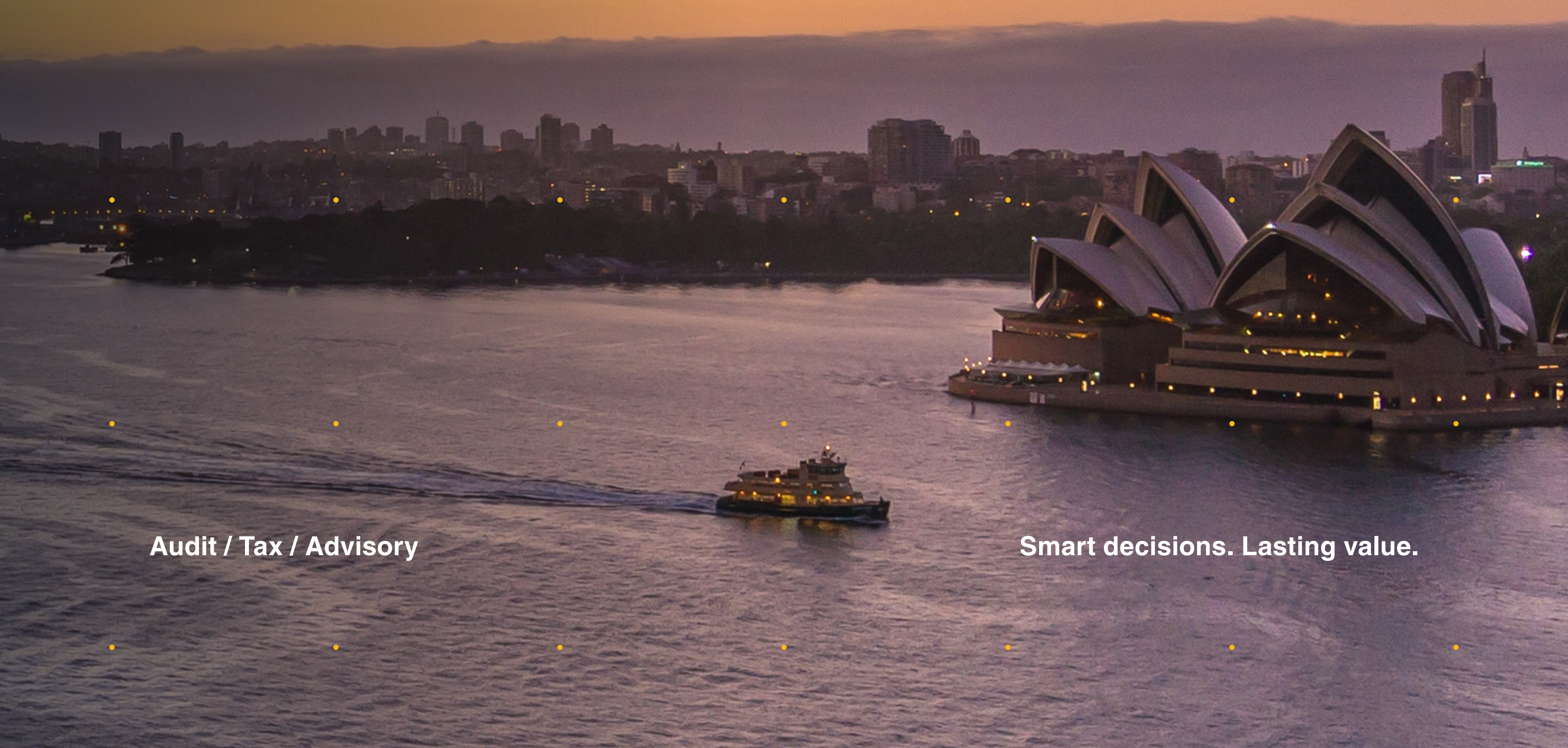
Investing in Asia Pacific 2021

Australia



Audit / Tax / Advisory

Smart decisions. Lasting value.

Table of contents

Welcome

to the Crowe Global Investing in Asia Pacific 2021: Australia guidebook.

