

# 私募股本行业： 澳大利亚税务问答

与私募股本行业相关的澳大利亚税项有哪些？	<ul style="list-style-type: none"> <li>» 所得税 税率：30%，税基为应税收入减去所允许的税前抵扣。</li> <li>» 向非居民跨境汇款的预提税 已付税股息：0% 未付税股息：最高税率30% (根据中澳避免双重征税协定，为15%) 利息：10% 特许权使用费：10%</li> <li>» 资本利得税 外国居民在出售其在某一实体所拥有的股份或单位时，通常无需缴纳资本利得税，前提是该企业所拥有的澳大利亚不动产资产没有达到其全部资产的50%或以上。</li> <li>» 增值税(商品及服务税) 对于非出口的出售交易，征收10%的税款(但如果属于商业性购买，则所缴纳的商品及服务税可予以索回)。</li> <li>» 印花税/交易税 印花税是各个州及领地政府所征收的税项，与私募股本业最为密切相关的征收范围包括土地及权益转让，或对直接或间接拥有土地的公司所进行的股权转让。各个州及领地政府有其不同的税基和税率，但目前的税率均在4.95%至6.75%之间。</li> <li>» 土地税 土地税是各个州及领地政府每年征收的税项，税基为在每年6月30日或12月31日所拥有的未经开发的土地的价值(视所在州而定)。各个州及领地政府有其不同的税基和税率，但对于公司实体而言，目前的税率在1.25%至3.7%之间。</li> <li>» 就业相关税项 工资税：各个州及领地政府对雇主就其支付给雇员的工资所征收的税项，目前的税率在4.90%至6.85%之间。 员工福利税：对雇主在某些特定的支付给雇员的非工资福利之上征收员工福利税，税率为46.5%。</li> </ul>
非澳大利亚居民在澳投资如何纳税？	<ul style="list-style-type: none"> <li>» 直接投资 非澳大利亚居民需在下列情况下需就其在澳大利亚获得的收益缴税：  <ul style="list-style-type: none"> <li>» 如果该收益归属于其在澳大利亚常设机构所持有的资产；</li> <li>» 如果该收益属于“收入”的性质(即营业性库存、短期持有用于转售获利)，该收益“源自”澳大利亚，且投资者不可获得“避免双重征税协定”的保护；</li> <li>» 如果该收益属于“资本”的性质(即作为投资资产长期持有)，并且源于下列二者之一： <ul style="list-style-type: none"> <li>- 直接拥有的土地权益(包括资源权益)；</li> <li>- 在一家澳大利亚或外国公司持有10%或更多的权益，而该公司价值的50%以上归属于澳大利亚土地(包括资源权益)。(合称“应税澳大利亚物业”。)</li> </ul> </li> </ul> </li> <li>» 投资澳大利亚信托 对于非澳大利亚居民对澳大利亚“固定”信托所进行的投资，如果其通过该信托所获得的收益属于资本性收益，并且该收益所涉及的资产不属于“应税澳大利亚物业”，则无需就该收益缴税。</li> </ul>
私募股本的收益在澳大利亚如何缴税？	<p>根据澳大利亚税务局目前的做法，来自中国(或其他地区)的投资者应当假设，对于私募股本基金所获得的收益，在大多数的情况下，澳大利亚税务局会按照最低30%的税率予以征税，下列可能出现的情况除外：</p> <ul style="list-style-type: none"> <li>» 如果该私募股本基金为非合伙企业性质的外国基金，位于一个“签署了税务协定的国家”，并且没有通过澳大利亚常设机构进行投资活动，则其所获得的收益可能完全无需在澳大利亚缴税(处置土地或资源权益所产生的收益除外)；在这类情况下，中国投资者将不会产生任何(间接的)澳大利亚税务成本。</li> <li>但是，在某些情况下，澳大利亚税务局有可能会认为，将在税务体系中不作为透明的税务实体的私募股本基金设立在一个“签署了税务协定的国家”是为了利用该协定，保护该出售收益不在澳大利亚缴税。</li> <li>» 如果根据投资者的最终司法管辖区的税务法，该私募股本基金(及任何其它属于某种投资结构下的实体)被视为税务体系中作为透明税务实体的外国合伙企业，澳大利亚税务局表示在这种情况下，会将出售收益的一部分直接归属于最终的(中国)投资者，而后该投资者才可使用中澳避免双重征税协定，保护那一部分收益不在澳大利亚缴纳任何税款。这是相对较新的税务发展，尚待实践验证。</li> <li>» 如果该私募股本基金为澳大利亚的管理投资信托，则该基金可将其资产的收益转让给来自符合资格的司法管辖区(包括中国)的投资者，而无需在澳大利亚缴税(前提是其投资如同大多数情况一样不属于应税澳大利亚物业)。</li> </ul> <p>如果该私募股本基金的投资属于应税澳大利亚物业(例如：拥有一家澳大利亚土地富有公司超过10%的权益)，那么在向中国投资者分配其出售该投资所产生的收益时，需要缴纳7.5%的预提税(相比之下，公司形式的投资者在分配时需按照30%的税率缴税)。</p>
从税务角度考虑，关于使用澳大利亚私募股本基金结构，中国投资者需要注意哪些问题？	<p>假如投资者要对澳大利亚私募股本基金进行投资，那么投资者务必寻求专业税务咨询，以确保：</p> <ul style="list-style-type: none"> <li>» 该基金为固定信托 - 这将取决于信托的条款内容；及</li> <li>» 该信托符合“管理投资信托”的资格条件 - 这将取决于投资者的构成情况。中国投资者可能需要建立其自己的信托以保证这些要求得到满足，并确保其在未来不会受到新的投资者的影响。</li> </ul>
本信息简介仅作为一般摘要提供。澳大利亚税务制度相当复杂，所以在对提案进行评估时或在承诺采取任何行动之前，请务必向专业人员进行咨询。本简介于2011年12月撰写。澳大利亚税务法和税务惯例会经常修改。	

