

Home country Germany		Host country Australia
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Assignee name Adam Smith	Assignee nationality German	HR email -
Assignee email adam.smith@gmail.com	Second nationality -	Family Status Single

Assignment type	Client assignment
Assignment reason	Technical expertise
Assignment duration	1 year 5 months
Cost bearer	Home company
Home residency status	Maintained in home country
Accompanied by	Partner, also on assignment

ASSIGNMENT COMPLIANCE ASSESSMENT

Visa / Immigration	<p>German nationals intending to work in Australia for an assignment of 1 year and 5 months will require a Temporary Work Permit. Based on the current facts, the only suitable option is the Temporary Skill Shortage visa (subclass 482).</p> <p>To qualify for this visa, the nominated occupation must be listed on a Skilled Occupation List published by the Australian Government. Whether this condition is met depends on how the role is classified under the Australian ANZSCO, the occupation classification system and must be confirmed by the Australian sponsor and/or a registered migration agent.</p> <p>As there is no Australian subsidiary and the work will be performed on the customer’s premises, an Australian-based entity must act as the formal sponsor (for example the Australian customer where feasible, an Australian business partner or an</p>
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Employer of Record) and submit the nomination to the Department of Home Affairs.

Sponsorship in this context means that the Australian entity formally takes responsibility for the visa, lodges the required applications and ensures that local employment and immigration obligations for the assignee are met. Once the nomination is approved, the assignee must apply online for the Subclass 482 visa, confirming that the assignment is temporary and the employment contract remains with the home-country employer.

No formal registration is required upon arrival in Australia under this visa type (subclass 482).

The visa holder must depart Australia on or before the visa expiry date unless an extension or subsequent visa has been granted.

In Victoria, overseas licence holders can drive on their foreign licence with an International Driving Permit (IDP) or an official English translation. However, as a Subclass 482 visa holder living and working in Melbourne is likely to be treated as a resident for licensing purposes, the German licence may only be used for up to six months after establishing residence. After this period, a Victorian driver licence is required.

Permanent establishment

An assignee who physically works in the host country can establish a Permanent Establishment (PE) if they continue to work for the benefit of the home company. Since the cost of the assignment will be borne by the home company, it is necessary to assess both the duration, and the nature of the activities performed.

The Germany–Australia tax treaty contains a specific rule for construction and installation projects. Under Article 5(4)(a), supervisory or consultancy activities in connection with such a project can give rise to a deemed construction-site PE (a special rule that applies even when no fixed place of business exists) once they continue for more than nine months, even if the work is

carried out on a customer's site rather than on a project site operated by the home company itself.

The expected presence in Australia is one year and five months, clearly exceeding the nine-month threshold for supervisory activities in connection with a construction or installation project. Given the duration and the supervisory nature of the assignment, the conditions for a construction-site PE are fulfilled. A Permanent Establishment in Australia should therefore be assumed.

Additional observations

Several factors (such as limited decision-making authority, no fixed place of business, and separation from revenue-generating activities) would normally mitigate PE risk in most cases. However, these mitigating factors do not override a deemed construction-site PE under Article 5(4)(a). Once the 9-month threshold and the supervisory nature of the work are fulfilled, the existence of a PE is triggered by treaty definition.

Aggregation of presence

As two assignees will be working on the same project, their activities are aggregated under Article 5(5). This aggregation further confirms that the duration threshold is exceeded for the enterprise as a whole.

The individual PE impact of the second assignee (functions, authority, duration) will need to be assessed separately once further details are available, but this does not affect the conclusion that a construction-site PE exists.

Conclusion

Based on the treaty definition and the known facts, a construction-site Permanent Establishment in Australia must be assumed.

If any assumptions change (e.g., nature of activities, project set-up, actual duration), the PE analysis will need to be revisited. WorkFlex can support with reassessment if required.

Employment income is generally taxable in the country where an employee performs the work. For the assignee in Australia, this means that Australia will assume primary taxing rights over the employment income under Article 14 of the German Australian Double Tax Treaty, as the assignment exceeds the relevant threshold of 183 days within a 12-months period.

Consequently, the assignee will become subject to Australian wage tax obligations, and a payroll must be set up for the assignee in Australia to withhold and remit taxes accordingly to ensure compliance with the state and local tax regulations (PAYG withholding).