This guide forms a part of the Investing in Asia Pacific 2021 series and provides a quick reference for those interested in investing in Australia. While it is not exhaustive, this guide aims to answer some of the key questions that may arise. When specific issues arise in practice, it will often be necessary to consider the relevant laws and regulations and to obtain appropriate professional advice.

The guidebook will cover five main topics as follows:

- Establishing the business entity
- Tax information
- IPO quick facts
- Human resource requirements
- Withdrawal procedures

Establishing the business entity

Formation and costs

Company
- Company can be set up within 24 hours with the Australian Securities and Investments Commission (ASIC) for around AUD $2,000.
- Taxation registrations including Australian Business Number (ABN), Tax File Number (TFN), Goods and Services Tax (GST) and Fringe Benefits Tax (FBT) required. May take up to 28 days.
- Cost of taxation registrations between AUD $750 - AUD $1,000.

Branch
- Register with ASIC as a foreign company carrying out business in Australia. You'll be issued an Australian Registered Business Number (ARBN).
- Taxation registrations including ABN, TFN, GST and FBT required. Due to complex identity check processes, whole process can take two (2) to four (4) months.
- Cost between AUD $3,500 – AUD $4,500.

Representative Office
- Assuming this is for set up of payroll only with no fixed branded office and no tax permanent establishment and no business carried on according to Corporations Act.
- Taxation registration required to obtain ABN or Pay As You Go (PAYG) withholding number.
- Due to complex identity check processes, whole process can take two (2) to four (4) months.
- Cost between A$ 2,500 - A$ 3,500.

Investment incentives

Company

a. Research & Development incentives (AusIndustry, self-assessed application).

b. Film tax incentives (Australian Tax Office (ATO), Screen Australia).
c. Export Market Development Grant (AusIndustry) and Export Finance and Insurance Corporation assistance.

All incentives require pre-registration and detailed information is needed for claim.

Branch

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b. Film tax incentives (ATO, Screen Australia).

All incentives require pre-registration and detailed information is needed for claim.

Foreign ownership restrictions

Company
Provided the company does not own, amongst other things, Australian agricultural land, pre-existing residential land, strategic assets or water entitlements there is no limit on the percentage of foreign ownership.

Branch
Same as for company.

Representative Office
Same as for company.

Work permits and visas

Company
Temporary work visas take around three (3) to four (4) months. In most cases, sponsorship by employer requires significant documentation and security requirements. Further information can be obtained from our recommended migration agent or lawyer.

Branch
Same as for company.

Representative Office
Same as for company.

Accounting standards and audit requirements

Company
Accounting standards used in Australia are IFRS-compliant. Lodgment of audited financial statements is required for wholly foreign owned subsidiaries and companies considered "large". A company is considered large if two (2) of the following tests are satisfied:

- More than AUD $50 million turnover;
- More than AUD $25 million assets; or
    - More than 100 employees

Some limited exemptions may be available from audit and lodgement of financial statements.

Branch
Accounting standards used in Australia are IFRS-compliant. Lodgement of audited consolidated foreign financial statements (or local branch financial statements) is required where a branch is registered with ASIC as a foreign company.

Representative Office
Not registered with corporate authority as not carrying on a business per Corporations Act.

Residential directors/ promoter's requirements

Company
At least one (1) resident director required.

Branch
At least one (1) local agent required.

Foreign ownership over tangible assets

Company
Foreign Investment Review Board (FIRB) reviews asset acquisitions above minimum acquisition costs and in certain industries including mining and real property. Approval from FIRB may be required before acquisition can be effected.

Branch
FIRB reviews asset acquisitions above minimum acquisition cost and in certain industries including mining and real property. Approval from FIRB may be required before acquisition can be effected.

Country quirks

Branch
Complexity in tax registrations due to requirements to certify/verify ID documents for all directors.

Successful companies consider tax implications before they make business decisions, so they do not pay more than their legal obligation. This makes international tax compliance, consulting, and structuring a crucial element in your global strategy.

Tax information

Overview

Australia uses a **residency basis** of taxation. This means:
1. Residents (for tax purposes) are taxed on their worldwide income from all sources.
2. Non-residents (for tax purposes) are generally only taxed on their Australian sourced income.

The **standard income tax year** in Australia is from 1 July to 30 June. Companies in foreign owned groups that balance on other than 30 June can apply for a substituted period.

