

Where you want to be.



Establishment Services for
companies setting up in
Australia

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➤ Advisors

➤ Accountants

➤ Auditors

Introducing McLean Delmo Bentleys

With a strong local presence, a national network and international connections, we can assist your business with all your needs to establish a business presence in Australia.

Agile and contemporary

McLean Delmo Bentleys is a member of Bentleys an international network of advisory and accounting firms, with 700 talented staff delivering solutions from 18 locations across Australia and New Zealand.

We work with public and private companies, businesses and entrepreneurs to help them achieve their objectives and get where they want to be.

Our suite of establishment services enables us to provide either holistic support, or provide solutions that supplement work of your own team.

As essential advisors, we provide the future thinking, strategic direction and practical support to strengthen businesses.

Full-service advisory

As a full-service advisory firm, McLean Delmo Bentleys has been providing professional services for 50 years across audit and assurance, business advisory, tax advisory, wealth management, superannuation and finance and lending.

McLean Delmo Bentleys is committed to innovation and development, in line with changing client needs. In recent years Bentleys has been able to maintain its ranking in the Australian Financial Review's list of Top 100 Accounting Firms which suggests we continue to grow in unison with our clients.

An international approach

Our International Business Group provides strategic advice in relation to doing business in Australia and assisting clients globally. We have hands on experience dealing with foreign nationals with business interests in and outside of Australia.



Our association with the Kreston Global network gives us access to unlimited resources from 820 offices in 115 countries.

Access to this network enables us to support our clients through our network offices as they reach further into new markets.

Other points of difference

McLean Delmo Bentleys offers:

- a highly commercial approach, with a focus on delivering timely outcomes within budget
- end-to-end business solutions that enable improved business performance
- tailored service – we take the time to understand your business and work with you to give you tailored service and support
- personal and friendly service with accessible partners who take responsibility for successful working relationships.



Private Equity services for your business



Our services to support companies establishing business in Australia

The common areas of support required by companies establishing a business presence in Australia are:

- Advice on structure of the Australian operation
- Company secretarial matters
- Taxation compliance
- Accounting services
- Immigration services
- Other services.

Advice on structure of the Australian operation

A foreign company establishing in Australia for the first time does so in one of three ways:

- Representative office, where there is no direct business operations in Australia, but the foreign company wishes to provide some support to its Australian customers.
- Branch, where a company intends operating a business in Australia, but the foreign company does not wish to establish a separate legal structure to operate through.
- Subsidiary, where a company intends operating a business in Australia, and the foreign company does wish to establish a separate legal structure to operate through.

There are numerous considerations to when making these decisions including Australian taxation issues, repatriation of profits to the country of origin, Corporations Act and financial reporting obligations, long and short-term business strategy, size of operations, management independence, etc.

Although each set of circumstances need to be considered separately, a representative office generally does not have authority to act for the foreign company. As a consequence, there is often not any requirement to register with ASIC and the ATO (for income tax and GST). There will be exceptions to this general rule and employment tax rules for individuals working in Australia on behalf of a non-resident will need to be managed.



International tax structuring



Managing taxation

Broadly, international tax structuring objectives focus on mitigation of tax leakage that may arise for a non-resident as a result of:

- the payment of Australian income tax or withholding tax on distributions and other payments to the non-resident where such payments are not creditable in the foreign jurisdictions. Even where such payments are creditable there would be a cash flow impact for the non-resident as a consequence of the payment of tax in Australia.
- the payment of further taxes in other jurisdictions on distributions to the ultimate shareholders of the parent company.
- Maximising the after tax return to the ultimate shareholders.

Any decision by a non-resident to invest in Australia should have regard to:

- the non-resident's other international investments;
- the non-resident's preferred international holding structure; and
- potential tax leakage in Australia or other jurisdictions as a result of profit repatriation to the shareholders of the ultimate partner company.

Managing an international structure and mitigating the incidence of tax leakage can be a complex and highly customised exercise which involves consideration of strategic, commercial and tax variables and having regard to several limitations imposed by integrity features of the Australian tax law.

