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Requesting a mutual agreement procedure (MAP) to address potential taxation not in accordance with a tax treaty.

Providing services in Australia - what you need to know

What you need to know about providing services in Australia.

Selling goods into Australia

Your Australian tax obligations when importing goods into Australia with or without having a physical presence here.

QC 28628

Combating multinational tax avoidance – a targeted anti-avoidance law

How a targeted anti-avoidance law that came into effect on 1 January 2016 will combat tax avoidance by multinationals.

Last updated 12 April 2021

The Multinational Anti-Avoidance Law (MAAL) is part of the government's efforts to combat tax avoidance by multinational companies operating in Australia.

The MAAL has been established to ensure that multinationals pay their fair share of tax on the profits earned in Australia.

What schemes does the MAAL apply to?

The MAAL came into effect on 11 December 2015. It applies to certain schemes on or after 1 January 2016, irrespective of when the scheme commenced.

Broadly, the new law will apply if under the scheme, or in connection with the scheme:

- a foreign entity supplies goods or services to an Australian customer
- an Australian entity, that is an associate of or is commercially dependent on the foreign entity, undertakes activities directly in connection with the supply
- some or all of the income derived by the foreign entity is not attributable to an Australian permanent establishment, and
- the principal purpose, or one of the principal purposes of the scheme, is to obtain an Australian tax benefit or to obtain both an Australian and foreign tax benefit.

Who does the MAAL apply to?

The MAAL only applies to significant global entities (SGEs). An entity is an SGE for an income year if it is:

- a global parent entity with annual global income of A$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 income of A$1 billion or more.

This definition includes both:

- Australian-headquartered entities (with or without foreign operations)
- the local operations of foreign headquartered multinationals.

If global financial statements have not been prepared for the global parent entity, the Commissioner may make a determination that based on information available to him, the annual global income of the entity would be A$1 billion or more for the period.

Under the MAAL we can cancel any tax benefits an SGE, and its related parties, obtained from certain schemes described above. SGEs are also subject to increased penalties for tax shortfalls arising from the application of the MAAL.

Our engagement with you

Our Law Companion Ruling (LCR 2015/2) outlines how we will apply and administer the law. If you are impacted by the MAAL, we will work closely with you to provide greater certainty on how the law applies to you and, where appropriate, help you transition with certainty into compliant arrangements.

If you choose not to engage with us within the required timeframe, we will initiate compliance actions through our standard processes to review whether the MAAL applies to you.

See also:

- Significant global entities
- Combatting multinational tax avoidance – stronger penalties
- LCR 2015/2 *Section 177DA of the Income Tax Assessment Act 1936: schemes that limit a taxable presence in Australia*

- Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015
- Tax Laws Amendment (Combating Multinational Tax Avoidance) Explanatory Memorandum (PDF 554KB)

QC 48321

Diverted profits tax

The DPT aims to ensure that tax SGEs pay reflects their activities in Australia and prevents diverting profits offshore.

Last updated 13 July 2022

The diverted profits tax (DPT) achieves the following outcomes:

- aims to ensure that the tax paid by significant global entities (SGEs) properly reflects the economic substance of their activities in Australia
- aims to prevent the diversion of profits offshore through arrangements involving related parties
- encourages SGEs to provide sufficient information to the ATO to allow for the timely resolution of tax disputes.

Find out about

- Entities to which the DPT can apply
- Schemes where the DPT applies
- Our engagement with you

Entities to which the DPT can apply

The DPT only applies to SGEs. An entity is an SGE for an income year if it is either:

- a global parent entity with an annual global income of A$1 billion or more

- a member of a group of entities (consolidated for accounting purposes) where the global parent entity has an annual global income of A$1 billion or more.

For the purposes of the DPT, this definition includes both:

- Australian-headquartered entities with foreign operations
- the local operations of foreign headquartered multinationals.

If global financial statements have not been prepared for the global parent entity, the Commissioner of Taxation may make a determination. This determines that based on the information available, it is reasonably believed that the annual global income of the entity would be A$1 billion or more for the period, and therefore the entity is an SGE.

Schemes where the DPT applies

The DPT applies to income years that start on or after 1 July 2017. Importantly, it can apply to schemes entered into before 1 July 2017.

Broadly, the DPT applies if, under the scheme or in connection with the scheme:

- a taxpayer ('the relevant taxpayer') has obtained a tax benefit
- the principal purpose, or one of the principal purposes, of a person who entered into or carried out the scheme, was to enable the relevant taxpayer to obtain an Australian tax benefit or to obtain both an Australian and foreign tax benefit
- a foreign associate of the relevant taxpayer is involved in entering into or carrying out the scheme or is otherwise connected with the scheme
- none of the exceptions as set out below apply.

Taxpayers are not eligible for a 50/50 arrangement if the dispute relates to a DPT assessment.

When the DPT will not apply

The DPT will not apply where the taxpayer satisfies any of the following exceptions:

- the $25 million income test

- the sufficient foreign tax test
- the sufficient economic substance test.

The DPT will also not apply where the relevant taxpayer is one of the following types of entities:

- a managed investment trust
- a foreign collection investment vehicle with wide membership
- a foreign entity owned by a foreign government
- a complying superannuation entity
- a foreign pension fund.

Our engagement with you

We have published a number of documents that set out how we will apply and administer the DPT.

Law companion ruling LCR 2018/6

LCR 2018/6 *Diverted profits tax* aims to:

- help affected taxpayers and their advisors understand how the DPT law will apply
- clarify key concepts introduced by the measure.

Practical compliance guideline PCG 2018/5

PCG 2018/5 *Diverted profits tax* aims to assist those taxpayers who may be affected by the DPT by:

- setting out our client engagement framework for the DPT
- outlining our approach to risk assessment and compliance activity when the DPT is identified as a potential area of concern
- providing example scenarios that would be considered higher risk and likely to attract our attention.

The PCG provides framing questions and scenarios to assist in considering the relative risk of certain types of arrangements in the context of the DPT measure.

This PCG is intended to provide affected taxpayers with additional certainty and will allow us to direct our compliance resources to the higher risk areas of the law.

Law administration practice statement 2017/2

PS LA 2017/2 *Diverted profits tax assessment* provides:

- specific direction to our staff on our internal administrative oversight framework for the DPT
- the processes leading to the issuance of a DPT assessment which will provide assurance to taxpayers that the new rules will be applied with the appropriate levels of internal review.

The administrative framework introduces several levels of oversight and additional safeguards to provide assurance around the DPT process. This process ensures that the DPT will only be applied in appropriate circumstances to ensure that SGEs do not reduce the amount of Australian tax they pay by diverting profits offshore through arrangements with related parties.

See also

- Significant global entities
- Treasury Laws Amendment (Combating Multinational Tax Avoidance) Act 2017
- Diverted Profits Tax Act 2017

QC 59560

Doing business in Australia

What you need to know about the way tax applies to income you receive from conducting business activities in Australia.

Last updated 28 October 2016

Foreign residents, like all Australian residents, are likely to be subject to tax on any income earned in Australia. If you receive an income sourced in Australia you may need to:

- pay tax on that income
- lodge a tax return.

However, you will not need to lodge a tax return if the only income you received consists of:

- interest, unfranked dividends or royalties from which withholding tax has been withheld by the payer
- fully franked dividends.

You also may be eligible for tax exemptions should your country have tax treaty with Australia.

See also:

- Selling goods into Australia
- Providing services in Australia
- Investing in Australia
- Residency requirements for companies, corporate limited partnerships and trusts
- Work out your tax residency
- Starting your own business
- Business.gov.au offers convenient access to government information, transactions and services. It is a whole-of-government service providing essential information about planning, starting and running your business.

Does my country have a tax treaty with Australia?

To work out how tax applies to income you receive from international transactions involving Australia, you must first work out if that income has an Australian or foreign source. This may depend on whether your country has a tax treaty with Australia.

Generally, if you are from a treaty country, your business income is not subject to tax in Australia unless you carry on your business through a permanent establishment in Australia.

Non-treaty countries

If you are from a country that does not have a treaty with Australia you will need to determine the place (country) the income is from as this will determine what income tax you will need to pay (if any).

Income you receive from goods or services you supply to Australia is generally income from one of the following:

- the place of the contract, if you are exporting goods or information (such as technical knowledge)
- the place where the services are performed, if you are exporting services – however, it can also be the place of the contract.

You may need professional advice to work out the source of the income you receive from an international transaction.

See also:

- What are tax treaties?
- See the list of countries that have tax treaties with Australia
- Permanent establishments
- Taxation Ruling TR 2002/5 – Income tax: Permanent establishment

Tax obligations

Employing people in Australia

If you employ people in Australia, you will have tax obligations relating to them.

Withholding tax on payments to foreign residents

If you make payments, including interest, dividends and royalties, to someone who is not an Australian resident, you will have tax obligations relating to them.

Capital gains on disposal of Australian assets

If you are a foreign resident and you make a capital gain on the disposal of an asset that is taxable Australian property, then the capital gain may be taxed.

Goods and services tax (GST)

Goods and services tax (GST) is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia.

See also:

- Employing people in Australia
- Making payments to foreign residents
- Capital gains in Australia
- Australian GST registration for non-residents
- GST overview

Limits to debt deductions for thinly capitalised entities

Special rules limiting debt deductions apply to both foreign investments in Australia and Australian investments overseas. These special rules apply if a thinly capitalised (or highly geared) entity is involved. A thinly capitalised entity's assets are funded by a high level of debt and relatively little equity.

See also:

- Understanding thin capitalisation

Paying my tax – lodging an Australian tax return

You may be required to lodge an Australian tax return to ensure you pay the right amount of tax.

To lodge a tax return in Australia, you:

- will need a tax file number (TFN)
- may also need an Australian business number (ABN)

International dealings with a related party or an interest in an overseas entity

When lodging a company, trust or partnership return for the 2011-12 income year and later income years, you must complete an **International dealings schedule 2016** and include it with your tax return if you have either of the following:

- international transactions or dealings with a related party, on either capital or revenue account, where the total amount of the transactions or dealings (including the value of property transferred or the balance outstanding on any loans) was more than $2 million
- a direct or indirect interest in a foreign trust, foreign company, controlled foreign company or transferor trust.

Next steps:

- Work out which registrations you need
- Australian Business Register
- International dealings schedule 2016

See also:

- Attributed foreign income
- International transfer pricing – introduction to concepts and risk assessment.

QC 18324

Doing business overseas

Outlines your tax obligations in Australia if you are an Australian resident doing business overseas.

Last updated 28 October 2016

As an Australian resident, you are taxed on your worldwide income. This means you must report all income you receive from foreign business activities on your Australian tax return.