Corporate tax

Corporate tax rate
Standard company tax rate is 30%. Certain companies (i.e. base rate entities) with an aggregated group turnover of less than AUD $50 million, may be taxed at 25%, subject to satisfying a number of conditions (e.g. 80% or less of total income consists of passive income such as rent, dividends, interest, royalties and net capital gains).

Diverted profits tax (DPT)

A DPT of 40% is imposed on significant global entities (SGEs) that divert profits offshore through related entities to reduce their Australian taxes payable. DPT would typically apply to such transactions if the amount of tax paid in the foreign country is less than 80% of the amount of tax that would have been payable in Australia if the profits were to be taxed in Australia.

An entity is an SGE for an income year if it is:
- A global parent entity with an annual global revenue of AUD$1 billion or more; or
- A member of a group of entities (consolidated for accounting purposes) where the global parent entity has an annual global revenue of AUD$1 billion or more. (however, there is an exception from the DPT if the Australian companies have a turnover of less than AUD $25 million).

Group tax relief
Australia has a tax consolidation regime that allows wholly owned groups to operate as a single entity for income tax purposes.
The benefits of consolidation include:
1. Reduced compliance costs once consolidated as only one tax return needs to be lodged for the entire group.
2. Intra-group transactions such as management / service fees, loans and sale / purchase of inventory, are disregarded for tax purposes.
3. The Head company can use the subsidiary's transferred losses and deductions.
4. Potential uplift of the cost base of the assets of a subsidiary joining a consolidated group (i.e. may lead to eventual lower capital gains when eventually sell the CGT asset of higher depreciation deductions on depreciable assets).

Tax treatment of unutilised tax losses
If a company incurs tax losses in any year, it can carry forward the tax losses and apply them against future taxable income of the company, subject to satisfying either the continuity of ownership test or failing that, the same business test or the similar business test. In limited circumstances, companies can also carry back their tax losses to offset against taxable income of prior years.

Tax treatment of dividends received from domestic shareholdings
Australia uses an imputation system to avoid economic double taxation of dividends.

Dividends paid by an Australian resident company to a resident shareholder are taxable but subject to imputation (i.e. Australian shareholders are entitled to a credit for the tax paid by the company). Dividends paid by an Australian resident company to a non-resident shareholder are:
- Exempt from Australian income and withholding taxes, to the extent the dividend is franked.
- Subject to Australian dividend withholding tax, to the extent the dividend is unfranked.

Tax treatment of dividends received from foreign subsidiaries or associated companies
Dividends received from foreign subsidiaries or associated companies are not taxable to the Australian company recipient provided it has a 10% or greater interest in the foreign company. Other dividends received will be taxable.

Tailored Solutions

Controlled Foreign Company (CFC) Rules
Australia has a CFC regime that taxes Australian resident shareholders of Australian controlled companies located overseas (generally in low tax jurisdictions) on certain profits that have not yet been remitted to Australia.

Thin Capitalisation rules
Australia has a thin capitalisation regime that denies interest deductions for excessive debt if the entity's debt-to-equity ratios exceed certain limits.

Tax filing deadlines
The standard filing date for companies is day 15 of month 7 after year-end (i.e. for 30 June filers, the company tax return is due for filing by 15 January). Tax agent filed returns may be later depending on the size of the company.

Capital Gains Tax (CGT)

Tax treatment of capital gains arising from the disposal of domestic shareholdings
Capital gains are subject to tax in Australia.

Some taxpayers can qualify for a CGT discount of 50% (e.g. individuals and trusts) or 33.33% (e.g. complying superannuation funds) provided they held the shares for at least 12 months before disposal.

Non-resident taxpayers will only be subject to CGT on the disposal of shares in land rich asset companies. An individual that is a non-resident after 8 May 2012 may not qualify for the full 50% CGT discount on the ultimate sale of a land rich asset.

Tax treatment of capital gains arising from the disposal of foreign shareholdings
Normally assessable to Australian taxpayers, but concessionary tax treatment / exemptions for disposals of certain non-portfolio shares (i.e. where a 10% or greater interest is held in the foreign company).