Integrity features that may impact international tax structuring arrangements

Australian tax laws include several integrity features which are designed to prevent certain kinds of manipulation of transactions and investments that diminish the Australian tax base. These include, but are not limited to:

- Australian transfer pricing rules that can operate to deem a benchmark arm's length price for goods and services provided by a company or branch of a non-resident in Australia based on the expected economic return for the functions, assets and risks of the business in Australia. Accordingly, the pricing of international related party dealings requires careful consideration for companies or branches in Australia.
- Thin capitalisation rules that can operate to deny debt deductions in respect of excess debt capital of an Australian company or branch. Accordingly, the capital requirements of the Australian business need to be examined and planned to mitigate non tax deductible debt costs.
- Anti-streaming rules can operate to prevent streaming of returns of dividends or capital to non-residents in certain circumstances. Accordingly, distributions of dividends and returns of capital to non-residents should have regard to these anti-streaming rules.



International tax structuring (continued)

- Anti-treaty shopping rules are included in many of Australia's international agreements with foreign tax jurisdictions to prevent treaty shopping for benefits under Australia's network of international agreements for the prevention of double taxation and avoidance of fiscal evasion. These agreements can operate to limit Australian income tax and withholding taxes by foreign residents. Accordingly, the choice of an intermediate holding company jurisdiction for an investment in Australia requires careful consideration.
- General anti-avoidance rules can be applied to deny tax benefits where certain conditions are met. These rules are primarily focused on arrangements that have entered into with a dominant purpose to obtain a tax benefit. The above listed objectives and limitations must have regard to these general anti-avoidance rules.

We would be pleased to discuss the potential international tax structuring options with management and consider the alternative market entry strategies that may be available having regard to the above listed objectives and limitations.

Australian income tax facts

- The income tax rate in Australia is levied only at a federal level (ie there is no state based income tax).
- The rate of income tax will be the same (ie typically 30%) for both an Australian subsidiary of a foreign company ("subsidiary"), and a foreign company carrying on business in Australia through a "permanent establishment" ("branch").
- The approach to the application of transfer pricing rules by the Australian taxation office is broadly the same whether the business is conducted through a branch or a subsidiary.
- There are occasions when customers may prefer to enter into business with a subsidiary company from a commercial perspective, because businesses commonly have a better understanding of the implications of dealing with an Australian subsidiary company as compared to a foreign company.



Company secretarial duties



Company secretarial matters

There are a number of requirements for companies to undertake, when setting up and doing business in Australia. A summary of the company secretarial requirements for both a branch and subsidiary is outlined in the table below.

Activity	Branch	Subsidiary (Proprietary Company)
Registration with Australian Securities and Investments Commission (ASIC)	Yes	Yes
Maintain Australian registered office	Yes	Yes
Preparation of annual statement (Form 316L)	No	Yes
Preparation of Form 405 to accompany lodgement of annual financial statements with ASIC	Yes	No
Preparation and lodgement of Form 384 (audit relief, if available) with ASIC	N/A	Yes
Resident director required	No	Yes
Resident local agent required	Yes	No

If a subsidiary or branch is registered, the foreign company will need to appoint either an Australian resident director or local agent and public officer for the company, unless they have a local representative that can fulfil these duties.

McLean Delmo Bentleys can introduce individuals who may be prepared to act as a resident director or local agent where the client does not have a local representative that can fulfil these duties.

We can act as the registered office for the branch or subsidiary as long as is required.



Company secretarial duties (continued)

Provision of a registered office and maintenance of company registers

This service includes the following recurring obligations of the subsidiary or branch and will be charged as a fixed annual fee:

- provision of registered office for the company; and
- maintenance of company registers (including electronic registers) and other corporate secretarial records at our premises to comply with the ASIC requirements.

These obligations must continue to be fulfilled whilst the subsidiary or branch continues to be registered in Australia.

Attendance to other corporate secretarial matters

Other services may be provided as and when required upon receipt of the necessary instructions from the company. These services would commonly include preparation of minutes and preparation and lodgement of ASIC Forms relating to changes to officeholder details or principal place of business details, but may extend to the provision of other services.



Taxation compliance



Taxation registration

There are a number of recurring activities associated with taxation compliance under Australian law.

Australian Business Number (ABN)

If the subsidiary or branch carries on a business in Australia, then it will need to obtain an ABN so that its receipts are not subject to ABN Withholding.

Tax file number (TFN)

As a consequence of having an Australian permanent establishment then a subsidiary or branch will need to obtain a Tax File Number.

Fringe Benefits Tax (FBT)

If non-cash benefits (eg cars, entertainment) are provided to employees, then the subsidiary, branch or representative office will need to register for fringe benefits tax and will need to complete an annual fringe benefits tax return.

Goods and Services Tax (GST)

If taxable supplies are made in connection with Australia, and turnover exceeds AUD75,000 per annum, then there is a requirement for the company to register for GST purposes.