Media:Operating a business through permanent establishments in another country

//publish.viostream.com/embed/player?video=bd1bdjubfiyse1&width=640&height=360

See also:

- Investing overseas

Foreign business income

Your tax obligations will depend on if your business transaction is with a country that has a tax treaty with Australia. Australia has treaties with over 40 countries.

See also:

- What are tax treaties?

Operating a business through permanent establishments in another country

A permanent establishment is a fixed place of business. It includes **any** of the following:

- a sales outlet
- a branch
- a place of management
- a factory
- a workshop
- an office

- a dependent agent who has authority to enter into contracts on behalf of the enterprise and does so regularly.

Generally, having a website that is hosted by an independent internet service provider in another country is not regarded as having a permanent establishment in that country.

See also:

- To work out if you have a permanent establishment, refer to Taxation Ruling TR 2002/5.

Australian-owned subsidiaries incorporated in another country

Different arrangements may apply to Australian-owned subsidiaries incorporated in another country.

Generally, a subsidiary incorporated overseas:

- will be taxed as a foreign resident under Australian tax law
- is not considered to be a permanent establishment of its Australian parent company.

Reporting income from international transactions

If you have income from overseas you must declare it on your Australian tax return.

If you have paid foreign tax in another country you may be entitled to an Australian foreign income tax offset, which provides relief from double taxation.

You must report any foreign income you receive that is exempt from Australian tax. This is because it may impact the amount of tax you are liable to pay on both your Australian and foreign income.

Before you calculate your income and deductions, you must convert all your foreign income, foreign deductions and foreign tax paid into Australian dollars.

See also:

- Converting foreign income to Australian dollars.

Is there any foreign income not subject to Australian tax?

If you are an Australian-resident company, certain types of foreign business income you receive might be non-assessable non-exempt income which means it is not subject to Australian tax . They include:

- foreign profits and gains in carrying on business at or through a permanent establishment
- dividend income you receive from a non-portfolio investment if you have at least a 10% voting interest in the payer company.

International dealings with an overseas entity

When lodging a return you must complete an international dealings schedule and include it with your tax return if you have **either** of the following:

- international dealings with a related party, if the combined amount of your transactions or dealings, whether on capital or revenue account, is more than $2 million, including the value of property and services transferred or the balance outstanding on any loans – if so, complete section A of the *International dealings schedule*
- an overseas branch or a direct or indirect interest in a foreign trust, foreign company, controlled foreign entity or transferor trust – if so, complete section C of the *International dealings schedule*.

If you are lodging your tax return for the 2010–11 income year or an earlier income year, you must complete section B of Schedule 25A if you had a direct or indirect interest in a foreign trust, foreign company, controlled foreign entity or transferor trust.

See also:

- International dealings schedule 2016
- International transfer pricing – introduction to concepts and risk assessment.

Capital gains on overseas assets

If you are an Australian resident your capital gains on overseas assets are treated in the same way as on Australian property. If you make a capital gain that is taxable in Australia and you have paid foreign tax on it, you may be entitled to a foreign income tax offset.

If you operate an Australian company, certain capital gains and capital losses you make on the disposal of your shares in foreign companies with underlying active businesses are disregarded or reduced.

Next steps:

- See if you are entitled to an Australian foreign income tax offset.

Limits to debt deductions for thinly capitalised entities

If you operate a thinly capitalised or highly geared entity – that is, your assets are funded by a high level of debt and relatively little equity – special rules apply that limit your debt deductions if you operate **either** of the following:

- an Australian entity with overseas investments
- a foreign entity with investments in Australia.

See also:

- Thin capitalisation – what you need to know

Goods and services tax (GST)

GST is a 10% consumption tax on most goods, services and other things sold in, and connected with, Australia.

How do I know if a supply of goods or services is connected to Australia?

A supply of goods is connected with Australia if **any** of the following applies:

- the goods are delivered or made available in Australia to the purchaser
- the goods are removed from Australia
- the goods are brought to Australia, provided the supplier either

  - imports the goods into Australia
  - installs or assembles the goods in Australia.
- land
- land and buildings
- rights over land.

A supply of real property is connected with Australia if the property is in Australia. For GST purposes, real property includes

- land
- land and buildings
- rights over land.

A supply of something other than goods or real property is connected with Australia if **either** of the following applies:

- the thing is done in Australia
- the supplier makes the supply through an enterprise – that is, a permanent establishment – that the supplier carries on in Australia.

Usually, a service is supplied in whichever location it is performed. If the service is performed in Australia, the supply of that service is connected with Australia.

How does GST apply to exports?

Exports are generally GST-free. These include:

- goods physically exported from Australia
- services supplied to a non-resident outside Australia.

See also:

- Exporting goods or services overseas – what you need to know
- GST for small business

QC 18452

Exporting goods or services overseas – what you need to know

If you or your business exports goods and services overseas, find out how Australian tax applies to you.

Last updated 28 November 2022

Income tax and source of income

If you export goods or services and you are an Australian resident entity, your export income is generally subject to income tax. This is because your assessable income includes your world-wide income.

If you derive income from another country and pay tax in that country, you may be entitled to a foreign income tax offset against your Australian income tax.

Foreign income your company earns may be exempt from Australian tax if your company derives this income by carrying on business at or through a permanent establishment in the other country.

The source of income is generally the place where the:

- contract is entered into, in the case of goods
- services are performed, in the case of services.

If you are exporting goods by selling them to a foreign resident entity on a free on board (FOB) basis in Australia, the place of contract is likely to be in Australia.

If you export to a country that has a tax treaty with Australia, the treaty may have special rules to help you determine the source of the income.

For more information, see Doing business overseas – what you need to know

How GST applies

GST is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia and on most imports of goods. Generally, once you are registered for GST you will include GST in the price of supplies to your customers and claim credits for the GST included in the price of your business purchases.

Exports of goods, services and other exports

Exported goods are GST-free if they are exported from Australia within 60 days of one of the following, whichever occurs first:

- the supplier receives any payment for the goods
- the supplier issues an invoice for the goods.

There are specific rules that determine if the sale of things other than goods or real property for consumption outside Australia, are GST-free or excluded from being treated GST-free.

For more information about export of goods, services and other exports, see:

- Exports of goods
- Exports of services and other exports.

QC 18454

GST cross-border transactions between businesses

Check if your transaction between overseas businesses and Australian businesses is still subject to GST.

Last updated 8 February 2018

As of 1 October 2016:

- some transactions between overseas businesses and Australian businesses are not subject to GST
- GST-registered importers have a new option to calculate transport, insurance and ancillary costs.

Find out about:

- Non-resident businesses
- Australian businesses
- GST-registered importers
- Legislation and supporting material

Non-resident businesses

We have made changes so that non-resident businesses don't have to engage in Australia's GST system unnecessarily. This will reduce their overall compliance costs.

We have:

- amended the test for 'carrying on an enterprise in Australia'
- limited the cases where a non-resident entity must pay GST on supplies of things done in Australia
- made sure there is no GST liability for certain supplies made between non-residents
- extended the GST-free (zero rate) rules for certain supplies made to non-residents
- moved liability, in some circumstances, from overseas businesses to the Australian-based business recipients that are already registered for GST.

The test for running an enterprise in Australia

Generally, a non-resident's enterprise must register for GST if:

- it is based in Australia for more than 183 days in a 12-month period, and
- has a GST turnover of A$75,000 or more.

If you are an affected non-resident entity, you need to review your enterprise arrangements in Australia to work out if you need to be involved in Australia's GST system.

This could result in some entities registering for GST and others cancelling their GST registration.

See also:

- The law companion guide – **LCG 2016/1** *GST and carrying on an enterprise in the indirect tax zone (Australia)*

We would like to work closely with affected taxpayers to support to meet their GST obligations. If you have any questions, email **AustraliaGST@ato.gov.au**

Supplies 'not connected with Australia'

Generally, for non-resident suppliers who do not run an enterprise in Australia, the following transactions are no longer connected with Australia and therefore will not be subject to GST:

- supplies of intangibles (such as services and digital products) which are performed in Australia are not connected if the recipient is an Australian-based business recipient or a non-resident acquiring the intangibles for their overseas enterprise
- a transfer of ownership of leased goods which are located in Australia, where the transfer takes places between non-residents that do not have an enterprise in Australia
- a supply of goods where the supplier installs or assembles the goods in Australia, but does not import the goods into Australia.

Services or digital products sold to Australian-based business recipients

For services or digital products where the supply is done in Australia (for example, services you perform in Australia), GST does not apply to your sales if all of the following apply:

- you are a non-resident
- you do not make the sale through an enterprise you carry on in Australia
- you make the sale to an Australian-based business recipient that is
  - registered for GST
  - not buying the item for private use
  - carrying on an enterprise in Australia.

As these sales are not connected with Australia, you are not required to charge GST on them. If these types of sales are the only sales you make, you are not required to be registered for GST.

Impacts for Australian-based business recipients if you incorrectly charge GST

If you incorrectly charge GST on these sales, you may disadvantage your customers. This is because your GST-registered customer may need to pay GST on their purchase under the reverse charge rules.

The law is designed to shift any net GST payable for these sales from the supplier to the customer.

The reverse charge applies if the customer would not be entitled to a full GST credit if GST had been charged on the sale. For example, if they are purchasing the item to make input taxed supplies, like financial supplies. Input taxed supplies are equivalent to ‘exempt' supplies in other jurisdictions.

If so, your customer will need to pay GST in their activity statement lodged with the ATO (they may claim a partial GST credit for the purchase at the same time, to the extent they are entitled to do so).

If you incorrectly charge GST on these sales, your customer will still need to pay GST through our reverse charge rules, if they apply. This can result in your customer paying GST on the sales twice.

As a result, your customers that are Australian-based business recipients will expect that you do not charge GST on sales that are not subject to GST.

If you have incorrectly charged GST on these sales, your customer may seek a refund from you. If you have already paid GST to the ATO on these sales, you can only obtain a refund from the ATO if you have reimbursed your customer.

> Example: sales by a non-resident business
>
> Berry Life Insurance Co runs a life insurance business in Australia. It is registered for GST. Berry Life Insurance Co purchases services to assist with processing insurance claims, including information technology services, from a supplier in India, Indian Grape Co.

Indian Grape Co is a non-resident that does not have an Australian presence for GST (it does not carry on an enterprise in Australia). The services it supplies are performed in Australia, as it subcontracts the work out to a local provider.

Even though the services it sells are performed in Australia, GST does not apply to the sales, because:

- Indian Grape Co is a non-resident who is not making the sales through an enterprise it carries on in Australia
- Berry Life Insurance Co is an Australian-based business recipient, because it
  - is registered for GST
  - carries on an enterprise in Australia
  - is not purchasing the services for private use.

Indian Grape Co is not required to charge GST on these sales as they are not connected with Australia. If these are the only types of sales Indian Grape Co makes, it does not need to be registered for GST.