Deductibility of capital losses resulting from the disposal of domestic and foreign shareholdings
Capital losses can only be deducted from capital gains to determine a net capital gain in the year of the capital loss or a subsequent year. The amount of net capital gain is taxable.

Stamp duty

Stamp duty is imposed by each Australian state and territory based on the nature and location of the dutiable property
The definition of dutiable property varies between the states but generally includes both tangible and intangible assets such as:

- Land and interests in land such as leaseholds or fixtures.
- Goods, such as plant and equipment and inventory.
- Trade receivables.
- Goodwill.
- Intellectual property and other intangible assets.

Where duty is imposed, the applicable rate is determined based on the higher of the unencumbered value of the dutiable property or the consideration provided for the dutiable property. The applicable rate of duty varies between states and territories but can be as high as 7%.

In addition to ordinary conveyance duty, each Australian state imposes a foreign purchaser surcharge duty applicable to purchases of residential property by foreign persons. Certain Australian states also impose foreign purchaser surcharges on purchases of property other than residential property by foreign persons. The surcharge is calculated at rates of up to 8% varying between states.

Indirect acquisitions of real property through companies or trusts are also subject to stamp duty in Australia, under landholder duty and trust look-through provisions. The applicable rates of duty for acquisitions of shares or units in companies and trusts that are landholders are the same as ordinary conveyance duty rates. A landholder duty surcharge can also apply to purchases of shares or units by foreign persons.

<u>Examples of the stamp duty calculation:</u>
When a foreign person buys a property worth $1,064,000 in NSW, the person pays $43,087 stamp duty (the rate varies depending on the value of the dutiable property) and $85,120 of foreign purchaser duty (8% x $1,064,000). As a result, the person would be liable to pay $128,207 of duty on the purchase of $1,064,000 property in NSW.

Tax incentives

The Australian tax system provides tax incentives in the form of tax deductions / offsets related to capital invested in domestic manufacturing and scientific research operations. Assistance includes reduced rates of payroll tax, low cost industrial land, low interest loans and government guarantees. In addition, grants and rebates are available for export market development.

Qualifying R&D expenditure attracts a 43.5% refundable R&D tax offset for companies with a turnover of less than AUD$ 20 million and a non-refundable 38.5% R&D tax offset for other companies. The R&D tax offset can also be available for companies that undertake R&D activities on behalf of a related foreign company.

Investments in the Australian film industry may also qualify for concessional Australian tax treatment.

Withholding taxes

The following are domestic withholding tax rates on payments made to non-resident companies. The rates may be reduced according to Australia's tax treaties with other countries.

Interest	10%
Management fees	None
Unfranked dividends	30%
Rental	None
Royalties	30%

Crowe Global's member firms are committed to impeccable quality service, highly integrated service delivery processes and a common set of core values that guide decisions daily.

IPO quick facts

Bourses in the country

a. Australian Securities Exchange (ASX).
b. National Stock Exchange (NSX) (based in Newcastle).
c. Sydney Stock Exchange (SSX) (owned by AIMS Financial).

Admission requirements

Australia Securities Exchange (ASX)

a. Company size

i. Aggregated profit from continuing operations of at least AUD $1 million over the past three (3) years and at least AUD $500,000 over the past 12 months.
ii. Net tangible assets of at least AUD $4 million or a market capitalisation of at least AUD $15 million.
iii. Less than half of the total tangible assets must be cash or in a form readily convertible to cash, or if greater, the entity must have commitments consistent with its business objectives to spend at least half; and
iv. Sufficient working capital (generally at least AUD $1.5 million).

b. Public shareholding requirement

i. Minimum 300 non-affiliated shareholders with holdings with a value of at least AUD $2,000 each.

c. Qualitative requirements

i. Consideration must be made as to whether the investment community will view the company as attractive and give appropriate support.

Newcastle Stock Exchange NSX

a. Company size

i. Minimum market capitalisation of AUD $500,000.

b. Public shareholding requirement

i. Minimum 50 shareholders of which 25% in non-directors' hands (held in the hands of the public).

