

# Australia

## Contacts

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## 1. Types of tax

### 1.1 Inheritance tax

There is no inheritance tax in Australia.

### 1.2 Gift tax

There is no gift tax in Australia.

### 1.3 Real estate transfer tax

There is no real estate transfer tax in Australia.

### 1.4 Endowment tax

There is no endowment tax in Australia.

### 1.5 Transfer duty

In all states and territories, there is an exemption from stamp duty (or only nominal duty) regarding the vesting of dutiable property in the executor of a deceased person. This also applies to the transfer of assets to the beneficiary of a deceased estate.

### 1.6 Net wealth tax

There is no net wealth tax in Australia.



## 1.7 Others

In some circumstances, an immediate income tax liability can arise upon death, including:

- ▶ Asset transfers on death to a charity, superfund or foreign resident can have capital gains tax (CGT) costs.
- ▶ Immediate CGT liability can arise when a discretionary trust deed provides that the trust is to vest on a specific date or on the death of the specified individual (often the parents).
- ▶ When benefits in an Australian complying superannuation fund are paid to non-dependents on death, tax of 17% is payable on the taxable component.
- ▶ Earnings in a foreign superannuation or retirement fund that have accumulated since the member became an Australian resident may be taxable on payment to nominated beneficiaries.

## 2. Who is liable?

There is no inheritance tax in Australia so this is inapplicable.

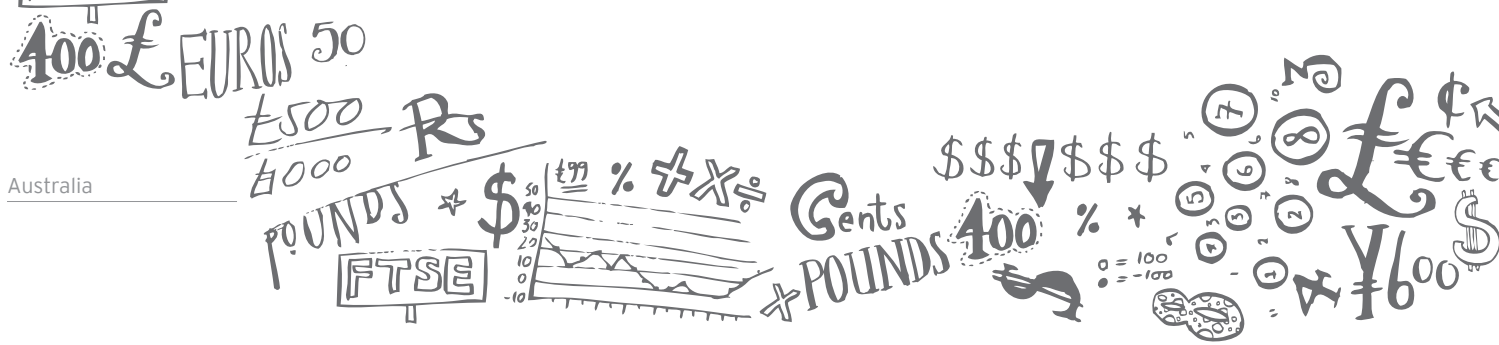
## 3. Rates

Although Australia does not have an inheritance or gift tax, there are certain circumstances where tax can be paid by an individual as a result of death as described above. Listed below are adult income tax rates for the 2016-2017 income year (1 July 2016 to 30 June 2017).

Taxable income	Tax payable thereon
A\$0-A\$18,200	None
A\$18,201-A\$37,000	19% in excess of A\$18,200
A\$37,001-A\$87,000	A\$3,572 plus 32.5% in excess of A\$37,000
A\$87,001-A\$180,000	A\$19,822 plus 37% in excess of A\$87,000
More than A\$180,000	A\$54,232 plus 45% in excess of A\$180,000

A Medicare levy of 2.0% of taxable income applies to residents plus a 2.0% Temporary Budget Repair Levy. The Temporary Budget Repair Levy is payable for taxable incomes over A\$180,000 for the 2014-15, 2015-16 and 2016-17 income years. This is reduced for low-income levels of family income.