Berry Life Insurance Co determines it has to pay GST on its purchase of Indian Grape Co's services through the reverse charge – this is because these purchases relate to the input taxed sales it makes in its life insurance business.

Berry Life Insurance Co has to pay GST through the reverse charge, regardless of whether Indian Grape Co has correctly treated its sales as not being subject to GST.

Non-resident business turnover for GST

GST-free supplies are only included in a non-resident's GST turnover if the supply is made through an enterprise they carry on in Australia.

Non-resident businesses with an Australian resident agent

Non-resident businesses and their resident agents can agree the resident agent is liable for GST for supplies made through the agent.

Both the non-resident supplier and the agent must specifically agree to this in writing.

If there is an agreement in writing between the non-resident supplier and the resident agent, notice must be given to the recipient of the supply if they are an Australian-based business. The notice must be given by the resident agent unless the agreement in writing provides that the non-resident supplier should issue the notice.

The notice must be in the following form, either:

- a tax invoice for the supply
- a document that shows the
  - non-resident supplier's, or their agent's, identity and ABN
  - price of the supply
  - amount of GST included in the price
  - date the document is issued, and a brief description of what is supplied.

If there is no agreement in writing between the non-resident supplier and the resident agent, the recipient of the supply may need to account for any GST, see reverse charging below.

See also:

- For a list of approved forms, see List of approved forms – GST

Reverse charge for supplies

Generally, business-to-business intangible supplies done in Australia by non-residents will not be connected with Australia. However, the recipient of the supply may be liable to pay the GST. This is the case if the recipient is an Australian-based, GST-registered business and acquires it not wholly for a creditable purpose. You acquire for a creditable purpose if you acquire for the purpose of your enterprise and the acquisition does not relate to making input-taxed sales. This is known as reverse charging.

See also:

- Reverse charge of GST on things purchased from offshore

Australian businesses

More supplies of services by Australian businesses to non-resident businesses will now be GST-free. This reduces the need for a non-resident business to interact with the Australian GST system to claim input tax credits.

Examples of supplies that may now be GST-free include:

- when an Australian business makes a supply of training services to an overseas company, but provides those services to one of the company's employees in Australia
- when an Australian business supplies repair services to an overseas company, but the supply is provided to an entity in Australia in order to fulfil the overseas company's obligations under a warranty.

GST-registered importers

If you are a GST-registered importer, to calculate the value of the taxable importation for GST purposes, you are no longer required to identify the exact amount paid for:

- international transport
- insurance
- loading or handling
- service costs for the transport.

You may opt to use an uplift factor, which is currently 10% of the customs value of the imported goods.

The Department of Home Affairs has issued an Australian Customs Notice that further explains this process.

See also:

- Department of Home Affairs Notice No. 2016/33

Legislation and supporting material

- GST cross-border transactions between businesses – legislation and supporting material
- Tax on retail sales of goods and services into Australia

- GST on imported services and digital products
- GST on low value imported goods

QC 49217

GST on sales of Australian accommodation by offshore sellers

Offshore sellers of Australian commercial accommodation need to register for Australian goods and services tax (GST).

Last updated 3 June 2021

Offshore sellers of Australian commercial accommodation must include sales of Australian accommodation in their goods and services tax (GST) turnover to determine if they are required to register for, charge and pay GST.

This law means offshore sellers of Australian accommodation receive the same tax treatment as domestic sellers.

See also:

- Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019

Who charges GST

If you sell **taxable accommodation** and your turnover is over the **GST threshold** you need to charge GST.

Examples of taxable accommodation sales include:

- hotels
- motels
- hostels

- serviced apartments
- student accommodation
- caravan and tourist parks
- ships and boats – if there is a taxable supply, such as house boat hire or cruise operator
- bed and breakfast accommodation.

Example: Offshore seller providing Australian accommodation

Downtown Holidays is based in the United Kingdom (UK) and sells Australian accommodation to customers in the UK and Australia.

Downtown Holidays purchases Australian hotel rooms from Sydney Sider Hotel at GST inclusive wholesale room rates. This means that Sydney Sider Hotel charges GST to Downtown Holidays when it initially purchases the hotel rooms. These are taxable sales of commercial accommodation and Sydney Sider Hotel is required to collect GST for those sales.

Downtown Holidays on-sells the hotel rooms to customers at retail rates that include their profit margin.

In the last 12 months, Downtown Holidays sells rooms totalling A$80,000.

Downtown Holidays must register for GST and account for GST on its sales of Australian accommodation.

Not all sales of Australian accommodation are subject to GST

Leasing residential premises and accommodation through the sharing economy are examples of supplies that do not attract GST.

If you have an apartment that's part of commercial residential premises, it's treated like other residential rental properties. You aren’t subject to GST as the rental charge is input taxed.

Supplies of residential leases and renting out all or part of a home on a short-term non-commercial basis are input taxed sales. These aren't subject to GST in Australia (input-taxed supplies may be referred to as exempt supplies in other jurisdictions).

If you act as an agent and only facilitate sales of accommodation, you aren't responsible for GST on the sale of accommodation. However, you may have other GST obligations on your services.

See also:

- Tax invoices
- Recipient-created tax invoices
- GST on imported services and digital products
- Residential premises
- Commercial residential premises and GST
- Holiday apartments in commercial residential properties
- The sharing economy and tax

When to register for GST

You need to register for GST within 21 days of:

- your 'current GST turnover' (turnover for the current month and the previous 11 months) totals A$75,000 or more (A$150,000 or more for non-profit organisations)
- your 'projected GST turnover' (total turnover for the current month and the next 11 months) is likely to be A$75,000 or more (A$150,000 or more for non-profit organisations).

Once you are registered, you can:

- issue tax invoices for the sale of the accommodation
- claim GST credits.

Working out your GST turnover

Your GST turnover is your gross business income (not your profit), excluding any:

- GST included in sales to your customers

- sales that aren't for payment and aren't taxable
- sales not connected with an enterprise you run
- input-taxed sales you make
- sales not connected with Australia.

How to register

You need to use the same GST registration as domestic entities (**not** simplified registration).

Before registering for GST you need an Australian business number (ABN). When applying for your ABN, you can also apply for GST registration at the same time.

Non-residents need to provide additional documentation and evidence of identity when applying for an ABN. This means, your registrations may take some time.

Next steps:

- ABN for businesses outside Australia

Apply for an ABN

GST requirements once you are registered

Once you are registered, or required to be registered for GST, you need to:

- **include GST in the price of taxable sales** of Australian accommodation
- **meet record-keeping requirements**
- **issue tax invoices**
  - when making taxable sales of more than $82.50 (including GST), your GST-registered customers need a tax invoice to claim a credit for the GST in the purchase price
  - if customers ask for a tax invoice you must provide it within 28 days of their request
- you need to lodge your business activity statements (BAS)

  - **either quarterly or monthly** depending on your turnover
  - report your GST
  - **claim any credits you're entitled to –** only claim GST credits once you have a tax invoice or a **recipient-created tax invoice** (RCTI)
  - you can't issue an RCTI unless you are eligible to and have a written RCTI agreement with the Australian accommodation provider
- Pay GST via your BAS

> Example: GST requirements
>
> In the last 12 months, Downtown Holidays sells rooms totalling A$80,000. This means they are over the GST threshold and must register for GST. There are certain obligations they need to complete.
>
> Downtown Holidays must:
>
> - include these sales in its GST registration turnover calculation
> - register for Australian GST as its turnover meets the GST registration turnover threshold of A$75,000 or more
> - charge GST to customers purchasing hotel rooms as they are taxable accommodation
> - consider if they are entitled to claim GST credits for GST included in wholesale room rates
> - report their GST liabilities and GST credit claims in their business activity statement that must be lodged monthly or quarterly
> - issue tax invoices to customers on request within 28 days.

Calculating currency conversion

If you're paid in a currency other than Australian dollars, you need to convert the amount into Australian dollars.

Use the following example to convert amounts into Australian currency:

- amount in foreign currency ×(1 ÷ your particular exchange rate on the conversion day).

Your particular exchange rate

You can use the following exchange rate options as your particular exchange rate:

- the Reserve Bank of Australia (RBA) rate
- agreed rate with your GST registered customer
- a rate published by a foreign exchange organisation (for example, a commercial bank).

Use your particular exchange rate consistently.

Your conversion day

Your conversion day is the date used to convert your foreign currency into Australian currency for GST purposes:

- **If you account for GST on a cash basis** – your conversion day can be any receipt, invoice or transaction date.
- **If you account for GST on an accruals (non-cash) basis** – your conversion day is the earlier of
  - the day the payment is received (receipt) date
  - the transaction or invoice date.

See also:

- GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*

Australian accommodation providers

Australian accommodation providers using offshore intermediaries to sell accommodation need to determine if they are selling:

- directly to customers using the accommodation – offshore entity is acting as an agent
- directly to an offshore seller – offshore entity is a re-seller.

Where offshore intermediaries are:

- **re-selling** your accommodation – you need to
  - provide a tax invoice to the offshore seller within 28 days of their request or enter into a **recipient-created tax invoice** (RCTI) agreement
  - show the wholesale amount the offshore seller pays you, (**not** the amount paid by the offshore seller's customer)
- **acting as your agent** – you or your agent need to
  - provide a tax invoice to the customer purchasing the accommodation within 28 days of request
  - show on the invoice the full amount the customer pays for the accommodation.

See also:

- Tax invoices
- GSTR 2018/1 *Goods and services tax: supplies of real property connected with the indirect tax zone (Australia)*

Purchasers of Australian accommodation

GST-registered businesses purchasing accommodation for business purposes may be entitled to claim GST credits for purchases made from offshore sellers. To claim a GST credit, you need a tax invoice.

Your accommodation provider or the offshore seller can provide a tax invoice.

If you book the accommodation through an online agent or booking service, they may be able to issue a tax invoice on behalf of the accommodation provider.

Offshore entities acting as an 'agent'

Offshore businesses act as 'agents' if they provide a facilitation arrangement or booking service rather than making sales of Australian accommodation directly to customers.

As an agent for an Australian accommodation provider you can issue a tax invoice on behalf of the accommodation provider to the purchaser of the accommodation. However, only one party must issue a tax invoice – either:

- you as the agent, or
- the Australian accommodation provider.

Offshore agents need to consider if their services are subject to GST.

Under special rules, imported services and digital products from overseas-based suppliers are subject to GST when supplied to an Australian consumer. Agency services, such as booking services, from offshore agents to GST registered Australian hotels aren't subject to GST because the hotel business isn't an Australian consumer.

