

Australia

Contacts

Brisbane

EY
Level 47
111 Eagle Street
Brisbane, QLD 4000
Australia

Ian Burgess
ian.burgess@au.ey.com
+61 7 3243 3711

Peter Vilaysack
peter.vilaysack@au.ey.com
+61 7 3011 3162

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

Limited circumstance arises upon death where an immediate tax liability is included when:

- ▶ Asset transfers on death to a charity, superfund or foreign resident can have capital gains tax (CGT) costs
- ▶ Immediate CGT liability can arise where 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), where benefits in an Australian complying superannuation fund are paid to non-dependents on death, tax of 16.5% 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. Listed below are adult income tax rates for the 2013-2014 income year 30 June.

Taxable income (A\$)	Tax payable thereon (A\$)
A\$0-A\$18,200	None
A\$18,201-A\$37,000	19% in excess of A\$18,200
A\$37,001-A\$80,000	A\$3,572 plus 32.5% in excess of A\$37,000
A\$80,001-A\$180,000	A\$17,547 plus 37% in excess of A\$80,000
More than A\$180,000	A\$54,547 plus 45% in excess of A\$180,000

A Medicare levy of 1.5% of taxable income applies to residents, increasing to 2.0% from 1 July 2014. This is reduced for low-income levels of family income. An increase in the tax-free threshold to A\$19,400 is expected from 1 July 2015.

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 5 weeks post-lodgement.





In addition to assets held in an individual's own name, it is common for HNWI's in Australia to hold considerable wealth in discretionary trusts, a superannuation fund (particularly nearing and post retirement) and in private ancillary funds (PAFs).

Assets held within a discretionary trust cannot be dealt with in an individual's will. Discretionary trusts are common structures in Australia for HNWI's to hold the family's wealth, particularly investment assets (with the relevant drivers being tax efficiency and asset protection advantages).

In selecting the successor appointor and guardian, it is important to ensure that the chosen successor (and his or her controlled entities) is not precluded from being a beneficiary of the trust as a result of the successor position.

Family members often have unpaid present entitlements, e.g., rights to draw on prior trust distributions where the cash has not been paid to the beneficiary from discretionary trusts. It is important to take unpaid present entitlements into account in the context of an individual's estate plan, particularly when treating family members equally and for asset protection.

It is necessary to review the vesting date of discretionary trusts during an estate planning review. Some deeds may provide for a specified period to be the vesting date or that the death of the specified individuals (often this will be the parents) results in the trust vesting. This effectively means that the trust ends and can result in the crystallization of CGT liabilities on CGT assets held within the trust and transfer duty in respect of properties owned by the trust. The tax liability in respect of the crystallization of the CGT liabilities and transfer duty will either be paid at the trustee level or by the beneficiaries of the trust in the relevant year of income.

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.

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.





This is not applicable to individuals in Australia.

This is not applicable in Australia.

This is not applicable in Australia.

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.

The basic procedures of administration and probate for deceased estates are generally the same in each state or territory of Australia.

A grant can either be a grant of probate of a will or a grant of letters of administration where the individual dies without a will. In either case, the grant of probate or letters of administration is effectively the official recognition of the will (i.e., for a grant of probate) or appointment by a court of an administrator (i.e., for a grant of letters of administration) and the right of the executor or administrator to administer the estate. There is no statutory requirement that a grant be obtained in every case.

Generally, a grant is obtained in the jurisdiction or place in which the deceased left assets or where the deceased resides. If assets are held outside Australia, the grant obtained in Australia may be “recognized” or “resealed” in a foreign jurisdiction subject to the laws of that jurisdiction being able to “recognize” or “reseat” the grant. The “resealing” of the grant has the effect that the original grant obtained in Australia has been obtained in that foreign jurisdiction.

When a grant has been obtained, the executor or administrator obtains legal title to the assets of the deceased estate. After administration of the deceased's estate is completed, the executor or administrator holds the assets on trust for the beneficiaries, subject to distribution to the beneficiaries.

11. Estate tax treaties

This is not applicable in Australia.

There is no gift or estate tax treaty currently in Australia. However, the US continues to recognize the gift and estate tax treaties previously entered into with Australia (please refer to the United States chapter of this guide).