Sydney Stock Exchange

a. **Company size**
   i. Market capitalisation of AUD $2 million.
   ii. Net tangible assets of at least AUD $2 million.
   iii. Sufficient working capital (generally at least A$300,000).

b. **Public Shareholding requirement**
   i. At least 50 shareholders with a value of at least $2,000.

Please note that this is not a complete list of admission requirements.

Typical issuance size

ASX: Minimum generally of AUD $10,000,000.

NSX: No real guide.

SSX: No real guide.

Moratorium imposed

Depends on the type of listing and shareholder spread but can be up to two (2) years.

Securities quoted allowed in foreign currency

No.

Requirements for the appointment of a resident/local director and board composition

- All companies must have a director that resides in Australia.
- A listed company must have at least three (3) company directors with at least two (2) residing in Australia.
- Best practice and corporate governance look for boards to have a certain number of independent non-executive directors.

Restrictions for foreigners

Certain takeover transactions may require FIRB approval.

Methods of offer and restrictions

For information regarding methods of offer and restrictions, please contact Crowe in Australia.

Timeline

Generally three (3) months.

Approving authorities

ASIC and relevant stock exchange.

Estimated cost involved

This varies across different size companies. It includes:

- **a.** Listing fees.
- **b.** Brokers & Underwriting fees.
- **c.** Legal fees.
- **d.** Accounting fees.

Restriction on secondary listing or dual listing

Available in limited circumstances.

Language required for:

a. Prospectus: English.
b. Annual reports: English.
c. Audit report: English.

Requirements of auditors to be appointed

Only Australian Registered Company Auditors may sign audit reports.

Audit opinion required for

a. **IPO**
An Investigating Accountant's Report is required for inclusion in the prospectus.

b. **After IPO**
A full audit under Australian Audit Standards (which are fully compliant with ISAs) is required for each Annual Report. In addition, a review of the interim financial statements is required after six (6) months of each financial year and continuous disclosure rules also apply.

Good practice ahead of an IPO

- Undertake a valuation of the entity, providing comfort to potential investors.
- Forecast Review in compliance with ASIC Regulatory Guide 170.
- Financial model review.
- Fair value of balance sheet items and recognition of non-balance sheet items at fair value.

Human resource requirements

Special labour standards to consider

From 1 January 2010, employers and employees in the national workplace system are covered by the National Employment Standards (NES). Under the NES, employees have certain minimum conditions. Together with pay rates in modern awards and minimum wage orders, the NES makes up the safety net that cannot be altered to the disadvantage of the employee. The NES includes minimum entitlements to leave, public holidays, notice of termination and redundancy pay. In addition to the NES, an employee's terms and conditions of employment generally come from a modern award, agreement, pre-modern award and state or federal laws.

Social welfare: insurance, pension, etc.

Australia has a non-contributory welfare system; benefits are flat rate rather than earnings related. We also apply a much tighter means test than many other countries. In Australia the age pension is only available to those on low incomes and subject to asset test limits.

Some companies have a system whereby employees are eligible to become a member of a National Income Protection Plan. This Income Protection Insurance is designed to pay employees a regular monthly income should they be unable to work due to illness or injury. Superannuation is a retirement (including pensions) program in Australia. It has a compulsory element whereby employers are required by law to pay an additional amount based on a proportion of an employee's salaries and wages (currently 10%) into a complying superannuation fund.

Requirements for retirement benefits

From 1 July 2017, the minimum pension age for both men and women will progressively increase from 65 to 67 by 1 July 2023.

Legal annual leave, Long Service leave and public holidays

Australian Employees are entitled to either 20 or 25 days annual leave for each year of service, dependent upon their job position.

Unless otherwise provided by the Fair Work Act, the Employee's entitlement to annual leave accrues progressively during each year of service on a pro-rata basis and accumulates from year to year. Subject to the Fair Work Act, the Employer and the Employee may from time to time (as from 1 January 2010) agree in writing that the Employee may take an additional period of annual leave, in exchange for foregoing an equivalent amount of pay.

Subject to the Fair Work Act, the Employer and Employee may from time to time (as from 1 January 2010), agree in writing that the Employee may cash out an amount of accrued annual leave, provided that the Employee shall retain at least four (4) weeks accrued annual leave after cashing in any annual leave. In such circumstances the Employee will be paid the full amount that would have been payable had the Employee taken that amount of accrued annual leave foregone. The Employer may, where it is reasonable to do so, direct the Employee to take a period of annual leave.