Example: An agency booking service

- Blue Ltd is an 'agent'. They are a German based online travel operator that provides a hotel booking service for Australian hotels and isn't registered for GST in Australia.
- Sun Hotel operates a hotel in Australia and is a GST registered Australian resident.
- Sun Hotel engages Blue Ltd to sell hotel rooms on its behalf and lists its available accommodation and room prices on Blue Ltd's website.
- Sun Hotel agrees to pay Blue Ltd a commission for each room sold through Blue Ltd at the rate of 15% of the price paid by the (resident or non-resident) customer.

Ben purchases a room from Sun Hotel via Blue Ltd's booking website and is charged A$330.

Blue Ltd accepts the $330 for the room booking on behalf of Sun Hotel.

Blue Ltd charges Sun Hotel a fee of A$49.50 for the booking services. Under the arrangement Blue Ltd is only supplying booking services (agent) and isn't the supplier of the hotel room.

As a result of this transaction

Blue Ltd (agent)

- If Blue Ltd was registered or required to be registered for GST, the $49.50 booking service would be subject to GST if Sun

Hotel is an Australian consumer. Sun Hotel isn't an Australian consumer because they are an Australian GST registered business.

- Blue Ltd isn't required to register for Australian GST if it **only** makes supplies of booking services to Australian GST registered businesses, such as Sun Hotel.
- Blue Ltd may, under an arrangement with Sun Hotel, issue a tax invoice to Ben on Sun Hotel's behalf for the supply of the room.

Sun Hotel (supplier of room)

- Sun Hotel is making a GST taxable sale of the hotel room to the customer (Ben) in the amount of $330 – the price Ben paid for the room.
- Sun Hotel must report $30 GST on its activity statement ($330 ÷11).
- Sun Hotel must issue a tax invoice within 28 days of a request from Ben displaying the price of the room and the GST component.
- The $49.50 booking fee Blue Ltd charges Sun Hotel is not subject to GST given Sun Hotel is not an Australian consumer – as such there is no GST credit for Sun Hotel in purchasing the booking services from Blue Ltd.

Ben's responsibilities

If Ben is registered for GST and travelling for business purposes he could be eligible to claim a GST credit in his next activity statement for GST included in the price he paid for the room. Ben must hold a tax invoice before claiming a GST credit. Sun Hotel or Blue Ltd (agent), not both, must provide a tax invoice for the supply of the hotel room within 28 days of a request from Ben.

See also:

- GST on imported services and digital products

Your rights

The Taxpayers' Charter explains what you can expect in all your dealings with us.

Compliance and penalties

If you don't register for GST and are required to, we can take action to register you for Australian GST. We will also calculate the amount of GST you are liable to pay and apply a penalty to you.

If you don't engage with us after we have written or called you (without a good reason), we are able to:

- calculate your business liability (using third party information, for example bank information) from the date of commencement of the law
- compulsorily register you for GST, raise and issue a default assessment with an additional 75% administrative penalty
- apply the general interest charge (GIC) to the amounts calculated for outstanding lodgments
- use available debt collection processes, including seeking assistance from the tax authority in your country to collect the debt.

Help and information

If you can't find an answer to your question, you can:

- email AustraliaGST@ato.gov.au
- phone us on +**61 2 6216 1111**.

Our business hours are 8:00am to 5:00pm, Australian Eastern Standard Time (AEST) or Australian Eastern Daylight Saving Time (AEDST) Monday to Friday, except for national public holidays. Ask the operator to connect you to **1300 146 094** with code '**118#**'. You will be transferred to an officer who can help you.

For a free interpreting service, you can phone +**61 3 9268 8332** and ask to be connected to **1300 146 094**.

Information in other languages

This information has been translated into the following languages:

- Arabic

- Chinese
- Japanese
- Korean
- Vietnamese

QC 60116

Mutual agreement procedure

Requesting a mutual agreement procedure (MAP) to address potential taxation not in accordance with a tax treaty.

Last updated 19 March 2024

What is the mutual agreement procedure

Within the international tax system, the mutual agreement procedure (MAP) – in Australia's tax treaties – supports a resilient global economy and facilitates economic growth. MAP can help:

- relieve double taxation
- resolve treaty-related tax disputes and issues in interpreting or applying a tax treaty.

MAP provides a bilateral mechanism for the Australian competent authority (CA) to engage with the CA of another jurisdiction.

You may request a MAP if you believe you are being taxed – or will be taxed – not in accordance with a tax treaty. Once you lodge your request, you do not take part in MAP negotiations. The CAs negotiate to resolve your request. They can also try to relieve double taxation in cases not covered by the tax treaty.

Seeking an advance pricing arrangement

You may seek an **advance pricing arrangement** to minimise the need for a MAP. This will reduce the risk of being subject to double taxation as a result of transfer pricing or profit reallocation adjustments in future years.

See our guidance in Law Administration Practice Statement PS LA 2015/4 *Advance Pricing Arrangements*.

Double taxation

In most instances, MAP cases involve cross-border double taxation. This can happen when the domestic taxation provisions of 2 jurisdictions overlap. The 2 types of double taxation are:

- juridical double taxation – where the same taxpayer is taxed in 2 jurisdictions on the same income, profits or gains
- economic double taxation – where 2 separate taxpayers are taxed on the same income, profits or gains in different jurisdictions.

In the present context, juridical double taxation may arise if:

- each jurisdiction subjects the same taxpayer to tax on their world-wide income – for example, the taxpayer may be a resident of, and be taxed on the same income in both jurisdictions
- a resident of one jurisdiction derives income in the other jurisdiction and both jurisdictions impose tax on that income or part of that income – for example, if the country of source imposes a withholding tax on a royalty payment, and the country of residence taxes the taxpayer on their world-wide income by assessment.

Economic double taxation may arise where a jurisdiction adjusts a resident taxpayer's taxable income by applying the arm's length principle to transactions between it and an associated taxpayer in another jurisdiction (a primary transfer pricing adjustment).

This may result in double taxation because the taxpayer whose taxable income is increased will be liable to pay tax in one jurisdiction on an amount of profit the associated taxpayer will also be liable to pay tax on in the other jurisdiction.

Relieving juridical double taxation

Australia's domestic law and tax treaties provide mechanisms to relieve juridical double taxation including:

- an exemption for foreign source income or a foreign income tax offset under domestic law
- credits (in the form of foreign income tax offsets domestically) for foreign tax paid being allowed against Australian tax payable under the relevant treaty.

Other mechanisms in Australia's tax treaties can prevent juridical double taxation from occurring in the first place, for example:

- residency tie-breaker rules
- allocating exclusive taxing rights over certain types of income.

Most of Australia's tax treaties contain an article which eliminates double taxation by obliging the country of residence to provide relief from juridical double taxation.

Applying this article is subject to the provisions of Australia's domestic law about the allowance of a tax offset against Australian tax for income tax paid in a foreign country (Division 770 of the ITAA 1997). The domestic provisions, however, cannot affect the general principle of this article to eliminate juridical double taxation.

Relieving economic double taxation

Economic double taxation can arise when a jurisdiction makes a primary transfer pricing adjustment consistent with the associated enterprises article in Australia's tax treaties.

The other jurisdiction may then be required to make an appropriate adjustment to the amount of tax charged on the profits of the associated enterprise in that jurisdiction in order to relieve economic double taxation (a correlative adjustment). A correlative adjustment may not resolve all double taxation.

When another jurisdiction makes the primary transfer pricing adjustment, the Australian competent authority (CA) can provide unilateral relief under section 24 of the *International Tax Agreements Act 1953* (the Agreements Act 1953); however, usually CAs of both jurisdictions will consult with each other.

Section 24 of the Agreements Act 1953 allows for adjustments to taxable income or to a tax loss. Your tax losses may increase when we apply this section.

Conditions for requesting a MAP

You may request a MAP when you consider the actions of one or both jurisdictions results (or will result) in taxation not in accordance with a tax treaty. The risk of such taxation must be probable (not merely possible). This can arise from a variety of actions by a jurisdiction, including:

- a notice of assessment or amended assessment
- a statement of audit position
- a private ruling
- a certificate of withholding.

Also, you may request a MAP when you have initiated an adjustment in good faith. For example, if you lodge a self-amendment request or a request under the domestic laws of a treaty partner country to amend a tax return to adjust the price of your related party transactions, or the profits attributable to a permanent establishment, to reflect arm's length conditions.

We will consider your self-initiated adjustment to be made in good faith if:

- it reflects a good faith effort on your part to ensure that you are reporting your income or profits correctly
- you have fulfilled properly and in a timely manner all your taxation obligations related to the income or profits under the domestic tax laws of both jurisdictions.

Find out how to determine if your case is justified.

Time limit for requesting a MAP

Most of Australia’s tax treaties require you to request your case be reviewed in a MAP within 3 years of you first being advised that you are to be (or likely to be) taxed not in accordance with a treaty. However, the time limit specified in the article dealing with MAP in each of Australia’s tax treaties varies.

We will apply this limit in a way that is most favourable to you. The time limit for submitting a MAP request will usually start from the day the notice of assessment or amended assessment issues.

We cannot accept your MAP request after the time limit expires.

If you want to pursue domestic remedies in either jurisdiction but are concerned about exceeding the time limits for presenting a case, you can lodge a protective MAP request.

Taxes covered by MAP

The 'taxes covered' article outlines the taxes that a particular tax treaty covers. For Australia, this may include:

- income tax
- fringe benefit tax
- resource rent tax.

Penalties and interest imposed under taxation laws are not considered taxes for the purposes of a treaty.

MAP and the general anti-avoidance rules

You are able to request MAP for tax that results from the application of the general anti-avoidance rules in Part IVA of the ITAA 1936.

This includes the multinational anti-avoidance law and the diverted profits tax rules both of which are a part of Part IVA.

Importantly, however, Part IVA is not restricted by the application of Australia's tax treaties (see subsection 177B(1) of the ITAA 1936 and **subsection 4(2) of the Agreements Act 1953**) and therefore it prevails regardless of whether the resultant tax is contrary to the provisions of a treaty. As a result, we cannot resolve a case under MAP to the extent that it involves the application of Part IVA.

MAP and settlements

You are able to request MAP for matters which are the subject of a settlement agreement with the ATO. However, settlement agreements are intended to resolve the matters in dispute for both parties and there may be consequences under the settlement deed for continuing the dispute through the MAP process. We recommend you consider possible double taxation, and whether you intend to request MAP, prior to entering into a settlement agreement.

MAP requests involving multiple jurisdictions

The MAP article in Australia’s comprehensive tax treaties typically allows CAs to resolve by mutual agreement, difficulties in the interpretation and application of the convention. In doing so, they can consult on cases not provided for in the convention including, for example, details of a transaction in a third jurisdiction.

