directly – tax on Australian-sourced income only, withholding tax on income that consists of interest, dividends and royalties – but the tax is collected at the trustee level prior to any remittance offshore.

Partnerships

General partnerships are transparent entities for tax purposes, but limited and other types of corporate partnerships are generally taxed as companies. An exception is made for limited partnerships used in venture capital investments, which continue to be transparent.

Interposed offshore entities

While the law is currently unclear, the practice of the Australian Taxation Office is to look through transparent offshore entities to each underlying owner, and if an owner is a resident in the United States, allow the owner to benefit from tax concessions under the terms of the DTA.

Debt financing

Leveraging an investment into an Australian entity by lending funds rather than subscribing for equity is generally tax efficient, because the interest should be deductible to the Australian entity, and the offshore borrower will be taxed at a maximum (final) rate of 10 per cent to the recipient, or at a lower rate in some circumstances.

This is subject to the following:

- Thin capitalisation – these rules limit the extent that an entity can be capitalised by way of debt rather than equity, by disallowing the deduction of interest on the excess portion of the debt. The rules are complex, but a debt/equity ratio of up to 60:40 is generally allowable.
- Transfer pricing – these rules require the interest rate on related party financing to be an arm's length rate. The Australian Tax Office requires this rate to be determined on a standalone basis, and without regard for parental support.
- Debt/equity rules – these may re-characterise debt as equity, and re-characterise interest payments as non-deductible dividends, if the loan has sufficient equity-like features.

Recent government announcements have signalled an intent to restrict the concessions to commercial and retail property investment, where rent is derived from third parties.

Real estate investment

A concessional tax regime allows offshore investment into Australian real estate via a widely held unit trust (known as a managed investment trust [MIT]), with tax on rent and any profits on sales imposed at (generally) a 15 per cent rate.

Recent government announcements have signalled an intent to restrict the concessions to commercial and retail property investment, where rent is derived from third parties.

Until this announcement, MITs had been used for investment in agricultural land, in infrastructure investments, and in 'stapled' investments (often in the agricultural and infrastructure sectors) where the land was purchased by the MIT, operating assets were purchased by a stapled entity, and the land was then leased by the MIT to the stapled entity, generating a deduction for the payer, and generating income taxed at a maximum rate of 15 per cent for offshore investors in the MIT.

Other issues

Other issues, beyond the scope of this article, that offshore investors may need to bear in mind when investing in Australia are:

- the requirement to receive government approval from the Foreign Investment Review Board prior to making certain investments (particularly real estate investments)
- anti-avoidance rules for highly structured investments (multinational anti-avoidance law, diverted profits tax, proposed anti-hybrid rules)
- proposed changes to tax concessions available to sovereign investors and foreign pension funds
- a proposed new corporate collective investment vehicle regime, which should offer tax transparency and limited liability.

This article is necessarily general in nature, and provides an overview of some of the key considerations that US investors should take into consideration when investing in Australia. Investors should seek professional tax advice referable to their own circumstances prior to making any investment.

THE BUSINESS CASE FOR INCLUSIVE WORKFORCES

Aside from feeling good about giving people a go, inclusive workforces make sound business sense. Data shows that inclusive businesses experience:

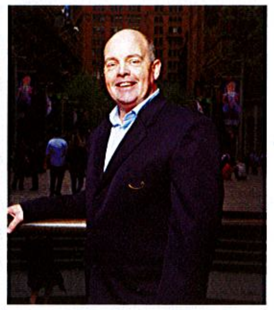
- lower absenteeism and reduced expenses associated with staff turnover
- reduced perception of discrimination and inequality
- increases in all of the following: employee health and wellbeing, staff commitment to organisational success, employee investment in work performance, and cooperation and collaboration between co-workers, employees and management.

Not surprisingly, all of the above lead to improved productivity!

The perceived barriers to forming a disability inclusion strategy are many, but they needn't be. Essentially, it's what you would normally do, while at the same time remembering that you want to give everyone a fair go.

Start by ensuring that the hiring process is open to all candidates:

- Provide the option to apply in person as well as online.
- Interview in accessible places.
- Speak and write in plain English in position descriptions and contracts, and during interviews.



Inclusion requires commitment from the CEO down. I have seen many attempts fail because management has tried to delegate inclusion. It's too important for that. And it's too important not to get expert advice on how it can work in your company.

Contact me to draw on NOVA Employment's almost 30 years' experience facilitating disability inclusion in New South Wales.

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