



ACCOUNTANTS & TAX ADVISORS

THE SIGNIFICANT INVESTOR VISA

WHAT YOU SHOULD KNOW BEFORE
APPLYING FOR THIS VISA

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1. Introduction

The Significant Investor Visa (SIV), introduced by the Government on 24 November 2012, provides a new path for migrants who can invest a minimum of AUD5Million in certain Australian investments to obtain permanent residency visas for Australia.

This special report takes a look at the qualifying requirements as well as the tax and other business issues that may apply to applicants for this new visa. This report does not constitute immigration advice which can only be provided by a registered migration agent. Details regarding the visa requirements have been obtained from the Department of Immigration and Border Protection website. Specific immigration advice regarding your particular circumstances should be sought from a migration agent.

This Special Report covers:

- An overview of the SIV
- The qualifying requirements for the new visa
- The types of investment that satisfy the investment requirement
- The types of investment structure to consider
- An overview of the Australian tax considerations

Armed with the information in this report and with the appropriate professional advice, Significant Investor Visa applicants will be able to make informed decisions about the appropriateness of this visa in their particular situation and how best to structure their complying investments

2. An overview of the new Significant Investor visa

The Business Innovation and Investment (Provisional) visa (subclass 188) is part of the Business Innovation and Investment Programme. Its purpose is to provide a boost to the Australian economy and to compete effectively for high net wealth individuals seeking investment migration. In 2013/14, 7,260 places were allocated for this particular visa category, including places for secondary applicants.

The visa includes three streams:

- Business innovation stream – for people with business skills who want to establish, develop and manage a new or existing business in Australia;
- Investor stream for people who want to make a designated investment of at least AU1.5million in an Australian State or territory
- **Significant investor stream** – for people who are willing to invest at least AUD5million into complying investments in Australia for a period of four years or more and want to maintain business and investment activity in Australia.

Holding this visa is the first stage before becoming eligible to qualify for a Business Innovation and Investment (Permanent) visa (subclass 888). This report focusses on the requirement for the third stream or Significant Investor Visa (SIV).

As a SIV holder, an individual is allowed to travel in and out of Australia for the life of the visa, bring accompanying family members to Australia and, after residing in Australia for at least 160 days over a 4 year period from the grant of the visa, seek permanent residence by applying for the subclass 888 visa.

The SIV has a number of advantages including:

- No upper age limit
- No English language requirements
- Unlimited rights to study and work for the applicant and family members
- No specific business or investment experience required

3. Applying for the SIV

To apply for the SIV, an individual must:

- Submit an expression of interest; and
- Be nominated by a State or Territory Government to apply for the SIV program; and
- Make an investment of at least AUD5million into complying investments and hold that investment continuously for at least four years.

The State or Territory government sponsor may have specific requirements on how a proportion of the investment funds must be invested. The applicant is free to choose how to invest the balance across the approved investment categories.

The applicant must also have a genuine and realistic commitment to:

- reside in the state or territory whose government agency nominated them
- continue their business and investment activity in Australia after the complying investment matures
- live in Australia for at least 160 days over four years while holding the provisional visa.

In addition the applicant and their partner must not have been involved in unacceptable business or investment activities and must agree not to bring any action against the Commonwealth for any loss relating to the complying investments.

4. The types of investment that satisfy the investment requirement

Complying investments for the SIV include:

- Australian Government Bonds
- Australia Securities and Investment Commission regulated managed funds with a mandate for investing in Australia. The types of approved investment include:
 - Australian infrastructure projects
 - Cash, bonds and term deposits with Australian financial institutions
 - Real property in Australia
 - Australian agribusiness
 - Bonds, equity, hybrids or other corporate debt in companies and trusts listed on the ASX.
 - Annuities issue by an Australian registered life company
- Direct investment into a private Australian company which operates a qualifying business

It is permitted to switch between investments during the four year holding period provided that any funds withdrawn from one investment are reinvested within 30 days into another complying investment.

5. The types of investment structure to consider

The complying investment must be made and held:

- Directly – by the applicant or together with their spouse or de facto partner; or
- Through a company – which is wholly owned by the applicant together with their spouse; or
- Through a valid trust – where the trustees and the beneficiaries are the applicant or the applicant and their spouse.

The most appropriate structure will depend on each individual's personal circumstances and Hunt Professional Group can advise on the most appropriate structure or structures for each individual and assist in the establishment thereof. There are various advantages and disadvantages in holding the complying investments indirectly through a company or trust and due consideration should be given to these matters before making a decision on the best holding vehicle.

