

## **OVERSEAS COMPANIES SETTING UP A BUSINESS IN AUSTRALIA – CHOICES OF BUSINESS STRUCTURE**

### **Background**

Australia's company regulator is the Australian Securities and Investments Commission, or ASIC ([www.asic.gov.au](http://www.asic.gov.au)). ASIC is an independent body operating under the direction of six full-time Commissioners appointed by the Governor-General on the nomination of the Treasurer of the Commonwealth of Australia.

The primary legislation under which Australian companies and Australian representative entities of overseas businesses operate is the Corporations Act 2001.

Matters relating to the taxation of companies are administered by the Australian Taxation Office ([www.ato.gov.au](http://www.ato.gov.au)).

### **Options**

Overseas businesses that wish to carry on a business in Australia have broadly 3 options available:

- A subsidiary limited company, incorporated in Australia
- An Australian registered branch
- A stand alone limited company, incorporated in Australia

There are different requirements attaching to each option.

Note that registering a business name is not the same as incorporating a company. Registering and using a business name does not create a separate legal entity, provide access to the company rate of tax, or limited liability status.

### **Proprietary Limited Companies**

Section 45A of the Corporations Act 2001 provides for the incorporation of a proprietary limited company, or Pty Limited. The majority of limited companies in Australia operate as a Pty Limited.

A proprietary company must:

- Be limited by shares, or be an unlimited company with a share capital
- Have no more than 50 non-employee shareholders
- Not do anything that would require disclosure to investors

A proprietary company is defined as being large or small.

### **Large proprietary company**

A proprietary company is defined as **large** for a financial year if it satisfies at least two of the following paragraphs:

- The consolidated revenue for the financial year of the company and any entities it controls is \$25 million or more
- The value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is \$12.5 million or more
- The company and any entities it controls have 50 or more employees at the end of the financial year.

**Large proprietary companies must prepare and lodge a financial report and a directors' report for each financial year. The accounts must be audited unless ASIC grants relief.**

### **Small proprietary company**

A proprietary is defined as **small** for a financial year if it satisfies at least two of the following paragraphs:

- The consolidated revenue for the financial year of the company and any entities it controls is less than \$25 million
- The value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is less than \$12.5 million, and
- The company and any entities it controls have fewer than 50 employees at the end of the financial year.

**Some small proprietary companies may have to lodge financial reports.**

## **Specific Issues**

### Subsidiary limited company, incorporated in Australia

- ASIC fee for incorporation – currently (01/07/2014) A\$457
- Must have an Australia-resident director
- Must have an Australian registered office and Australian place of business
- Will be issued with an ACN (Australian Company Number) by ASIC - and an ABN (Australian Business Number) by the Australian Taxation Office upon application
- Tax File Number, registration for PAYG Withholding (tax deducted from payroll) and GST registration usually sought at the same time as ABN registration
- Default financial year end is 30/06 (to coincide with the end of the Australian financial year), but a Substituted Accounting Period can be established with the Australian Taxation Office if the parent company has a different year end
- ASIC requires that an audited financial report and directors' report are prepared and lodged each year, within 4 months of the end of the financial year. However, relief from this requirement is available, but must be applied for within a strict timeline, and for each financial year
- Annual review fee is payable to ASIC – currently (01/07/2014) A\$243
- Annual company tax return to be submitted to the Australian Taxation Office, usually by 28/02 following the end of the previous 30/06 year end, although a company that has appointed a Registered Tax Agent will usually have an extended lodgment date
- The deadline for lodgment of the tax return for a company with a Substituted Accounting Date is the middle of the 7th month following the period end
- Tax payable on Australian company profits at 30%

### Australian registered branch

- ASIC fee for registration – currently (01/07/2014) A\$457
- Must have an Australia-resident local agent
- Must have an Australian registered office
- Will be issued with an ARBN (Australian Registered Body Number) by ASIC - and an ABN (Australian Business Number) by the Australian Taxation Office upon application
- Tax File Number, registration for PAYG Withholding (tax deducted from payroll) and GST registration usually sought at the same time as ABN registration
- Default financial year end is 30/06 (to coincide with the end of the Australian financial year), but a Substituted Accounting Period can be established with the Australian Taxation Office if the parent entity has a different year end
- **Not a separate legal entity from the overseas head office.** A branch is simply another office of the same legal entity – usually a limited company incorporated in the overseas jurisdiction.
- ASIC requires that a balance sheet, profit and loss account, and cash flow statement are lodged each year **for the foreign company including the Australian branch – not for only the Australian branch.** Relief from this requirement is available, but **is not available to companies incorporated in the United Kingdom**
- Fee is payable to ASIC when accounts are lodged with ASIC, must be done each year – currently (01/07/2014) A\$1,139
- Annual company tax return containing results of the Australian branch to be submitted to the Australian Taxation Office, usually by 28/02 following the end of the previous 30/06 year end, although an entity that has appointed a Registered Tax Agent will usually have an extended lodgment date
- The deadline for lodgment of the tax return for a branch with a Substituted Accounting Date is the middle of the 7th month following the period end
- Tax payable on Australian branch profits at 30%

### Stand alone limited company, incorporated in Australia

- ASIC fee for incorporation – currently (01/07/2014) A\$457
- Must have an Australia-resident director
- Must have an Australian registered office and Australian place of business
- Will be issued with an ACN (Australian Company Number) by ASIC - and an ABN (Australian Business Number) by the Australian Taxation Office upon application
- Tax File Number, registration for PAYG Withholding (tax deducted from payroll) and GST registration usually sought at the same time as ABN registration
- Financial year end will be 30/06 (to coincide with the end of the Australian financial year) – amendment to this is usually not possible
- No requirement to lodge a financial report and directors' report with ASIC
- Annual review fee is payable to ASIC – currently (01/07/2014) A\$243
- Annual company tax return to be submitted to the Australian Taxation Office, usually by 28/02 following the end of the previous 30/06 year end, although a company that has appointed a Registered Tax Agent will usually have an extended lodgment date
- Tax payable on Australian company profits at 30%

**In all cases the late notification of changes (eg director details, place of business) to ASIC will give rise to a late fee.**

**Comment**

We recognise that there may be sound reasons for an overseas entity to use a subsidiary or branch structure when commencing business in Australia. For example, the ability to offset a loss from the Australian branch against the profits of the overseas parent entity may be a key factor in the first period or two of trading.

Similarly, the ability to distribute profits upwards in the form of an intra group dividend may be a key factor which would mandate the use of an Australian subsidiary company.

However, should these issues not apply we would be inclined towards using a new stand alone Australian limited company, primarily because of the lower cost of compliance and reduced disclosure to ASIC.

**Further Assistance**

If you require any assistance setting up a business in Australia, including registering your business with the relevant authorities, please let us know. With offices in the UK and in Australia we are ideally placed to help.

*The contents of this factsheet are necessarily a general overview of a very detailed subject. The situation may change as company and tax legislation can alter quickly. We therefore strongly recommend that you take professional advice about your circumstances before placing any reliance on the contents of this factsheet.*

*Go Matilda Tax can be contacted in the UK by email on [info@gmtax.com.au](mailto:info@gmtax.com.au), and by telephone on 023 80 30 25 24.*

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