



## DOING BUSINESS IN AUSTRALIA

# COMPANY FORMATION IN AUSTRALIA

*Internationals are encouraged to visit Australia, meet with advisors and have the right conversations before establishing an Australian business footprint.*

## MAIN FORMS OF COMPANY/BUSINESS IN AUSTRALIA

- Proprietary (private) companies: Often used for private ventures or as subsidiaries of public companies
- Proprietary companies: Have up to 50 shareholders (excluding shareholders who are employees)
- Australian branch: Relates to a foreign corporation operating in Australia in its own right in the absence of establishing a subsidiary
- Public companies: Traditionally used for larger public ventures and have no limit to shareholder numbers

## SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

- Determine whether a Permanent Establishment (PE) exists for the parent
- Determine the correct profit allocation
- Consider the implications of Goods & Services Tax (GST) liability
- Consider the failure to comply penalties
- Consider the effective repatriation of profits and transfer pricing methodologies
- Determine the Double Tax Treaty rules
- Consider harmonizing reporting dates and a Substituted Accounting Period (SAP) application

## LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

- Consider the need to quarantine liability within the jurisdiction
- Determine a Company Public Officer appointment and consider the attached personal liability for certain tax debts
- Corporate regulator registration is lodged with Australian Securities & Investment Commission (ASIC)
- Registration is required for private, public and foreign corporations/branches

- Constitution: Governing document for Australian entity
- Name availability: Check with ASIC's Business Name Index register
- A Private company: Requires Proprietary Limited or 'Pty Ltd' at the end of its name
- Shareholder liability: Limited to share capital invested upon wind up
- Directors: 1 director minimum requirement and 1 director must reside in Australia
- Secretary: 1 minimum requirement but 1 must reside in Australia
- Public Officer: 1 and must reside in Australia
- Reporting: Rules vary between small and large corporations

- Size is determined by consolidated group data:
  - < \$25 million turnover
  - < 50 employees and
  - < \$12.5 million gross asset value

In order to be classified as a large corporation, two of these three criteria must be met.

Foreign owned corporations require an annual audit but exemption can be obtained in many circumstances.

### Local Requirements

- Director: Minimum 1 director and 1 director must reside in Australia
- Secretary: Minimum 1 and must reside in Australia
- Public Officer: 1 and must reside in Australia



## DOING BUSINESS IN AUSTRALIA

Foreign owned corporations have limited fund raising capability.

Directors can be held personally responsible under specific circumstances.

- Public companies: Requires 'Limited' or 'Ltd.' at the end of its name
- Shareholder liability: Limited to the share capital invested
- Directors: Minimum 3 directors of which 2 must ordinarily reside in Australia
- Company secretary: 1 minimum that ordinarily resides in Australia
- Fund raising: Can raise funds within specific governing laws

Can be listed on the Australian stock exchange.

### Australian branch

Registration for an Australian branch is filed as 'non resident foreign corporation' with the corporate regulator Australian Securities and Investments Commission (ASIC).

- Corporate identifier: Australian Registered Body Number (ARBN)
- Application for Taxation File Number (TFN) must be made
- There are stringent Proof of Identity requirements. Registration will not be granted if these requirements are not met in full
- A registered office needs to be established in Australia. A local agent needs to be appointed also
- This agent is comparable to a director of a corporation and has the same directorial responsibilities
- Audit relief may be available depending on circumstances
- There may be audit requirements and in certain cases audit relief may be applied for and made available

## CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

- Local business may respond better to a locally incorporated entity under certain circumstances
- Specific visa requirements must be considered for expatriate staff
- Have employment contracts vetted before finalization to protect against unnecessary costs

## OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

Business and tax registrations are required both at federal and state levels.

### Federally

- Australian Securities Commission (ASIC) Australia's corporate regulator
- Australian Business Number
- Tax File Number
- Goods and Services Tax registration
- Withholding (employer and royalties / licence fees)

### By State

- Payroll taxes
- Workers compensation insurer
- Registration to protect of trademarks and logos should be made
- Must have a registered office in Australia that is an actual street address
- Employment agreements must address Australian employment law aspects contained within Fair Work Australia federal legislation
- Superannuation /pension contributions for local staff and depending on the specific bilateral agreement that exists can apply to expatriate employees
- Applications can be made for Research and Development incentives and can be granted subject to meeting certain conditions