

SUMMARY OF HOW AUSTRALIAN TAX APPLIES TO *FOREIGN EMPLOYMENT INCOME*

legislation change

Traditionally, there have been two main criteria for determining whether a taxpayer is liable to Australian taxation — namely, *residency* and *source of income*:-

- (i) a resident Australian taxpayer is generally assessed on income derived from all sources, whether in or out of Australia
- (ii) by contrast, a non-resident is liable to Australian taxation on Australian source income only.

Before 1 July 2009, foreign earnings derived by an Australian resident from at least 91 days of continuous employment in a foreign country were exempt from Australian income tax.

However, from 1 July 2009 this exemption will be available only if an Australian resident's foreign service is directly attributable to:-

- (a) the delivery of Australian official development assistance by your employer;
- (b) the activities of your employer in operating a public fund declared by the Treasurer to be a developing country relief fund; or a public fund established and maintained to provide monetary relief to people in a developing foreign country that has experienced a disaster;
- (c) the activities of your employer as a prescribed institution that is exempt from Australian income tax;
- (d) deployment outside Australia by an Australian government (or an authority thereof) as a member of a disciplined force; or
- (e) an activity of a kind specified in the regulations.

If you are deemed to be Australian resident and your foreign service is not directly attributable to any of the above activities, any foreign employment income will need to be declared as assessable income in an Australian income tax return. A foreign income tax offset may be available where foreign tax has been paid on the foreign earnings.

taxation of non-residents

Non-residents are liable to Australian tax on interest and unfranked dividend income from Australian sources and Australian royalty income, at withholding tax rates of 10% and 15% respectively. Australian franked dividends are ignored as the 30% company tax rate has already been applied and this is not refunded to individual non-resident shareholders. [The withholding tax is a final tax deducted by the relevant financial institution. This means that a non-resident's investment income from which tax has been withheld (and remitted to the Australian Taxation Office) is not assessable to Australian income tax.]

Capital gains tax (CGT) may apply if related to an asset that is connected with Australia.

Non-residents are generally exempt from the Medicare levy, but cannot claim personal tax offsets or receive a refund of excess imputation credits. Non-residents are taxed from the first dollar of income earned — they do not receive the \$6,000 tax-free threshold that is available to residents.

As non-residents are assessed on Australian source income only, it is important to identify where particular types of income arise, for example:-

- wages, salary, professional fees - generally the place where the services are performed
- trading or business profits - place where transactions conducted
- interest - place where the obligation to pay the interest arose
(e.g. where the contract was made or credit given)
- dividends - where the company paying the dividends made the profit
- royalties - country from which the royalty flows
- pensions and annuities - location of the fund from which the pension is paid.

residency

To be a resident of Australia for taxation purposes, you must *reside* in Australia under ordinary concepts or meet one of three statutory tests. Residence for taxation purposes is essentially a question of fact and degree, and there is no one rule which will determine the issue in every case.

‘Reside’ has been defined as “having a settled abode, to dwell permanently or for a considerable time [or] to live in or at a particular place”. You can reside in more than one place and still be considered an Australian resident if you visit Australia every year as part of the regular order of your life, even if you are living permanently abroad.

You will be considered to be residing in Australia if your behaviour over a period of time has the degree of continuity, routine or habit that is consistent with residing here. Factors which are considered in determining residency include:-

- intention or purpose
- extent of family or business/ employment ties with Australia
- maintenance and location of assets, and
- social and living arrangements.

If you do not reside in Australia under ordinary concepts as described above, the following statutory tests may still be considered:-

(i) *Domicile/ permanent place of abode*

Under this first test, you will be deemed a resident of Australia if you have a home in Australia and no permanent place of abode outside of Australia.

Taxation Ruling IT2650 examines the factors to be taken into account in determining whether a person who leaves Australia temporarily to live overseas ceases to be an Australian resident during the absence. Such factors include:-

- the intended and actual length of stay overseas
- whether a home has been established outside Australia
- whether Australian bank accounts have been maintained
- whether government authorities have been informed of movements, and
- the durability of your association with a place outside Australia.

The weight given to each factor will vary depending on the individual circumstances of each particular case — no single factor is decisive.

In general terms, if you leave Australia for a period exceeding two years and establish a home in another country, you will be a non-resident for Australian taxation purposes. Equally, if you leave Australia with the intention of returning within two years, you will normally remain a resident of Australia unless you can demonstrate that your permanent place of abode is outside Australia.

(ii) *‘More than half the year’ test*

Under this test, if you are actually present in Australia for more than half the year, you will be deemed to be an Australian resident, unless it can be proven that your usual place of abode is elsewhere. The test applies to a financial year rather than a calendar year, and the days present in the country need not be continuous.

(iii) *Commonwealth superannuation fund test*

If you are a contributing member of the superannuation fund for Commonwealth Government officers (or their spouse or dependent child), you will be deemed to be an Australian resident regardless of other factors.

flowchart

