce : FC&E Exclusion Filter | nfcpin : FC&E Industry News Filter

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IPD Regulations

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AN Document EIUCP00020140902ea8t0000b