In Australia employees are entitled to 'Long Service Leave' when they have been working for one company for a period of time. The time frame is typically ten (10) years, however each state and territory have their own legislation. To find out further details about this please go to the Fair Work website which will provide the links relevant to the State and Territory legislation.

Brief information on labour unions

The Australian Council of Trade Unions (ACTU) was established in 1927 with the purpose of lifting the living standards and quality of working life of all working people in Australia. Their strategy was to build union organisation of the workforce on a national basis. They still are in operation today and deal with issues around wage increases through the award system and campaigns in the field, safer workplaces, equality for women, working hours, entitlements to paid holidays and employment conditions, as well as superannuation.

Trusted Advisers

Withdrawal procedures

Company: legal procedures required for liquidation

For a solvent company the directors can place the company into members' voluntary liquidation, whereby the shareholders appoint a liquidator who takes control of the company, discharges its liabilities and distributes any surplus to the shareholders.

Alternatively, any company with assets of less than A$1,000 and no liabilities may be deregistered with ASIC. This process is simple but provides less protection for the shareholders.

Where a company is insolvent, the directors must appoint a liquidator as soon as they are aware the company is trading whilst insolvent or they can be personally liable for debts. This process is more complex and requires specialist practitioners to undertake this work.

Company: tax requirements

When a company ceases activities in Australia prior to liquidation or deregistration, there are several taxation requirements that must be addressed:

- To notify the ATO of the company's cessation of activities in Australia a final income tax return must be lodged. The final income tax return is for the period ending on the date in which the company permanently ceased trading in Australia. In this return the ATO is notified that the company has ceased trading and that no further income tax returns are necessary.
- If the company is registered for GST and/or PAYG Withholding it will be required to cancel these registrations on the date it ceases trading. A final business activity statement is then required to be lodged to this date, following which the GST and PAYG Withholding registrations will be cancelled. The ABN of the Company can also be cancelled at this time.
- The company must notify any relevant State Taxation Authorities of its cessation so as to cancel any payroll tax registrations.

Branch: legal procedures required for closing branch

A foreign company carrying on business in Australia must register the branch with ASIC. Upon cessation of business in Australia the branch must notify ASIC within seven (7) days by lodging Form 407: Notification of cessation, winding up or dissolution of a foreign company or registered Australian body. This will cancel the Australian Registered Body Number ("ARBN").

In addition to the above statutory requirements, other commercial considerations for the cessation of a Branch include (where applicable):

- Termination of lease and rental agreements.
- Payout of employee entitlements.
- Closure of banking facilities.

Branch: tax requirements

When a foreign company withdraws from Australia, there are several taxation requirements that must be addressed. A Branch is generally required to fulfill the same taxation obligations as a company; accordingly, the withdrawal process for tax purposes is similar to that of a company ceasing activities as set out above.

The Branch must:

- Notify the ATO of its withdrawal from Australia and lodge a final income tax return to the date of cessation.
- Prepare and lodge a final business activity statement to the date of cessation, following which the GST and PAYG Withholding registrations will be cancelled. The ABN of the Branch is also required to be cancelled.
- Notify the relevant State Authorities that the Branch has ceased trading to cancel any payroll tax registrations.

Representative office: legal procedures required for closing office

A foreign company with a representative office in Australia must register with the ASIC. Upon cessation of the representative office in Australia it must notify ASIC within seven (7) days by lodging Form 407: Notification of cessation, winding up or dissolution of a foreign company or registered Australian body. This will cancel the ARBN.

Representative office: any tax requirements

A representative office generally does not have any tax obligations in Australia. Accordingly, the closure of the office will have no tax implications or requirements.

It is important however to ensure that the representative office is not treated as a branch for Australian tax purposes.

International Specialists

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We are here to help you get to there.

At Crowe Global, we know you have a commitment to growing your firm, to being competitive in your local market while growing your global capabilities. We successfully navigate this challenge every day, which is why we are one of the top ten global accounting networks with over 200 independent accounting and advisory services firms in more than 145 countries around the world.

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