CAs of each jurisdiction can be part of multilateral MAP consultations when all jurisdictions have a tax treaty containing the necessary MAP and EOI articles with each of the other jurisdictions. Typically, we don't enter into single multilateral agreements, rather, we resolve these cases through a series of bilateral agreements. CAs can discuss the suitability of a multilateral MAP negotiation as part of the case.

In some of Australia’s tax treaties, the MAP article doesn't contain the express provision to consult together on cases not provided for in the convention. In these cases, effective exchange of information may still be possible with the third jurisdiction. The ability to consult or mutually agree on a multilateral basis may be limited.

How to request a MAP

You must submit your request for MAP to the competent authority (CA) of your country of residence or nationality, or the CA of either country, depending on the wording in the MAP article of the relevant tax treaty.

If you submit your request to the incorrect CA this may delay your request or result in your request being rejected.

Information to submit with your request

For the Australian CA to be able to accept your MAP request, it must contain sufficient information for us to determine if your case is justified.

You must provide the following information and documentation as part of your request:

- identity of the taxpayers covered in the request including
  - name
  - address
  - taxpayer identification number or date of birth
  - contact details

  - where applicable, the relationship between the taxpayers covered in the request
- basis for the request, specifying the articles of the relevant treaty you consider one or both jurisdictions are not applying correctly and the jurisdiction applying the treaty
- all relevant facts of the case and any documentation supporting those facts, including
  - income years or other periods – taxpayers may request multi-year resolution of recurring issues
  - amounts involved with details of what is to be adjusted and the basis of the calculation
- analysis of the issues you want resolved under the MAP, including how you think the specific treaty provisions should be interpreted to support your claim that one or both jurisdictions have not applied the treaty correctly – you should support your analysis with relevant documentation, such as
  - transfer pricing documentation required under legislation or in accordance with published guidance
  - copies of tax assessments, audit or other tax administration documentation reflecting what you consider to be the incorrect application of the relevant treaty provisions
  - copies of briefs or objections submitted by you in response to the tax administration's action
- if you have submitted the MAP request to the other jurisdiction's CA, provide
  - the date the request was submitted
  - the name and designation of the person, or the office, to which the MAP request was submitted
  - a copy of the request including all documentation filed with it, unless the content of both MAP requests are identical
- whether the issues involved have been dealt with previously, for example, in a ruling, advance pricing arrangement, settlement agreement, or tribunal or court decision – you should provide a copy of any such ruling, agreement or decision

- a statement confirming all information and documentation provided in the MAP request is accurate and that you will help the CA to resolve the issues by providing any other information or documentation requested by the specified dates.

If a related taxpayer submits a MAP request to another CA regarding taxation not in accordance with a treaty involving Australia, you should also provide a copy of the MAP request to us. This helps us to do preliminary analysis – potentially reducing the time taken to resolve the MAP.

We may reject your request if you do not provide the listed information and documentation . See Time limit for requesting a MAP.

Address to submit MAP requests

To submit a MAP request to the Australian competent authority, email it and any other correspondence relating to a MAP to internationalsgatekeeper@ato.gov.au

Alternatively, our postal address for submitting MAP requests is:

MAP Program Management Unit
Public Groups and International
Australian Taxation Office
PO Box 9977
Brisbane QLD 4001
Australia

Who is involved in the MAP process

A number of ATO staff can be part of the MAP process.

The MAP Program Management Unit

The ATO MAP program management unit (PMU) is responsible for the general administration of the MAP process. The PMU:

- receives your MAP request and acts as your initial point of contact
- reviews your MAP request to ensure it has been lodged within time and with the correct jurisdiction
- assigns a CA to your case and helps the CA to manage it.

The competent authority

The competent authority (CA) in consultation with the PMU:

- provides assistance to people who believe the actions of Australia or a treaty partner either result, or may result, in taxation that is not in accordance with a particular tax treaty
- reviews your MAP request to determine if it is justified
- determines whether we will relieve double taxation, or whether we can otherwise resolve your case, unilaterally
- tries to resolve your MAP case in line with the relevant tax treaty
- communicates directly with the other jurisdiction's CA involved in your MAP case.

In trying to resolve your MAP case, the CA may get specialist advice or input from other ATO staff.

Other ATO staff

Other ATO staff may provide:

- administrative support
- information and help if they have a history of engagement with you or with your industry
- specialist advice – for example economists who may provide further economic analysis on the adjustment made or proposed by us or help to evaluate the adjustment made by the other jurisdiction.

These staff may communicate directly with you to request further information or to keep you updated with developments. They do not communicate with the other jurisdiction's CA.

ATO staff involved in the original action or adjustment will only be present at CA negotiations in order to provide factual information or background analysis that would help the CA deliberations. This is to preserve the independence of the CA and the MAP process.

You, the taxpayer

While you initiate the MAP process by making a request to a CA and we advise you of progress, you are not permitted to attend MAP negotiations.

If the CAs in both jurisdictions agree, you may present arguments in support of your case to both jointly. If they do not agree, the Australian CA will give you an opportunity to present your arguments to the Australian CA.

The MAP process

There are the 3 stages involved in the MAP process:

- Stage 1 – submitting your request for CA consideration and determination
- Stage 2 – negotiating with the CA
- Stage 3 – implementation of the mutual agreement.

Stage 1 – Submitting your request

The first stage in the MAP process contains the following 3 steps:

- Step 1 – submit your request to the MAP program management unit at **internationalsgatekeeper@ato.gov.au**
- Step 2 – the CA considers whether your request is justified
- Step 3 – if your request is justified, the CA determines if we can provide unilateral relief.

Step 1: Submitting your request to the MAP PMU

When we receive your completed MAP request, we will confirm whether you submitted it in time and to the correct CA.

We will not accept a MAP request received out of time as there is no mechanism in Australia's tax treaties for the CA to extend the time allowed to submit a MAP request.

If you want to pursue domestic remedies in either jurisdiction but are concerned about exceeding the time limits for presenting a case, you can lodge a protective MAP request.

Step 2: Determining if your case is justified

A CA will determine your case is justified if:

- you have provided a sufficient factual and legal basis for your case
- your MAP request demonstrates that

  - the actions forming the basis of the request results or will result for you in taxation not in accordance with a tax treaty
  - the risk of such taxation is at least probable, not just possible.

The CA will accept that the risk of taxation not in accordance with a treaty is probable if you have received written notification from us or the tax administration of a treaty partner country of an actual or proposed action. The notification should include details of what is to be adjusted, the amounts and the basis of calculation.

After the CA determines the MAP request is justified, they will let you know your case has been accepted and placed into our MAP program.

Actions that do **not** justify a MAP request include:

- an audit or examination of your affairs or those of an associated foreign entity prior to the issue of a statement of audit position or equivalent position paper from another jurisdiction
- exchange of information requests about dealings between you and an associated foreign entity
- discussions between you (or an associated foreign entity) and us (or a foreign tax jurisdiction) about your tax affairs
- public advice and guidance of a general nature, even if you believe it could apply to you and, if applied, may result in taxation not in accordance with the treaty.

If the CA considers that your case is **not** justified, then we will advise you that we will take no further action in relation to your request.

Step 3: Unilateral relief

We will decide whether we can reach an appropriate solution ourselves. If this is not possible, such as when the taxation not in accordance with the tax treaty is due wholly or in part to an action taken in the other jurisdiction, we will try to resolve your case by mutual agreement with the CA of that jurisdiction (Stage 2).

Stage 2 – Negotiating with the CA

In this stage, we negotiate with the CA of the other jurisdiction. Both CAs will do their best to resolve your case. However, this does not mean that the CAs will resolve every case or necessarily relieve all taxation not in line with the treaty.

In all instances and as part of the negotiations, the CAs will seek to establish a mutual understanding of the relevant principles embodied in the treaty, the facts of your case and how those principles are to be applied so as to relieve any taxation not in accordance with the treaty.

For example, if we make the primary transfer pricing or profit reallocation adjustment, the Australian CA will try to demonstrate to the other CA that:

- the adjustment results in tax in accordance with the treaty
- the treaty partner country should relieve any resultant double tax.

We will also seek to comprehend fully the other CA's position and explore opportunities to reach agreement.

How competent authorities communicate with each other

CAs usually provide their positions to each other by exchanging position papers. If the CAs do not reach agreement after exchanging MAP position papers, they may discuss the matter with each other directly.

In preparing our MAP position paper, we may take into account relevant information you provide (including information about your foreign associates) and information gained from any prior compliance activity.

Stage 3 – Implementation of mutual agreement

When a mutual agreement is finalised between the CAs, we will notify you of the decision and provide an explanation of the result. If you accept the agreement, both tax administrations will be notified and you will be provided a letter confirming this agreement. The agreed adjustments will then be processed by the tax administrations to provide you the relief for double taxation.

An appropriate solution arrived at by both CAs may result in us:

- restoring your original tax position by withdrawing the adjustment which led to your MAP request
- making a correlative adjustment or providing a tax offset or credit to relieve any double taxation
- amending your tax assessment or tax payable if you agree with the MAP outcome.

You may proceed with your domestic objection, review or appeal rights in relation to the assessment (or amended assessment) arising from issues that are outside the scope of the MAP or otherwise left unresolved.

What happens if you disagree with the MAP outcome

If you do not agree with the MAP outcome agreed by the CAs, you can seek tax relief under your domestic objection, review and appeal rights. In this case, the CAs will finalise your MAP case without implementing the agreement reached. Refer to **Dispute or object to an ATO decision**.

Timeframes for resolving a MAP case

The ATO has committed to the OECD's recommended average timeframe of 2 years to resolve MAP cases. However, we will try to resolve your case as quickly as possible. In the meantime, we will communicate with you and with the other jurisdiction on a timely basis and keep you informed of the progress of your case.

Some of Australia's tax treaties give you the right to seek arbitration if the MAP case is not resolved within the time frame specified in the relevant tax treaty. Refer to Arbitration.

Time limits on implementing the MAP outcome

Most of Australia's tax treaties state that any MAP agreement will be implemented despite any domestic time limits.

If a treaty does not include this, time limits under domestic law apply.

Domestic time frames for amending your income tax assessment are set out in particular parts of the income tax law, for example, in **section 170 of the ITAA 1936** and **section 815-150 of the ITAA 1997**.These time frames can be extended in some circumstances.

For more information see:

- Income Tax Treaties – on The Treasury website
- **Relief From Double Taxation Where Profits Adjusted** – *International Tax Agreements Act 1953*
- **Foreign income tax offsets – Amendment of assessments** – *Income Tax Assessment Act 1997*

Interaction of other dispute resolution processes with the MAP process

The MAP provides an additional dispute resolution process to those available under the domestic legislation of Australia and other jurisdictions. You can request MAP regardless of the remedies provided by domestic law. If you are pursuing domestic law remedies, we will try to progress your MAP case as much as is possible, depending on the circumstances of your case. Refer to Pursuing Australian domestic remedies.

