Your Guide to the Australian Tax Residency Rules

Runway Wealth Management's guide to help you understand the Australian Tax Residency Rules as an Aussie Expat

As an Australian Expat, it's crucial to understand your tax residency status under the Australian tax residency rules. This will allow you to make informed decisions, manage your finances effectively, and avoid any unexpected tax liabilities in Australia.

It is worth noting that your tax residency status is separate to your right to reside in Australia under a relevant visa or citizenship status. It relates only to your liability of tax in Australia.

The Australian tax residency rules are governed by the Income Tax Assessment Act 1936 (ITAA36). In recent years, there have been growing calls to update the rules to better align them with modern global work practices. This is because the current rules are considered outdated and place an undue compliance burden on many Australian Expats. However, no such update has been enacted.

In this Guide, we'll help you to understand the **current** tax residency rules by taking a closer look at the existing 4 tests used to determine tax residency. If you would like to learn more about the history of the Australian Tax Residency Rules and a timeline of what has been proposed (but not yet legislated), please check out our detailed **Blog Post**.

The Current Australian Tax Residency Rules - 4 Tests

You are a resident for tax purposes in Australia if you meet any one (or more) of the 4 tests below, but are a non-resident if you do not meet any of the tests.

There are 4 tests to determine your tax residency:

1. Resides test
2. Domicile test
3. 183-day test
4. The Commonwealth superannuation test

1. Resides Test

The primary test of tax residency is called the resides test.

Under the Resides test, you are a resident of Australia if you reside in Australia according to the ordinary meaning of the word 'reside' – which means 'to dwell permanently, or for a considerable time, to have a settled or usual abode, and to live in a particular place'.

Some of the factors that can be used to determine tax residency status include:

- period of physical presence in Australia;
- intention or purpose of presence in Australia;
- behaviour while in Australia;
- family, business or employment ties in Australia
- social and living arrangements in Australia.

Your tax residency is determined by considering all the relevant circumstances above. No single factor is likely to be decisive, and many will be interrelated.

If you don't satisfy the resides test due to having few ties to Australia, you may still be considered an Australian resident if you satisfy one of the remaining 3 statutory tests.

2. Domicile Test

You will be an Australian resident if your domicile (the place that is your permanent home) is in Australia, unless the ATO is satisfied that your permanent place of abode is outside Australia.

A domicile is a place that is your permanent home by law. For example, it may be a domicile by origin (where you were born) or by choice (where you have changed your home with the intent of making it permanent).

There are no 'hard and fast' rules that can be used to determine your permanent place of abode. Some of the relevant factors include:

- intended and actual length of stay overseas, including the continuity of that stay
- existence of an established home overseas
- existence of a residence in Australia (while overseas)
- family and financial ties.

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A permanent place of abode should have a degree of permanence and can be contrasted with a temporary or transitory place of abode. As set out in TR 2023/01, 2 years is considered to be a substantial period of time overseas. What this means is that if your intended length of stay is less than 2 years, you are unlikely to be able to establish that your permanent place of abode is outside of Australia.

3. 183-day Test

This test only applies to individuals arriving in Australia. You will be a resident under this test if you're actually present in Australia for more than half the income year (183 days), whether continuously or with breaks, unless it is established that your 'usual place of abode' is outside Australia and you have no intention of taking up residence here.

In this test, the ATO must be satisfied that your usual place of abode is outside Australia. This is different to the domicile test that requires the ATO to be satisfied that your "permanent" place of abode is outside Australia.

The phrase 'usual place of abode' should not be given the same or similar meaning as the phrase 'permanent place of abode'.

Your place of abode does not have to be fixed but must have the attributes of a place of residence or a place to live. It can't have the attributes of an overnight, weekly or monthly accommodation for a traveler.

4. **The Commonwealth superannuation test**

This test applies to Australian Government employees working at Australian posts overseas and who are members of the CSS or PSS schemes. It does not apply to members of the PSSAP scheme. If this is the case, you (and your spouse and children under 16) are a resident of Australia regardless of any other factors.

This test is now considered outdated and has received calls to be either removed or changed in proposals to change the Australian Tax residency rules. Should the Government decide to make changes to the current Australian tax residency rules, this test would likely be replaced or removed altogether.

Final Thoughts

Navigating tax residency as an Australian expat can be challenging, but it's vital to understand the rules. To make sure you're compliant with the current Australian tax residency rules and to avoid surprises, Australian Expats should seek professional advice from an Australian Expat Tax Accountant.

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Do you have further questions? Please send us an enquiry to speak with a Financial Adviser.

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