Proper wage tax withholding and compliance with national and regional tax regulations must be ensured. There are several ways to secure correct wage tax remittance, including:

1. Payroll Registration:

The home company as a non-resident employer can register with the Australian tax authorities. This allows the company to remit Australian wage tax. Usually, the amount of Australian wage tax will be determined by an Australian tax advisor/service provider.

2. Australian Payroll Agent or Employer of Record:

Wage tax / Payroll

If the home company does not want to register, it can engage a payroll service provider or an Employer of Record (EOR) in Australia. These providers act as the formal employer for tax and payroll compliance purposes, handling wage tax withholding while the assignee remains employed by the home company.

For the time of the assignment the payroll can be maintained in Germany according to the current procedure. However, due to the assignment length, Australia obtains the exclusive taxing right on the employment income under the provisions of the German Australian Double Tax Treaty.

To avoid double taxation and ensure correct tax treatment, the employer can apply relief at source in accordance with the German payroll directive, provided that a valid certificate of tax residency in Australia and a corresponding exemption certificate (“Freistellungsbescheinigung”) from the German tax authorities are obtained.

This setup allows that German payroll does not need to remit income tax to the German tax authorities for the period during which the assignee is taxable in Australia. Instead, hypothetical tax (“hypo-tax”) withholdings may be applied through the German payroll, in line with the company policy, to simulate a home-country tax burden and ensure sufficient coverage of Spanish tax obligations.

It is noted that if the employee receives a bonus or equity-related income in Australia which partially refers to the employment period prior to the assignment, that portion will remain taxable in Germany. This logic also applies to a post-assignment bonus or similar benefit; if such benefit was partially earned during the assignment, that portion is taxable in Australia.

Personal income tax

Besides employment income, the assignee may have other income, such as capital gains or business income, which may

become taxable. The tax treatment of such income depends on which country has the taxing rights according to the rules of the Double Tax Treaty, which depend on multiple factors, including the assignee's tax residency status and the applicable tax treaty between Germany and Australia.

Germany taxes its residents on a worldwide income basis. Accordingly, the assignee will remain subject to German taxation throughout the assignment period, while still being eligible to claim foreign tax credits or other reliefs to mitigate potential double taxation.

Australia is likely to consider the assignee a tax resident due to the length of stay and physical presence of one year and five months combined with the assignee's work in the country, especially when the individual secures an accommodation and establishes a habitual abode there.

If a person is considered a tax resident in both Germany and Australia, they may face a dual tax obligation. In this situation, the tax treaty between Germany and Australia will apply. The treaty contains tie-breaker rules to determine which country should be treated as the person's main country of residence for tax purposes. These rules examine factors such as where the person's permanent home is located and, if there is a home in both countries, where their centre of vital interests (COVI) lies. The centre of vital interests is the country where the person's personal and economic connections are strongest. This decision will establish which country has the primary right to tax the individual on the personal income.

Based on the current facts, the assignee will maintain a permanent home in Germany, and the employer is also located in Germany. The assignee will be accompanied by their partner, who equally retains their permanent home and main personal ties in Germany. When assessing the centre of vital interests (COVI) under the Germany–Australia tax treaty, it is therefore likely that the assignee's personal and economic ties remain strongest in

Germany. As a result, the right to tax the assignee's personal income will remain with Germany.

Social security

An employee is generally insured in the country where the work is performed. This is called the territoriality principle. During an assignment, this means that the employee in principle becomes subject to the social security scheme of the host country.

However, Germany and Australia have concluded social security agreements, which provide exceptions to this rule for pension coverage. These allow the employee to remain subject to the German statutory pension scheme during a temporary assignment to Australia and, where the conditions are met, avoid double pension/superannuation contributions.

In this case, the employee remains subject to the German statutory pension insurance, and pension contributions should continue to be paid in Germany. To ensure continued participation and compliance with German benefit and reporting obligations, a payroll shall be maintained in Germany, where the employer will remit German social security contributions (subject to a valid certificate of coverage) and report earnings in line with domestic requirements.

It is necessary to obtain a Certificate of Coverage (CoC) in Germany. WorkFlex will submit the application and upload the certificate to the platform upon issuance. This confirms that the assignee continues to be covered under German pension legislation and can be used to obtain an exemption from mandatory Australian Superannuation Guarantee contributions on the same income.