Protective MAP request

If you want to pursue domestic remedies in either jurisdiction but are concerned about exceeding the time limits for presenting a MAP case, you can lodge a protective MAP request.

If the request meets the requirements of MAP, we will:

- accept the MAP request
- advise the other jurisdiction of the request
- defer CA negotiations until you inform us you would like the case to progress.

Pursuing domestic remedies in the other jurisdiction

Whether a MAP can progress while your objection, review and appeal rights are ongoing in the other jurisdiction depends on whether the CA in that jurisdiction is prepared to proceed with MAP negotiations concurrently.

We will defer issuing any amended assessment, which can include a foreign income tax offset, until such time as the review and appeal rights in the tax treaty partner country have lapsed or are rescinded or exhausted.

Pursuing Australian domestic remedies

Where your matter is subject to administrative or judicial review, we may defer progressing your MAP request until the tribunal or court has made its determination.

Where you seek internal independent review after receiving a statement of audit position from us, we will conduct the independent review concurrently with progressing your MAP request.

Objections

Objection undecided when CAs reach agreement

Three scenarios can occur when the CAs reach agreement on your MAP request and you have an undecided objection. These are set out below:

- Scenario 1 – If the CAs agree to restore you to your original tax position, we will finalise your MAP case. You will need to withdraw your objection in writing.
- Scenario 2 – If both CAs resolve your MAP request whereby the adjustment is wholly or partly maintained and you agree with the agreement reached by the CAs, then you will need to withdraw your objection in writing.
- Scenario 3 – If you are dissatisfied with the CA's agreement, you can continue to pursue your domestic objection and review or appeal rights. The CAs will finalise your MAP case without implementing the agreement reached.

Objection finalised before CAs reach agreement

If we allow an objection in full and there is no longer any taxation that is not in line with the provisions of the tax treaty, we will finalise the MAP case. If all, or some, of the MAP issues remain unresolved following an objection decision, the MAP will continue in an attempt to resolve the case.

If the CAs have not agreed on an appropriate solution by the time we decide to disallow, or allow in part, your objection, you have the right to apply to the Administrative Appeals Tribunal (AAT) for a review of the objection decision or appeal to the Federal Court against the objection decision. Whether or not we continue the MAP during the review and appeal stages will be considered on a case-by-case basis.

Court or tribunal decisions

Once the AAT has made a decision or the Federal Court has made an order, the Australian CA will abide by that decision or order.

When such a decision or order has been made, the Australian CA will seek to demonstrate to the other jurisdiction's CA that the adjustment, consistent with the decision or order, is in line with the relevant tax treaty and that the other country should relieve the applicable double tax.

Seeking arbitration to resolve a MAP case

If the CAs involved in your case have not reached agreement within 2 years (3 years for certain tax treaties) and the relevant tax treaty provides for arbitration, you can request that the CAs submit any unresolved issues to arbitration.

The *Treasury Laws Amendment (OECD Multilateral Instrument) Act 2018* gives the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) the force of law in Australia. The MLI will modify some of Australia's tax treaties to provide for mandatory binding arbitration. The date of effect and the availability of mandatory binding arbitration will vary between each tax treaty.

For more information, see Timeframes for resolving a MAP case and Arbitration.

Penalties, interest and debt recovery under MAP

Our tax treaties exclude penalties and interest imposed under the law of either jurisdiction from being 'tax' for the purposes of the particular tax treaty. Therefore you cannot seek relief under a MAP for any penalties or interest.

Interest paid by us on overpayments of tax resulting from MAP

If we relieve taxation not in line with the tax treaty that results in an overpayment of tax and the interest on overpayment rules apply, we may pay you interest on that overpaid amount.

If the overpayment of tax has arisen from the provision of correlative relief for juridical or economic double taxation, the interest we pay is limited to the lesser of the amount of the:

- interest payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (Overpayments Act)
- interest charged by the other jurisdiction making the transfer pricing or profit reallocation adjustment
- relief being provided under the MAP agreement.

This limitation applies to any year where correlative relief is provided by either amending the assessment of a year of income or by applying a credit for foreign taxes.

Interest on overpayments arising from the provision of correlative relief will not be paid if the:

- other jurisdiction does not require payment of interest on their primary adjustment that gave rise to the double taxation
- interest required to be paid on that primary adjustment has not been paid by the time we provide relief from double taxation.

If we were to pay interest in these circumstances, it would provide you with a windfall gain.

Paying tax during the MAP process and deferral of debt recovery

Requiring you to pay the tax that is the subject of your MAP request may result in double taxation until the case is resolved.

For example, if we make a transfer pricing or profit reallocation adjustment, the same profits may become subject to tax in both jurisdictions. Also, if you are a dual resident, both jurisdictions may impose tax on the same income until the CAs in the MAP process resolve which jurisdiction is your country of residence for the purpose of the relevant tax treaty.

If collecting tax during the MAP process may result in double taxation, we will defer legal action for recovery of those amounts, including any general interest charges (GIC), until an agreed future date (usually the date that the MAP is concluded), unless:

- there is a risk to revenue
- you have other liabilities unpaid after the due date, or
- you have failed to meet other tax obligations when required.

For more detailed information see our Help with paying for support measures to help you stay on track. To find out more about our Practice Statement Law Administration you can read:

- PS LA 2011/4 *Collection and recovery of disputed debts*
- PS LA 2011/14 *General debt collection powers and principles*.

Remission of GIC on tax which is part of a MAP and unpaid

You can make a written request to have us remit GIC accrued for unpaid tax.

For example, we can consider remitting some or all GIC if we are satisfied that either:

- you did not cause the delay in payment and you have taken reasonable steps to mitigate that delay
- there are special circumstances making it fair and reasonable to remit all or part of the GIC or it is appropriate to do so.

If we have deferred recovery of your tax debt until the MAP is completed, we can consider remitting the GIC accrued during the MAP in respect of the tax actually paid in the other jurisdiction (on the profits that both countries claim to tax), provided you do not get a windfall gain from this.

For example, remitting GIC arising from non-payment of tax in Australia from a transfer pricing or profit reallocation adjustment in Australia would result in a windfall gain for you or your economic group where the other jurisdiction pays interest on overpayment after granting correlative relief.

We may also consider remitting GIC if either jurisdiction has caused unreasonable delays in the CAs resolving the MAP. This recognises the potential financial disadvantage you may otherwise suffer when subject to MAP.

For more information, see PS LA 2011/12 *Remission of General Interest Charge*.

Arbitration

Independent and binding arbitration, for issues that remain unresolved under the Mutual Agreement Procedure (MAP), is provided for in some of Australia’s tax treaties. This is because the relevant tax treaty either:

- already provides for arbitration (for example, the Australia-Germany tax treaty)
- has been modified by Part VI of the **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting**, also known as the Multilateral Instrument (MLI), to include arbitration provisions.

You may request (in writing) arbitration if an issue of your MAP case remains unresolved by the competent authorities (CAs) within the time period specified in the relevant tax treaty (generally 2 years).

The MLI and arbitration

Australia has adopted mandatory binding arbitration under Part VI of the Multilateral Instrument (MLI) subject to all the following conditions:

- disputes which have been the subject of a decision by a court or administrative tribunal will not be eligible for arbitration, or will cause an existing arbitration to terminate
- breaches of confidentiality by taxpayers or their advisors will terminate the arbitration process
- disputes involving the application of either Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) or section 67 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) will be excluded from the scope of arbitration
- any treaty partners’ specific reservations made under Article 28(2)(a) of the MLI on the scope of issues eligible for arbitration.

The extent of availability of arbitration in Australia’s tax treaties modified by the MLI will depend on the finalised Part VI adoption positions taken by Australia and its treaty partner. Based on other jurisdictions’ known adoption positions, it is expected that 17 of Australia’s tax treaties will eventually be modified by the MLI to provide for mandatory binding arbitration.

Australia’s current tax treaties with Germany, Iceland and Switzerland also provide for arbitration.

Arbitration in Australia’s tax treaties

The table below lists the tax treaties which have, or are expected to have, arbitration provisions. You can click through to the bilateral Memorandum of Understanding (MoU) with each treaty partner in the table below, as they become available.

Table: Memorandum of understanding with treaty partners

Jurisdiction	Eligibility period (years)	Arbitration provision takes effect for MAP cases presented on or after	Arbitration available for cases presented for MAP prior to arbitration provisions taking effect
Belgium	2	01/10/2019	Yes
Canada	2	01/12/2019	Yes
Denmark	2	01/01/2020	Yes
Fiji	2	TBC (Note 3)	TBC (Note 3)
Finland	2	01/06/2019	Yes
France	3	01/01/2019	No
Germany (non-MLI)	2	07/12/2016 (Note 1)	No
Hungary	2	01/07/2021	No
Iceland (non-MLI)	2	06/11/2023 (Note 4)	No

Ireland	2	01/05/2019	No
Italy	2	TBC (Note 3)	TBC (Note 3)
Japan	2	01/01/2019	Yes
Malta	2	01/04/2019	No
Netherlands	2	01/07/2019	Yes
New Zealand	2	01/01/2019	Yes
Papua New Guinea	2	01/12/2023	Yes
Singapore	2	01/04/2019	No
Spain	2	01/01/2022	No
Switzerland **(non-MLI)**	3	14/10/2014 (Note 2)	No
United Kingdom	2	01/01/2019	Yes

Note 1: Arbitration may be available for unresolved issues in MAP cases concerning income derived on or after 1 July 2017 or in respect of withholding tax on income derived on or after 1 January 2017.

Note 2: Arbitration may be available for unresolved issues in MAP cases concerning income derived on or after 1 July 2015 or in respect of withholding tax on income derived on or after 1 January 2015.

Note 3: Treaties for which the date of effect of the arbitration provisions are not yet known are those where the treaty partner has yet to action its ratification, acceptance or approval of the MLI and notify the OECD.

Note 4: Arbitration may be available for unresolved issues in MAP cases concerning income derived on or after 1 July 2024 or in respect of withholding tax on income derived on or after 1 January 2024.

Your MAP case's eligibility for arbitration

Your MAP case is eligible to be submitted for arbitration if it meets all the following criteria:

- Your case was presented for MAP under the treaty equivalent of Article 25(1) of the OECD Model Tax Convention.
- The arbitration provisions have effect on your MAP case (refer to relevant date in table above).
- The CAs involved in your case have not reached an agreement on all the issues within 2 years (or 3 years under certain tax treaties).
- The unresolved issues are not excluded from the scope of arbitration due to reservations made by Australia (or treaty partner) under the MLI, or exclusions specified in the tax treaty.