# Private Equity sector Australian Tax Q & A

## What are the relevant Australian taxes for the private equity sector?

» Income tax	Rate = 30%. Basis: assessable income less allowable deductions.
» Withholding tax on remittances to non-residents	Dividends franked: 0% Dividends unfranked: maximum rate 30% (15% under China/Australia agreement) Interest: 10% Royalties: 10%
» Capital gains tax (CGT)	A foreign resident will generally not be subject to CGT when selling shares or units that it owns in an entity, provided that the entity does not own real property in Australia which comprises 50% or more of its asset base.
» Goods and services tax (GST)	10% charge on non-export sales (but normally claimed back by business purchases).
» Stamp duty transfer tax	Stamp duty is a State/Territory tax most relevant to the private equity sector on the transfer of land and interests or on the transfer of shares in companies directly or indirectly owning land. The basis of the tax and rate varies between States/Territories, but currently ranges between 4.95% and 6.75%.
» Land tax	Land tax is an annual tax levied by a State/Territory based on the unimproved value of land owned as at either 30 June or 31 December of each year (depending on the State/Territory). The basis of the tax and rate varies between States/Territories, but currently ranges between 1.25% and 3.7% for companies.
» Employment taxes	Payroll tax: a State/Territory tax based on salary and wage payments, with the rates currently ranging between 4.90% and 6.85%. Fringe benefits tax: rate 46.5% on specified non-salary/non-wage benefits provided to employees.

## How are non-residents taxed on Australian investments?

» Direct investments	Non-residents are taxed on gains in Australia if: <ul style="list-style-type: none"> <li>» the gain is attributable to an asset held through an Australian permanent establishment;</li> <li>» the gain is of a 'revenue' nature (ie trading stock, short term held for resale at a profit), the gain has an Australian 'source' and the investor is not able to claim the protection of a double tax treaty;</li> <li>» the gain is of a 'capital' nature (ie held for long term investment) and is either: <ul style="list-style-type: none"> <li>- a direct interest in land (including resource interests);</li> <li>- a 10% or greater interest in an Australian or foreign company where more than 50% of the value of that company is attributable to Australian land (including resource interests). (Collectively 'Taxable Australian Property'.)</li> </ul> </li> </ul>
» Investments in an Australian trust	Non-resident investors in an Australian 'fixed' trust are not subject to tax on a gain that the Australian trust makes if the gain is of a capital nature and the gain was in relation to an asset that is not Taxable Australian Property.

## How are private equity (PE) gains taxed in Australia?

	Based on existing Australian Taxation Office (ATO) practice, Chinese (and other) investors should assume that the ATO would seek to tax gains made by PE funds in most cases at a minimum rate of 30%, subject to the following possible exceptions. <ul style="list-style-type: none"> <li>» Where the PE fund is a non-partnership foreign fund, based in a 'tax treaty country' and did not make its investment via an Australian permanent establishment, no part of the gain (other than gains on the disposal of land or resource interests) may be subject to Australian tax; in this event, no (indirect) Australian tax cost for a Chinese investor. However, in some cases, the ATO may seek to argue that locating the non-tax transparent PE fund in a tax treaty country was a device to protect the gain on sale from Australian tax under the treaty.</li> <li>» Where the PE fund, and any other entities in an investment structure, are treated as tax transparent foreign partnerships under the tax laws of an ultimate investor's jurisdiction, the ATO has indicated it will attribute part of the gain on sale directly to the ultimate (Chinese) investor. The tax treaty between Australia and China may then apply to protect that part of the gain from any Australian tax. This is a relatively recent development and has not yet been tested in practice.</li> <li>» Where the PE fund is an Australian Managed Investment Trust (MIT), it can pass through gains on its assets to investors in qualifying jurisdictions (including China) free of Australian tax (if, as is most common, its investment is not Taxable Australian Property). If the PE fund's investment is instead Taxable Australian Property (eg, a greater than 10% interest in an Australian land-rich company), then 7.5% tax would be withheld from distributions of gains on sale of the investment to Chinese investors (reduced from the 30% tax on distribution that would otherwise apply for a company investor).</li> </ul>
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## From a tax perspective what should a Chinese investor look for in an Australian PE fund structure?

	Assuming the investor is investing into an Australian PE fund, it is important that tax advice be taken to ensure that: <ul style="list-style-type: none"> <li>» the fund is a fixed trust – this will depend on the terms of the trust; and</li> <li>» the fund qualifies as a MIT – this will depend on the make-up of the investors. A Chinese investor may want its own trust to ensure that these requirements are met and to ensure it cannot be affected in the future by new investors.</li> </ul>
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This is intended as a very general outline, and because of the complexity of Australia's tax regimes it is essential that specific professional advice be obtained when evaluating proposals or before committing to any actions. This outline was prepared in December 2011 and tax law and tax practice in Australia are subject to regular change.