It is uncommon for a business that has a presence to not also have an "enterprise" for GST purposes. We recommend that we review the circumstances of the company to determine how the company should be treated for GST purposes.

This is important to understand, particularly if the company's management is negotiating contracts. If it is determined that a taxable supply does exist, then a liability of 1/11 of the value of the sale will need to be remitted to the Australian

Taxation Office. This will have a significant impact on the company's profit margin, if it has not negotiated its contracts with appropriate regard to GST.

The registration for the Tax File Number, ABN, PAYG Withholding (see below), GST and Fringe Benefits Tax can all be done on one form.



Taxation compliance (continued)

Employment related registrations

The employment related registrations will apply where there are employees in Australia, irrespective of which structure is chosen.

PAYG Withholding

As a consequence of having employees in Australia, the structure will need to register for PAYG Withholding, which is the term used in Australia for employer withholdings from salary and wages paid to employees. There will be either monthly or quarterly reporting obligations arising from this also (Instalment Activity Statements, or IAS).

TFN Declarations

The structure will be required to lodge a Tax File Number declaration for each employee on commencement of their employment.

Payroll tax

Payroll tax rules depend upon how many employees you have and where they are located. For example, a business operating only in Victoria, will only have a payroll liability if its annual wages exceed AUD650,000. However, there are grouping rules, and the obligations become more complex as a business moves into multiple states with multiple entities. If the structure's payroll is expected to exceed the relevant thresholds, registration for payroll tax will then be required.

Workers compensation

There is a further mandatory requirement to obtain workers compensation insurance in each State that the structure employs staff. This

must be done immediately as employees are appointed, noting that penalties for non-compliance can be severe.

Superannuation

If the structure has employees, it is very likely that superannuation will be required to be paid by the structure on their behalf. The statutory rate for superannuation is currently 9.5% of cash salary, with some limited exceptions. However, please note that there may be an exemption for some senior expatriates (if applicable). Although it is employers that are liable to pay superannuation for its employees, employees often organise their superannuation arrangements themselves.



Other compliance services



Other compliance obligations

The following obligations may also exist:

- annual income tax return
- annual fringe benefits tax return (if required)
- annual payroll compliance obligations
- GST reporting

Accounting services

The company may have limited resources to employ full time finance professionals. McLean Delmo Bentleys can assist with the creation of management reporting solutions upon which to base management decisions and the periodic preparation of management reports for provision to management.

McLean Delmo Bentleys can also assist with annual financial reporting requirements, including the preparation of annual financial reports and the adoption of International Financial Reporting Standards (if relevant).

Immigration Services

McLean Delmo Bentleys is able to provide advice on the requirements for transferring managers and skilled employees to Australia, helping foreign companies to proceed with their business plans with confidence. Our registered professionals offer full-service assistance to help companies complete the necessary paperwork to secure the necessary visas and permissions to work.

Depending upon the visa being sought by the applicant, there may be a requirement to prepare and lodge a business plan with the Immigration Department. We are able to assist

with these requirements also should they arise, noting that our costs will depend upon the complexity of the business plan required.

Audit services

There may be statutory obligations to undertake an audit if a subsidiary is registered. However, there may be relief available from these obligations in certain circumstances. It should be noted that if relief is to be sought, then this should be considered at the time of incorporation.



Business Services Partner:

Ray Short

Contact Us

Please contact us to discuss how we can assist you to establish your business in Australia

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Qualifications

- Bachelor of Economics (Accounting & Economics), Monash University
- Chartered Accountants Australia & New Zealand (Member)



Ray Short, Engagement Partner

Ray has over 20 years' experience in public practice and the private sector and prior to joining the firm, worked with a 'big 4' accounting firm.

Ray has extensive experience in providing business services, tax planning and assisting clients with major transactions such as the purchase or sale of their business.

As part of his business services and tax role Ray provides all necessary functions to meet a client's statutory requirements including financial statements, income tax returns, GST returns, FBT returns and state-based taxes. Ray also works closely with clients to ensure tax planning and tax structuring is maintained to minimise the tax burden as well as assisting with business functions such as strategic planning and budgeting.

Ray also provides a suite of corporate finance services to help clients through major transactions. These include strategy reviews, managing the business sale process, due diligence (both financial and tax), data room management, financial modelling, capital raising, and project management.



Where you want to be

Measuring and realising value.
Improve profitability and
performance. Gain efficiency.
Achieve strategic growth. Buy
and Sell. Propel your business
success.

Contact McLean Delmo
Bentleys.

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