MAP cases presented before arbitration provisions take effect

MLI Arbitration

Arbitration is potentially available to MAP cases presented prior to the arbitration provisions taking effect. This will depend on the reservations adopted by Australia's treaty partners. Jurisdictions can reserve the right for cases presented for MAP prior to the later entry into force dates to be eligible for arbitration only if the CA of both jurisdictions agree that the case can be submitted for arbitration. You will be notified of this decision if the CAs of Australia and the relevant treaty partner agreed for your MAP case to be submitted for arbitration.

Additionally, under Article 28(2)(a) of the MLI, jurisdictions may limit the scope of MAP cases eligible for arbitration.

Arbitration in other treaties

Arbitration is not available to MAP cases with issues concerning years or dates prior to the entry into force date of the tax treaty with arbitration provisions.

Memorandum of Understanding

The CAs of Australia and the relevant treaty partner are required to bilaterally conclude a Memorandum of Understanding (MoU) on the mode of application of the arbitration process for the arbitration provisions in the tax treaty to operate.

In general, the MoU will cover:

- details regarding how a taxpayer makes a request for submission of a case to arbitration
- the minimum information necessary for a case to be considered for arbitration
- terms of reference
- appointment of arbitrators
- arbitration process
- communication of information and confidentiality
- operating procedures
- costs, including fees paid to arbitrators and the chair
- failure by the chair to communicate the decision, within the required period
- final decision, including implementation
- entry into effect of arbitration provisions, including for MAP cases entered into prior to entry into force of the MLI
- types of MAP cases not eligible for arbitration.

Arbitration process

Part VI of the MLI contains the operative provisions of the arbitration process for tax treaties that are modified by the MLI to provide for arbitration. The process is dependent on the position and reservations of Australia and its treaty partner. The specific rules and timeframes agreed between the CAs are contained in the relevant MoU.

For tax treaties that provide for arbitration and are not modified by the MLI, the arbitration process is contained in the MoU.

Broadly, for MLI and non-MLI arbitration, jurisdictions can adopt one of 2 types of arbitration process:

- Final offer – an independent arbitration panel considers the proposed resolutions submitted by the CAs and chooses, by vote of simple majority, one of the proposed resolutions as the final arbitration decision.
- Independent opinion – an independent arbitration panel considers the position papers (including relevant information) submitted by the CAs, the applicable provisions of the relevant tax treaty and domestic provisions of both jurisdictions to reach the final arbitration decision.

Australia has adopted the final offer arbitration process under the MLI. As such, the majority of tax treaties modified by the MLI to provide for arbitration will follow this process. An exception is where Australia's treaty partner has adopted independent opinion (for example, Japan and Malta). In this case, independent opinion will be the relevant process for the arbitration proceedings with that treaty partner.

When you can request arbitration

You can request for any unresolved issues under your MAP case to be submitted to arbitration if the relevant tax treaty provides for arbitration and your case satisfies the eligibility criteria.

How to request arbitration

You must submit your request for arbitration in writing to either or both of the CAs.

In your request for arbitration, you must provide sufficient information to identify your MAP case.

Address to submit arbitration requests

To submit a request for arbitration to the Australian CA, email it and any other correspondence relating to your MAP case to **internationalsgatekeeper@ato.gov.au**

Alternatively, our postal address for submitting an arbitration request is:

MAP Program Management Unit
Public Groups and International

Australian Taxation Office
PO Box 9977
Brisbane QLD 4001
Australia

Requesting a competent authority determination

How to request a competent authority (CA) determination under Limitation on Benefits provisions in UK and USA conventions.

Minimum level of supporting information

This list outlines the information to send with your request for a determination from an Australian CA under:

- Article 10(3)(c) of the tax treaty between Australia and the United Kingdom (Convention between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double Taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains)
- Article 16(5) of the tax treaty between Australia and the United States (Convention between the Government of Australia and the Government of the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income)
- similar provisions in other tax treaties. However, separate guidance is available for non-individuals seeking dual residency CA determinations under Article 4(1) of the Multilateral Instrument.

The following is not a complete list. The information required will depend on the circumstances of the applicant. Sending this information with your initial request will help achieve a quicker outcome. You may need:

- a copy of the global corporate structure, in particular from the Australian payer company to ultimate parent
- a description of activities undertaken by each company interposed between the Australian payer and ultimate parent including functions performed and employee numbers

- a broad description of the business carried on by each company in the relevant treaty country, including functions performed and employee numbers (this will help establish relevance of the treaty country operations to the group wide business)
- a history of companies from (and including) the Australian payer to ultimate parent including
  - dates the companies were established
  - details of any
    - disposals or acquisitions
    - corporate restructures and liquidations
    - change of corporate residence
  - any proposed changes and the commercial reason for the respective changes
- an explanation of any tax consolidated/multiple entry consolidated group changes or proposed changes
- details of the capital structure of all companies in the chain from Australian payer to ultimate parent, including
  - each class of shares and whether any are listed and traded regularly in a recognised stock exchange, and associated rights (for example, voting, conversion and dividend rights)
  - nature of any changes to the capital structures in last 3 years
- any of the following
  - confirmation that all companies in the chain beneficially own all dividends received
  - details of any company that is a nominee, agent or conduit
  - confirmation that the company does not have a legal or equitable obligation to surrender the dividends to another party
- details of any beneficial ownership of dividends as the applicant, including commercial reasons of any
  - corporate restructure
  - new incorporation

- interposition
- acquisition
- change of residency
- other changes

- a history of dividends confirming the amounts and use of funds
  - paid by the Australian company
  - received by the applicant (including from other companies)
  - paid by the applicant up the corporate chain
  - include each period of time the recipient of the dividend beneficially owned the dividend
- the company's / group of companies' details of either
  - capital management policy
  - dividend policy
- a copy of the financial statements for the current and prior three years for both the
  - Australian company
  - applicant
- an explanation of the source of the income generating the unfranked dividend, including details of when the Australian payer receives from its subsidiaries either by
  - a return of capital
  - other distributions
- confirmation of the residency of the applicant issued by the revenue authority of the treaty country
- confirmation that the applicant does not carry on a business through a permanent establishment in Australia
- an explanation of the tax treatment of dividend flows from Australian payer to ultimate parent
- an explanation as to why the applicant does not satisfy the treaty conditions for relief under Article 10(3)(a) or (b) and needs to seek

the determination from the CA
- details of the commercial purpose for a creation or assignment of the shares or other rights for which the dividend is paid including details of any tax benefit or tax saving that arises as a result.

Submitting your request for a determination

You can either:

- mail your application to

  MAP Program Management Unit
  Public Groups and International
  Australian Taxation Office
  GPO Box 9977
  BRISBANE QLD 4001
- send us your application or ask for help by emailing internationalsgatekeeper@ato.gov.au

Note: The internet is not a secure environment. We don't control the path of inbound and outbound emails, so the privacy of personal information sent by email can't be guaranteed. You should be aware of this risk if you choose email to communicate with the ATO and those communications include your personal details.

Requesting dual residency competent authority determinations

Apply for a competent authority (CA) determination under Article 4(1) of the Multilateral Instrument.

Dual residency competent authority determinations under Article 4(1) of the Multilateral Instrument

The tax treaties listed below are modified by Article 4(1) of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, also known as the Multilateral Instrument (MLI).

Non-individual taxpayers who are dual residents under a tax treaty listed below will need to apply to either CA for a determination of their residency for the purposes of the relevant treaty.

Australia’s tax treaties that are modified by Article 4 (1) of the MLI as at September 2023, by jurisdiction

- Canada
- China
- Denmark
- India
- Indonesia
- Japan
- Mexico
- The Netherlands
- New Zealand
- Norway
- Papua New Guinea
- Poland
- Romania
- Russia
- The Slovak Republic
- South Africa
- United Kingdom

For information regarding the date of effect of Article 4(1) of the MLI for the listed tax treaties, see **Multilateral Instrument**.

Dual residency competent authority determinations with New Zealand

In recognition of the Single Economic Market agenda between Australia and New Zealand, which seeks to create a seamless trans-Tasman business environment, and the fact that our respective tax systems and administrations are comparable and both countries are committed to adopting measures to address BEPS risks, a joint administrative approach is available for certain taxpayers that satisfy a set of eligibility criteria.

An eligible Australia/New Zealand taxpayer will not be required to provide the above information to either CA under the administrative approach. For more information see **MLI Article 4(1) administrative approach.**

At this stage, the administrative approach will **only** be implemented between Australia and New Zealand. The approach does **not** apply to Australia's other tax treaties modified by Article 4(1) of the MLI.

You must lodge the taxpayer's request with the minimum level of supporting information and documentation that supports the taxpayer's proposed position. This level of supporting information and documentation helps to ensure timely consideration of the application.

There is no restriction on the level of supporting information that a taxpayer can provide beyond the minimum level as part of their initial notification.

If either CA requires additional information or documentation to complete their evaluation of the taxpayer's application, they may request it. All information received by a CA will be provided to the other CA.

You can lodge an application for a determination via the MAP Program Management Unit.

Minimum level of supporting information

Companies

The minimum level of supporting information for companies includes:

- a submission on the entity's jurisdiction of residence for treaty purposes, including the commencement date of such self-determination
- confirmation of the entity's incorporation details, including
  - any relevant registration numbers
  - its principal place of business
  - its registered office addresses (including any overseas addresses)
- the entity's constitution or equivalent (for example, memorandum and articles of association)

- an organisational chart, including reporting lines and where key senior executives are located
- a brief description of the business carried on by the entity, including details such as
  - functions performed and where they are performed
  - number of employees and where they are located
- a brief description of the reasons why the entity has been established as a dual resident
- a description of the role and responsibility of each board member or senior executive who in substance is tasked with making key management and commercial decisions necessary for the conduct of the business as a whole, including details such as
  - their level of authority
  - formal powers (including any delegation powers)
  - where they reside and their tax residency
- details of any other persons or entities (for example, shareholders, parent entities, advisors) that have the power to materially influence the entity's key management and commercial decisions
- confirmation of where the following types of documents are prepared, located and physically maintained
  - accounting records
  - company bank accounts
  - board minutes or equivalent documents recording high-level strategic decisions
- copies of the minutes of the last three board meetings.

Deceased estates and testamentary trusts

The minimum level of supporting information for deceased estates and testamentary trusts includes:

- a submission on the deceased estate's or trust's jurisdiction of tax residency for treaty purposes, including the commencement date of that treaty residency
- copy of the will or other creation document, court order or similar

- copy of appointment of trustee(s) if not covered in the will or creation document
- name and tax residency of each trustee (if any trustee(s) is a company, the place of incorporation)
- a brief description of any business carried on by the deceased estate or trust
- a description of the role and responsibility of each trustee who, in practise, makes key management and commercial decisions necessary for the conduct of the estate or trust
- confirmation on whether any trustee takes a lead role in the management of the estate or trust
- if decisions concerning the estate or trust are not taken by unanimous agreement, a description of how they are made
- confirmation on whether the trustees rely totally on advice provided by advisor(s)
- confirmation on whether anyone other than the trustee(s) is involved in making key management and commercial decisions in relation to the deceased estate or trust and if so their name, location and tax residency and their involvement in making those key decisions
- a brief description of significant assets of the deceased estate or trust located in each country
- confirmation on whether the trustees meet to discuss the estate or trust and if so where or how such meetings take place.