Individual tax returns are generally due between 31 March and 15 May of the year following year-end (30 June each year) with tax payable broadly five weeks post-lodgment.



## 4. Exemptions and reliefs

## 5. Filing procedures



## 7.2 Superannuation funds

Monies held within a superannuation fund can assist with asset protection, and generous tax concessions are available in respect of contributions and earnings derived by the fund.

Monies held within superannuation are primarily dealt with outside of a person's will (although the will can assist in ensuring the benefit is taxed in the most efficient manner where the fund pays the death benefit to the estate of the individual). The estate planning issues for superannuation are dependent on whether the individual has set up a personal fund or has placed funds in a public fund. It is most common for HNWIs to have a personal fund.

If a personal fund has been established with a corporate trustee, a key issue that requires addressing is the ongoing control of the corporate trustee of the fund to ensure that benefits paid on the death of the individual are distributed in the most tax-efficient manner with asset protection in mind. The use of "reversionary pensions" and "binding death benefit nominations" are also common means of ensuring the tax-efficient transfer of superannuation proceeds to desired beneficiaries.

## 7.3 Private ancillary funds

Private ancillary funds (a private fund established that is entitled to receive tax-deductible donations) continue after the death of the founder.

# 8. Grants

With regard to estate taxes, there are no specific rules regarding grants in Australia.

# 9. Life insurance

Life insurance payments are generally exempt from tax when received by the nominated beneficiary.

# 10. Civil law on succession

## 10.1 Estate planning

Australia does not have an inheritance or gift tax. However, there are tax consequences that can arise at the time of death and estate planning measures that should be undertaken.

Considerations and strategies relevant for individuals include:

- ▶ Should a discretionary testamentary trust be established? A testamentary trust can provide asset protection advantages and access to the CGT discount, and minors are not subject to punitive tax rates on income distributions. In certain circumstances, family law protection and bankruptcy protection from creditors can be enhanced with the establishment of a testamentary trust. The use of a testamentary trust is a common strategy for funding the maintenance and education costs of minor children and grandchildren. The testamentary trust is established in the individual's will and only comes into existence on the death of the individual. The expected level of the individual's wealth on death will be a factor, as there are ongoing compliance costs with the maintenance of a testamentary trust.
- ▶ To what extent should an older individual transfer assets to intended beneficiaries prior to death? This often assists in the reduction of post-death family disputes and is effective when the individual has unused capital losses (as capital losses that would otherwise be lost on death can be offset on assets that have appreciated since acquisition and are transferred).



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- ▶ There are various strategies regarding donations, including the timing thereof. For example, it can be more tax-effective to make donations pre-death instead of post-death.
- ▶ Where the individual has a desire to ensure equity between family members, it is necessary to ensure that the will (and testamentary trust if established) provides for the split of assets between family members to be on a post-tax basis (i.e., after the CGT cost bases that the beneficiaries will inherit have been taken into account).
- ▶ It is also necessary to ensure that a family member's will does not undo asset protection strategies put in place during the individual's lifetime. For example, if the will of the spouse of an at-risk individual provides that on the death of the spouse the at-risk person will be the beneficiary of assets, then asset protection is lost. It is also important in the context of asset protection that potential inheritances and control of assets that cannot be dealt with in an individual's will are considered.

An estate planning review of an individual's personal assets and assets that cannot be dealt with in an individual's will (including regular review thereof and the taking of future actions cognizant of the estate plan) will ensure:

- ▶ There is a tax-effective transfer of assets to nominated beneficiaries.
- ▶ The incapacity of the individual is addressed at all stages, including whom is given the responsibility to control the individual's entities upon the death of the individual.
- ▶ Asset protection implications for the individual and his or her beneficiaries are considered.

## 10.2 Succession

This is not applicable to individuals in Australia.

## 10.3 Forced heirship

This is not applicable in Australia.

## 10.4 Matrimonial regimes and civil partnerships

This is not applicable in Australia.

## 10.5 Intestacy

If a person dies without making a will, his or her assets will be dealt with in accordance with the laws of intestacy in that state or territory. One of the relevant factors is whether the deceased had a spouse or children.

