

Profits from Australian Activities of foreign-owned enterprise

Note: this is a summary only and business owners should seek formal guidance about the tax implications of business structure in Australia.

If you're considering setting up your business in Australia – or already have – then it's important to understand that how you operate here can have some significant tax implications.

Setting up in Australia

Typically a foreign-owned business may establish operations in Australia in one of two ways:

- As a branch of a foreign company; or
- A wholly owned subsidiary of a foreign company.

Generally speaking, there is no significant relative advantage or disadvantage of either method for Australian tax purposes, as both are subject to transfer pricing issues and are required to file an Australian tax return.

Having said, if you operate as a branch, you are in a world of uncertainty as to how the branch is taxed in Australia. At the moment, the Government is undertaking a review in this area and a recommendation report from the Board of Taxation is due to release in April 2013.

What is a branch?

Do you know a foreign firm may be liable to pay taxes in Australia for sending its employees to work on projects without a physical office or traditional concept branch in Australia?

It is not uncommon to be engaged in assisting Australian projects for specialist or one off assignment involving a building site or construction or installation project.

Depending on the length of the project and also the existence of double tax treaty, the project itself may trigger a notional branch or a tax permanent establishment. Once a permanent establishment

is created, the ATO has the right to tax the profit you derive as a foreign firm from the project. Further, various employment taxes may be applicable to the foreign employees such as PAYG withholding, superannuation, Workcover and payroll tax although certain exemptions are available.

What are the key tax considerations for a branch vs a subsidiary?

The table below outlines the similarities and differences in tax treatment of a branch compared to a subsidiary:

Issue	Branch	Australian Subsidiary
Australian taxable income	Corporate tax payable on Australian-source assessable income, subject to deductions, credits, etc. Subject to Double Taxation Agreements (DTAs), although DTAs generally support taxation of profits arising from business of permanent establishment (PE) in Australia	Corporate tax payable on worldwide assessable income, subject to deductions, credits, etc. Subject to DTAs, although DTAs generally support taxation of profits from Australian activities.
Tax rate	Corporate tax rate is 30%	Same as for branch
Filing of tax returns	Income tax returns are required to be filed each year. Quarterly returns also required for payment of income tax and goods and services tax (GST).	Same as for branch
Tax on repatriation of profits	Repatriation of profit to principal jurisdiction does not constitute a dividend and therefore dividend withholding tax is not applicable. Distributions by the entity out of the Australian profits, eg dividends, to non-resident entities may be subject to tax by assessment, subject to DTA relief	Withholding tax deducted from unfranked dividends (i.e. dividends from income not yet taxed) (standard rate 30%) paid to non-resident. These rates are subject to reduction under DTAs. Dividend withholding rate recently reduced under US DTA (for shareholders meeting specified criteria) to: <ul style="list-style-type: none"> • 5% for companies with at least 10% control; • 0 for companies with at least 80% control which held shares for 12 months; • otherwise 15%.

More Information

Australia's foreign tax law is inherently complex and we strongly advise that professional advice is sought when determining how to set up a presence here. For a more in-depth analysis of the tax treatment comparison, please contact Matt Zhou on 02 9957 4033.



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