Lodging your application

You can either:

- mail your application to

  MAP Program Management Unit
  Public Groups and International
  Australian Taxation Office
  GPO Box 9977
  BRISBANE QLD 4001

- send us your application or ask for help by emailing **internationalsgatekeeper@ato.gov.au**

Note: The internet is not a secure environment. We don't control the path of inbound and outbound emails, so the privacy of personal information sent by email can't be guaranteed. You should be aware of this risk if you choose email to communicate with the ATO and those communications include your personal details.

QC 56904

Providing services in Australia

What you need to know about providing services in Australia.

Last updated 28 October 2016

Sometimes entities from other countries that provide services in Australia may have to pay tax.

This happens to entities that are from countries with tax treaties with Australia and countries without tax treaties.

You will need to register for an **Australian business number** (ABN) for some tax obligations.

Next steps:

- Australian business number

See also:

- Doing business in Australia
- Selling goods into Australia
- What are tax treaties?
- GST for small business

Income tax

You may be liable to pay Australian income tax if you have an Australian permanent establishment.

If you provide services as an individual you will need to pay income tax on the earnings if the income is attributable to your fixed establishment or if you were present in Australia for more than 183 days (6 months).

If your entity is registered in a non-treaty country you need to determine the source of your income.

Capital gains tax (CGT)

You may be liable for Australian capital gains tax (CGT) if you have assets that are considered taxable Australian property.

Goods and services tax (GST)

You may be liable for **goods and services tax** (GST), which is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia.

Other taxes

You may also be subject to:

- foreign resident withholding tax
- superannuation guarantee and PAYG withholding obligations if you employ workers in Australia, and
- fringe benefits tax (FBT).

If you are exporting goods to Australia, and the buyer is responsible for clearing the goods through customs, you may not have Australian tax obligations. Your Australian customer will have tax obligations relating to the importation of the goods.

Next steps:

- Permanent establishment
- Capital gains tax link
- Supplying goods and services in Australia – goods and services tax

- Foreign resident withholding tax
- Superannuation guarantee
- PAYG withholding
- Fringe benefits tax (FBT)

QC 18411

Selling goods into Australia

Your Australian tax obligations when importing goods into Australia with or without having a physical presence here.

Last updated 18 September 2020

This information is for entities that sell goods into Australia.

You should use this information whether or not:

- you have a physical presence in Australia
- you sell through an Australian agent
- your country of residence has a tax treaty with Australia.

The government is continually reviewing international tax arrangements. Potential international legislative changes may affect you.

Find out about:

- Selling goods without a physical presence in Australia
- Selling goods through an Australian agent
- Selling goods through a permanent establishment
- What if I operate a subsidiary?

See also:

- Australian GST registration for non-residents
- Australian business number (ABN) for non-residents

- GST on imported services and digital products
- GST on low value imported goods
- Providing services in Australia
- Tax treaties
- New legislation

Selling goods without a physical presence in Australia

Treaty countries

This section applies to you if:

- you are a resident entity of a country that has a tax treaty with Australia
- you export goods to Australia without having a physical presence in Australia, such as an agent, subsidiary or permanent establishment, and
- you don't employ staff in Australia.

Under these circumstances you will have the following tax obligations:

- **Income tax** – You will **not** be liable to pay Australian income tax. Income tax only applies if you have an Australian permanent establishment.
- **Capital gains tax (CGT)** – You will **not** be liable to pay CGT. CGT only applies to assets that are taxable Australian assets.
- **Goods and services tax (GST)** – You **may be** liable for GST. GST is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia.
- **Superannuation**, **PAYG withholding** and **fringe benefits tax (FBT)** – As you don't have employees, you **won't** have any of these obligations.
- **Other tax obligations** – If you are exporting goods to Australia by selling to an Australian resident entity on a free on board (FOB) basis, this may be considered an importation by the Australian entity. This means you may not have any Australian tax obligations –

rather, your Australian customer will have tax obligations relating to the importation.

You will need to register for an Australian business number (ABN).

Non-treaty countries

This section applies to you if:

- you are a resident entity of a country that does not have a tax treaty with Australia
- you export goods to Australia without having a physical presence in Australia, such as an agent, subsidiary or permanent establishment
- you don't employ staff in Australia.

Under these circumstances, you will have the following tax obligations:

- **Income tax** – You **may be** liable to pay income tax. You need to work out the source of your income, as this will determine how you are taxed.
- **Goods and services tax (GST)** – You **may be** liable for GST. GST is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia.
- **Superannuation**, **PAYG withholding** and **fringe benefits tax (FBT)** – As you don't have employees, you **won't** have any of these obligations.
- **Other tax obligations** – If you are exporting goods to Australia by selling to an Australian resident entity on a FOB basis, this may be considered an importation by the Australian entity. This means you may not have Australian tax obligations – rather, your Australian customer will have tax obligations relating to the importation.

You will need to register for an Australian business number (ABN).

See also:

- Doing business in Australia
- Tax treaties
- Australian GST registration for non-residents
- Australian business number (ABN) for non-residents

Selling goods through an Australian agent

Treaty countries

This section applies to you if:

- you are a resident entity of a country that has a tax treaty with Australia, and
- you export goods to Australia through an agent in Australia.

Under these circumstances, you will have the following tax obligations:

- **Income tax** – If you have dependent agents in Australia that have authority to enter into contracts on your behalf and regularly exercise that authority, they may be regarded as your permanent establishment. This means your business profits **will** be subject to Australian income tax.
- **Capital gains tax (CGT)** – If you have a permanent establishment in Australia, the assets you own as part of that establishment **will** generally be subject to CGT when you sell or otherwise dispose of those assets.
- **Goods and services tax (GST)** – If you make sales, purchases or importations through a resident agent, the agent **may** have GST obligations. GST is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia.
- **Superannuation and PAYG withholding** –- If you employ a full-time, part-time or casual worker, or a contractor wholly or principally for labour as your agent in Australia, you **may** have Australian superannuation obligations or PAYG withholding obligations.
- **Fringe benefits tax (FBT)** – If you employ a full-time, part-time or casual worker as your agent in Australia and you provide benefits to them or their associate (typically family members) in place of, or in addition to, salary or wages, you **may** have fringe benefits tax (FBT) obligations.

You will need to register for an Australian business number (ABN).

Non-treaty countries

This section applies to you if:

- you are a resident entity of a country that does not have a tax treaty with Australia, and
- you export goods to Australia through an agent in Australia.

Under these circumstances, you will have the following tax obligations:

- **Income tax** – You **may be** liable to pay income tax. You need to work out the source of your income, as this will determine how you are taxed.
- **Goods and services tax (GST)** – If you make sales, purchase or importations through a resident agent, the agent **may** have GST obligations. GST is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia.
- **Other tax obligations** – If you are exporting goods to Australia by selling to an Australian resident entity on a free on board (FOB) basis, this may be considered an importation by the Australian entity. This means you may not have Australian tax obligations – rather, your Australian customer will have tax obligations relating to the importation.

You will need to register for an Australian business number (ABN).

See also:

- Tax treaties
- Doing business in Australia
- Australian GST registration for non-residents
- Australian business number (ABN) for non-residents
- Guide to capital gains tax
- Goods and services tax (GST)
- Super for employers
- PAYG withholding
- Fringe benefits tax (FBT)

Selling goods through a permanent establishment in Australia

Treaty countries

This section applies to you if:

- you are a resident entity of a country that has a tax treaty with Australia
- you export goods to Australia through a permanent establishment in Australia, and
- you employ staff in Australia.

Under these circumstances, you will have the following tax obligations:

- **Income tax** – Your business profits, attributed to your Australian permanent establishment, **will** be subject to Australian income tax.
- **Capital gains tax (CGT)** – You **will** be subject to Australian CGT if you sell or dispose of assets that are taxable Australian assets.
- **Goods and services tax (GST)** – You **may** be liable for GST. GST is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia.
- **Superannuation and PAYG withholding** – If you employ a full-time, part-time or casual worker, you are **likely** to have Australian superannuation obligations and PAYG withholding obligations.
- **Fringe benefits tax (FBT)** – If you employ a full-time, part-time or casual worker and you provide benefits to them or their associate (typically family members) in place of, or in addition to, salary or wages, you **may** have fringe benefits tax (FBT) obligations.

You will need to register for an Australian business number (ABN).

Non-treaty countries

This section applies to you if:

- you are a resident entity of a country that does not have a tax treaty with Australia
- you export goods to Australia through a permanent establishment in Australia
- you employ staff in Australia.

Under these circumstances, you will have the following tax obligations:

- **Income tax** – You **may** be liable to pay income tax. You need to work out the source of your income, as this will determine how you are taxed.
- **Capital gains tax (CGT)** – You **will** be subject to Australian CGT if you sell or dispose of assets that are taxable Australian assets.
- **Goods and services tax (GST)** – You **may** be liable for GST. GST is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia.
- **Superannuation and PAYG withholding** – If you employ a full-time, part-time or casual worker, you are **likely** to have Australian superannuation obligations and PAYG withholding obligations.
- **Fringe benefits tax (FBT)** – If you employ a full-time, part-time or casual worker and you provide benefits to them or their associate (typically family members) in place of, or in addition to, salary or wages, you **may** have fringe benefits tax (FBT) obligations.
- **Other tax obligations** – If you are exporting goods to Australia by selling to an Australian resident entity on a free on board (FOB) basis, this may be considered an importation by the Australian entity. This means you may not have Australian tax obligations – rather, your Australian customer will have tax obligations relating to the importation.

You will need to register for an Australian business number (ABN).

See also:

- Permanent establishments
- Tax treaties
- Australian GST registration for non-residents
- Australian business number (ABN) for non-residents
- Guide to capital gains tax
- Goods and services tax (GST)
- Super for employers
- PAYG withholding
- Fringe benefits tax (FBT)

Operating a subsidiary

If you operate a subsidiary in Australia different arrangements may apply.

A subsidiary that is incorporated in Australia is treated as an Australian resident for Australian tax purposes.

The subsidiary is generally taxed in Australia on its worldwide income and its worldwide capital gains, subject to a number of exemptions.

Generally, an Australian resident subsidiary is not considered to be a permanent establishment of its parent company.

See also:

- **Australian owned subsidiaries incorporated in another country**

QC 18431

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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