In addition, German social security contributions for unemployment insurance can remain mandatory under the provisions of § 4 SGB IV ("Ausstrahlung"). This mechanism enables the continued application of selected branches of German social security law during a temporary assignment abroad.

Accident insurance is not automatically included under “Ausstrahlung”, as it is territorially limited to occupational activities in Germany.

It may only be continued on a voluntary basis (if permitted by the competent institution “Berufsgenossenschaft”) or else will be inactive during the assignment. Nursing care insurance (“Pflegeversicherung”) is typically linked to health insurance and should be assessed based on individual status and coordination with the health insurance provider.

Alternatively, if the conditions for “Ausstrahlung” are not met, or if the employer chooses not to apply this provision, all branches of German social security may be continued on a voluntary basis. WorkFlex can assist with the application process.

Labour law

An employment contract is generally governed by the labour law of the country where the employee’s habitual place of work is located. As this assignment is temporary and the contractual and organisational centre of the employment relationship remains in Germany, German labour law continues to apply throughout the assignment.

At the same time, most countries, including Australia, have mandatory labour law provisions that apply to anyone working within their territory, regardless of the governing employment law. These provisions typically cover minimum employment standards such as working hours, paid leave and workplace safety (Work Health and Safety framework). While Australian labour laws do not override the German employment contract, any mandatory Australian labour standards must be adhered to during the assignment.

Due to the local employment arrangements required for payroll and compliance purposes, the National Employment Standards (NES) of the Fair Work Act are expected to apply for the duration of the assignment. These specifically include a standard working week of 38 hours, a minimum annual leave entitlement of four weeks (20 days), paid public holidays in the state of work and

access to paid personal/carer's leave in accordance with local rules.

A visa sponsor in Australia is required for this assignment. This does not necessarily mean that a separate Australian employment contract must be concluded with the assignee. For sponsorship purposes, it is sufficient that the sponsoring entity can demonstrate a clear contractual basis for the assignment (for example assignment documentation and evidence of the work arrangement), that it has a legal right to nominate the worker and that the duties performed in Australia match the nominated occupation.

The sponsor must also be in a position to meet its sponsorship obligations, including monitoring salary and ensuring that local minimum employment standards are observed. The underlying employment relationship nevertheless remains governed by the German employment contract.

WorkFlex can prepare an assignment letter reflecting the applicable labour law framework in draft form upon authorization.

For completeness, it should be noted that if the employee leaves the company during the assignment, both the German employment contract and the assignment letter must be formally terminated.

Posted workers directive

According to European law, employers have in principle to register their employees' postings within local authorities in the destination country. The objective of such registrations is manifold: to balance the mobility of workers across borders with the need to protect their rights.

	<p>An assignment to any country outside the European Union (EU) and the European Free Trade Association (EFTA) does not trigger an obligation of PWD notification in the destination country.</p>
Data protection	<p>Data protection involves securing information from unauthorized access, breaches, theft, or damage. This obligation applies universally, regardless of the assignee's work location. During an assignment to Australia, data protection requires maintaining compliance with both the GDPR (for EU/EEA data subjects) and Australia's Privacy Act 1988, including the Australian Privacy Principles (APPs).</p> <p>While Australia lacks an EU adequacy decision, transfers of personal data from the EU to Australia remains permitted under GDPR Article 46 safeguards (e.g., Standard Contractual Clauses) when implemented by WorkFlex and the host entity. This does not pose any risk for compliance purposes, provided:</p> <ul style="list-style-type: none">• Both WorkFlex employer guidelines and assignee instruction (available on the WorkFlex platform) for data security are strictly followed.• The assignee does not access high-sensitivity data (defined as information whose compromise could cause catastrophic harm to the organization or individuals).
Health and Safety	<p>An assignment to Australia will involve distinct conditions and challenges that may differ significantly from those in an expatriate's home country. The following factors have been considered to define the potential hardship and adjustments associated with living and working in Australia.</p> <p>Freedom of Expression</p> <p>Australia maintains strong protections for freedom of speech under common law and various state and federal legislation. While there is generally open public discourse on most topics, certain limitations exist regarding hate speech, defamation, and</p>

racial vilification. Expatriates should be aware that while political expression is generally free, some public commentary may carry legal consequences unlike in Germany. The political climate tends to be less polarized than in some other Western nations, but sensitivity to Indigenous issues and multicultural policies is recommended.

