



Residency for tax purposes



To understand your tax situation, you need to know if you are a resident for tax purposes. Residency for tax purposes may be different to your residency status for other purposes. You may be a resident for tax purposes even if you're not an Australian citizen or a permanent resident for immigration purposes.

Residency and tax

As an individual you will fit into one of the following three categories.



Australian resident for tax purposes

If you satisfy any of the below residency tests, you are an Australian resident for tax purposes.

This means you have to declare all of your worldwide income even if you have already paid tax on it overseas.

A foreign income tax offset is generally available to reduce the Australian tax on the same income.



Foreign residents

If you do not satisfy any of the residency tests below, you are a foreign resident.

As a foreign resident, you have no tax-free threshold and do not pay the Medicare levy.

You must still declare any income derived in Australia, including any capital gains on taxable Australian property in your Australian tax return.

If you have a Higher Education Loan Program or Trade Support Loan debt, you are required to declare your worldwide income or lodge a non-lodgment advice.



Temporary residents

You will be a 'temporary resident' if you hold a temporary visa and neither you or your spouse is an Australian resident within the meaning of the *Social Security Act 1991* (that is, not an Australian citizen or permanent resident).

As a temporary resident, you only need to declare income derived in Australia, plus any income earned from employment performed overseas for short periods while you are a temporary resident.

Other foreign income and capital gains do not have to be declared.

There are separate rules for working holiday makers and individuals who are dual residents, see below for more details.

Residency tests



There are four tests used to determine if you are an Australian resident for tax purposes.

You will be an Australian resident if you meet any one of these tests. You can use our online tool to assess your circumstances, visit ato.gov.au/residencytests

✓ The resides test

Under this test, you are a resident of Australia if you reside in Australia according to the ordinary meaning of 'reside' – which means 'to dwell permanently, or for 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 residency status include physical presence, intention and purpose, family and business/employment ties, maintenance and location of assets, social and living arrangements.

✓ The domicile test

Under this test, you are a resident of Australia if your domicile is in Australia, unless the Commissioner is satisfied that your 'permanent place of abode' is outside Australia.

A domicile is a place that is considered to be 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).

A permanent place of abode should have a degree of permanence and can be contrasted with a temporary or transitory place of abode.

✓ The 183 day test

You will be a resident under this test if you spend over half the year in Australia, unless it is established that your 'usual place of abode' is outside Australia and you have no intention of taking up residence here.

If you have already taken up residence in Australia, this test will not generally apply regardless of the number of days you spend overseas.

In practice, this test only applies to individuals arriving in Australia.

✓ The Commonwealth superannuation fund test

This test only applies to certain Australian Government employees who are eligible to contribute to the Public Sector Superannuation Scheme (PSS) or the Commonwealth Superannuation Scheme (CSS). If this is the case, you (and your spouse and children under 16) are considered to be a resident of Australia regardless of any other factors.

Examples



Emily - teaching in Japan

Facts

- Emily leaves Australia to work in Japan as a teacher of English.
- She has a one-year contract, after which she plans to tour China and other parts of Asia before returning to Australia to resume work here.
- During her time in Japan, she lives with a family who treat her as one of their own.
- She rents out her property in Australia during her absence.
- Emily is single. Her parents live interstate, and her brother has moved to France.

Outcome: why is Emily considered an Australian resident?

Even though Emily is residing in Japan, under the domicile test:

- her domicile is in Australia (a resident who has always lived in Australia will generally retain a domicile here when they are absent overseas, unless they choose to permanently migrate to another country)
- her permanent place of abode remains in Australia.



i These examples are intended as a guide. Residency determinations depend on your individual circumstances. More examples are available at ato.gov.au/residencyexamples



Bronwyn - an extended job overseas

Facts

- Bronwyn, an Australian resident, has received a job offer to work overseas for three years, with the option to extend for another three years.
- Bronwyn, her husband and three children decide to make the move.
- They retain their property in Australia, as they intend to return one day.
- The house will be rented out during their absence.
- Bronwyn is uncertain whether she will extend the option to stay after three years, and will decide later, depending on how the family like the life there.
- While overseas, they will rent a house with an accommodation allowance provided under her contract.

Outcome: why is Bronwyn considered a foreign resident?

The resides test is not satisfied because the length of Bronwyn's physical absence from Australia and the surrounding circumstances (such as establishing a home overseas with her family and renting out her family home in Australia) are not consistent with residing in Australia, even though she has retained the family home in Australia.

The domicile test is not satisfied because:

- her permanent place of abode is outside Australia due to
 - the length of time she has committed to spending overseas
 - establishment of a home overseas, and
 - her family accompanying her
- the fact that she will not be selling the home in Australia, although relevant, is not persuasive enough to overcome the finding on the basis of the other factors
- it is arguable that she has abandoned her home in Australia for the duration of her stay, by renting it out.

Dual residents

If you are a resident of Australia for domestic income tax law purposes, you can still be a resident of another country for the purpose of that other country's tax laws. Where Australia has a double tax treaty with a foreign country, a treaty tie breaker test would usually determine which country has the right to tax Australian and foreign sourced income.

For more information, visit ato.gov.au/taxtreaties

Working holidaymakers

If you come to Australia for a working holiday under visa subclass 417 or 462, you have fixed tax rates regardless of your residency status.

For more information, visit ato.gov.au/whm

This is a general summary only

For more information, speak with your registered tax agent, phone us on **13 28 61** or visit ato.gov.au/residencyandtax