Where an Australia resident private company is used, it will be necessary to appoint at least one Australian resident director and an Australian resident public officer and ensure that all compliance matters are appropriately attended to. There are also various compliance matters required when holding the investments via a trust, including making timely determinations each year regarding the allocation of the trust net income to beneficiaries and lodging appropriate returns. Various tax registrations and annual filings are required for both entities as well as maintenance of books and records. Hunt Professional Group can assist with meeting all these compliance obligations.

6. An overview of the Australian tax considerations

Careful tax planning at the outset should help to minimise the amount of Australian tax that may be payable as a SIV holder.

Tax considerations impacting individuals

The key issue is to determine the tax residency status of the individual in Australia as this will determine the extent of exposure to Australian tax. Residency is a question of fact and each individual's situation will need to be closely examined to determine residency status.

Residents of Australia are taxable on world-wide income and capital gains while non-residents are subject to Australian tax only on income from sources in Australia and capital gains from the disposal of taxable Australian property (broadly Australian real estate interests). Non-residents also benefit from being subject to withholding tax rather than income tax on Australian source interest income (10%) and Australian source unfranked dividends (30% but may be reduced to 15% depending on country of residence).

It may be possible for individuals who become residents of Australia while holding the 188 visa to take advantage of the temporary resident rules which would exclude foreign source investment income and gains from the Australian tax net.

Australian resident individuals pay tax at scaled rates up to 49% and can benefit from the 50% discount that applies to capital gains on assets held for at least 12 months. Non-residents are not eligible for this exemption and their top marginal tax rate is 47%.

An individual who remains tax resident in a country with which Australia has a double tax treaty should be able to claim relief under the treaty to prevent double taxation. Advice should be obtained in both Australia and the home country to ensure that this is the result.

Tax considerations for companies

Again the residency status of the company will be a key determination regarding exposure to Australian tax and it may be necessary to determine residency under a double tax treaty if the company is also tax resident in another country. Companies pay tax at a rate of 30% and are not eligible for the 50% discount on capital gains, making them more attractive for resident individuals where investments largely derive income and less attractive where there are expected to be significant capital gains.

If the SIV holder intends to invest most of the required AUD5million in an active Australian business, a company is likely to be the best holding vehicle to allow for future expansion.

Tax considerations for trusts

A holding trust may have minimal tax advantages where the sole trustee is the SIV holder and their spouse. The main benefit of trusts, apart from some asset protection, is the flexibility they can offer regarding distribution of income to beneficiaries in a tax efficient manner. However a requirement for the use of a holding trust by a SIV holder is that the beneficiaries are limited to the SIV holder and their spouse.

7. Summary

The SIV may provide a fast track route to permanent residency in Australia for individuals who may not qualify under other visa categories. However there are various tax and other issues that need careful consideration and structuring to ensure that there are no nasty surprises for the SIV holder either on arrival in Australia or down the track when permanent residency is obtained.

To find out more about how Hunt Strategic Advisors can help you to plan your investment in Australia in the right way, simply call 1300 347 952 and ask for David Hunt.

About David Hunt

David Hunt is a Chartered Accountant and Fellow of the Taxation Institute of Australia. He has a Bachelor of Business degree majoring in accounting and a Master of Taxation degree from Sydney University where he obtained a distinction average.

David commenced his career at Industrial Equity Limited (IEL) in the 1980s and worked in the accounting division of Chase Manhattan Securities in London before completing his undergraduate degree and commencing with Peter H Hunt & Associates (renamed Hunt Professional Group) in December 1992. He became a partner of the firm on 1 July 2000 and acquired majority share of the firm by 2007. David has since gone on to form Hunt Strategic Advisors.

David's significant experience and expertise are in the following areas:

- Tax effective business structures
- Capital gains tax
- Employee share schemes
- International taxation
- Family business advising
- Self-managed super fund gearing
- Superannuation and retirement planning
- Estate planning

Often sought after for press commentary on current taxation matters, David has spoken on numerous occasions as the key note speaker to audiences as private bankers, lawyer associations and member based organisations.

David is advisor and confidante to some of the most senior executives in Australia and is highly regarded by many institutions and small to medium enterprises and associations.

David is happily married with three children. His interests include all sport, particularly rugby, rugby league, golf and tennis.