Environmental Concerns

Melbourne's climate differs substantially from many other Australian cities. It is known for rapid weather changes ("four seasons in one day"), with warm to hot summers and cool, often wet winters. Air quality is usually very good but can temporarily deteriorate during periods of bushfire activity in Victoria.

Although Melbourne itself does not face tropical cyclones, the broader state is prone to bushfires during summer months, and occasional flooding can occur in certain suburbs. Familiarity with local emergency alerts and seasonal bushfire preparedness is recommended.

Safety and Security

Melbourne is generally regarded as a very safe city with low violent crime rates compared to other Western urban centres. Petty crime, such as theft from cars or pickpocketing, may occur in crowded areas like the CBD, Southbank, or major events. Nightlife districts such as King Street and parts of the inner north require the usual urban caution. Firearm-related crime is extremely rare due to strict national regulations.

Security in Australia also include awareness of local wildlife, particularly venomous animals that Europeans may not be used to encountering. In urban areas and cities, residents should watch out for redback spiders, which can be found in sheds, garages, and sometimes in shoes left outside. There is also the occasional presence of snakes in suburban neighbourhoods. Outside cities, especially in bushland or outback regions, the risk of encountering venomous snakes, funnel-web spiders, scorpions, ticks, and other wildlife increases.

It is advisable to always check shoes and clothing left outdoors before wearing them. While bites and stings are rare in populated areas and medical assistance is readily available, these precautions help ensure continued safety.

Cultural Adjustments

While English is the primary language, cultural adaptation in Australia may involve adjusting to the distinctive local vernacular and more informal social norms. The workplace culture typically emphasizes egalitarianism, humour, and a relatively flat hierarchy. Australians value direct communication but often soften it with colloquial language and self-deprecation.

Expatriates may need time to adjust to the more relaxed pace of life and different approaches to work-life balance compared to Germany. Understanding local customs around sports, outdoor culture, and indigenous heritage will facilitate integration.

Health Insurance

While it may seem possible to rely on public health programs or local insurance options in Australia, private health insurance is highly recommended for expatriates. The healthcare systems in Germany and Australia differ substantially, and the assignee will not be covered under German statutory health insurance during the Australian assignment unless a separate voluntary continuation is arranged. Therefore, securing comprehensive private health insurance is essential to ensure access to quality healthcare during the assignment.

Enhanced Coverage and Access to Quality Care

Private health insurance plans typically provide broader and more flexible coverage than basic local or travel options, which can be crucial when living abroad. These plans often include access to private hospitals and coverage for services not included in Australia's Medicare system. This is especially important for expatriates accustomed to the German healthcare system and seeking continuity in care. While Australia's healthcare system is

known for its quality, certain services may involve out-of-pocket costs or waiting periods without private coverage.

Compliance with Legal and Visa Requirements

For the Temporary Skill Shortage visa (subclass 482), Australia legally requires visa holders to maintain adequate health insurance for the entire duration of their stay.

Proof of this coverage, typically provided through an approved Overseas Visitors Health Cover (OVHC), must be submitted at the time of application and kept current throughout the assignment.

Private health insurance ensures access to necessary medical care, supports visa compliance, and demonstrates financial responsibility during the assignee's stay in Australia.

Healthcare Access

Australia's healthcare system combines public Medicare coverage with private options, offering high-quality services. While expatriates on temporary visas don't automatically qualify for Medicare, reciprocal agreements may provide limited coverage. Private health insurance is strongly recommended to cover gaps and ensure access to private hospitals. The system is more straightforward than other countries, with lower out-of-pocket costs, but understanding the mix of public and private options remains important. Emergency care is excellent, though wait times for elective procedures can be lengthy without private coverage.

Financial Risk Mitigation

The cost of healthcare in Australia can be substantial, particularly for private medical services, ambulance transportation, or specialized treatments. Even routine medical care may result in significant out-of-pocket expenses without proper coverage. By investing in private health insurance, the assignee can mitigate financial risk and avoid unexpected medical bills. This is especially important for expatriates unfamiliar with the Australian healthcare system, which includes both public and private elements. Private insurance ensures access to high-quality care without exposing the assignee to excessive financial risk.



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REQUEST TYPE: ASSIGNMENT

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