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Foreign residents and temporary residents

If you're a temporary resident, foreign resident or the trustee of a foreign trust, you're subject to capital gains tax (CGT) if a CGT event happens to a CGT asset that is taxable Australian property, such as real property in Australia or a CGT asset you use in a business in Australia.

Assets you acquired before 20 September 1985 are not subject to CGT.

For temporary residents there are specific rules where the CGT asset is a share or right acquired under an employee share scheme.

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- [Taxable Australian property \(/general/capital-gains-tax/international-issues/taxable-australian-property/\)](#)
- [Work out your residency status for tax purposes \(/individuals/international-tax-for-individuals/work-out-your-tax-residency/\)](#)

What is a temporary resident?

You're a temporary resident if you:

- hold a temporary visa granted under the *Migration Act 1958*
- are not an Australian resident within the meaning of the *Social Security Act 1991*
- do not have a spouse who is an Australian resident within the meaning of the *Social Security Act 1991*.

The *Social Security Act 1991* defines an 'Australian resident' as a person who resides in Australia and is an Australian citizen, the holder of a permanent visa or a protected special category visa holder.

This is different to the standards we use to determine tax residency. You could be an Australian resident for tax purposes even if you're not an Australian citizen or permanent resident.

Anyone who is an Australian resident for tax purposes after 6 April 2006 but is not a temporary resident cannot later become a temporary resident, even if they later hold a temporary visa.

Ceasing to be a temporary resident

If you cease being a temporary resident and remain an Australian resident, you're taken to have acquired assets (other than assets you acquired before 20 September 1985) that are not taxable Australian property for their market value at the time you ceased being a temporary resident.

There is an exception to this rule for employee shares and rights.

Example

Fred has lived most of his life in London working as a market research consultant. He is single. He owns several apartments in and around London that are leased to tenants and has a share portfolio that provides him with regular dividend income.

On 12 December 2011, he arrived in Brisbane to begin work with an Australian company that conducts market research. For the first three years, Fred held a temporary visa and expected to eventually return to the United Kingdom. During this period he was a temporary resident as he held a temporary visa and met the other criteria for being a temporary resident.

Fred decided to apply for, and was granted, permanent residence in Australia on 15 March 2016.

The CGT implications for Fred are as follows.

For assets disposed of between 12 December 2011 and 14 March 2016

Fred was a temporary resident and was only subject to CGT in Australia on any assets that were taxable Australian property.

For assets disposed of on or after 15 March 2016

Fred is an Australian resident and is subject to tax in Australia on his worldwide income and capital gains. Any capital gains or capital losses Fred makes on the assets held in the United Kingdom will be subject to CGT in Australia and the cost base for these assets will be set according to the market value of the assets on 15 March 2016. Fred will receive a foreign tax credit for any tax paid in the United Kingdom on those gains.

See also:

- [Changing residency \(/general/capital-gains-tax/international-issues/changing-residency/\)](/general/capital-gains-tax/international-issues/changing-residency/)
- [Taxable Australian property \(/general/capital-gains-tax/international-issues/taxable-australian-property/\)](/general/capital-gains-tax/international-issues/taxable-australian-property/)
- [CGT discount for foreign resident individuals \(/general/capital-gains-tax/international-issues/cgt-discount-for-foreign-resident-individuals/\)](/general/capital-gains-tax/international-issues/cgt-discount-for-foreign-resident-individuals/)
- [Foreign income exemption for Australian residents and temporary residents - employee share schemes \(/General/Employee-share-schemes/In-detail/Foreign-residents/ESS---Foreign-income-exemption-for-Australian-residents-and-temporary-residents---employee-share-schemes/\)](/General/Employee-share-schemes/In-detail/Foreign-residents/ESS---Foreign-income-exemption-for-Australian-residents-and-temporary-residents---employee-share-schemes/)

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