

Australia

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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 not applicable.

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 2017-18 income year (1 July 2017 to 30 June 2018).

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.

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-lodgement.



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 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).



- 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:

- 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.



10.6 Probate or letters of administration

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

A grant can be either a grant of probate of a will or a grant of letters of administration when 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 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

11.1 Unilateral rules

This is not applicable in Australia.

11.2 Double-taxation treaties

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).