

## Residency - the resides test

---

### What is the resides test?

The resides test is used to determine whether you reside in Australia according to the ordinary meaning of the word. There are several aspects to the resides test.

#### The meaning of 'resides'

The courts and the ATO rely on the normal definition of 'resides' when deciding who is an Australian resident for income tax purposes, as the term is not defined within income tax legislation.

The Shorter Oxford Dictionary defines reside as:

'...to dwell permanently, or for a considerable time, to have one's settled or usual abode, to live, in or at a particular place...'

#### Entering Australia

[Taxation Ruling TR 98/17 \(/law/view/document?Docid=TXR/TR9817/NAT/ATO/00001\)](#) *Income tax: residency status of individuals entering Australia* outlines the circumstances in which an individual is considered as residing in Australia. It considers people entering Australia such as:

- migrants
- academics teaching or studying in Australia
- students studying in Australia
- tourists, and
- those on pre-arranged employment contracts.

#### Behaviour while in Australia

The way in which you organise your domestic and economic affairs as part of your life is an influential factor in determining residency status.

You may be considered an Australian resident if your day-to-day activities in Australia are relatively similar to your behaviour before entering Australia.

In residency cases, your situation is considered by having regard to all the facts and circumstances that are relevant. No single factor is likely to be decisive, and many will be interrelated.

We may take into account any or all of the following factors in determining where you reside:

- intention or purpose of presence
- family and business/employment ties
- maintenance and location of assets
- social and living arrangements.

#### Intention or purpose of presence

Sometimes your stated intentions will be in contrast to your intentions as shown through your behaviour or actions.

---

### **Example of resident**

Markus expressly states that he has no intention of staying in Australia. However, the way he has organised his personal life - bank accounts, 12-month lease on rental property - reveals that he is well prepared for a lengthy or ongoing stay. In this case, Markus is likely to be considered an Australian resident for tax purposes.

---

### **Example of foreign resident**

Juliette states that she intends to stay in Australia for at least the next 10 years. Unfortunately, her visitor's visa only permits her to stay in Australia for a period of six months. The visa also forbids her to apply for a permanent resident's visa while in Australia.

The transitory nature and intended short duration of Juliette's stay mean that she will generally not be considered to be an Australian resident for income tax purposes.

## **Family and business/employment ties**

The presence of your family may indicate that you reside in Australia.

---

### **Example**

Yusef comes to Australia to work. His wife and four children remained in Iran. This particular aspect of Yusef's behaviour is not generally consistent with the activities associated with residing in a particular place.

However, the absence of his family does not mean that he will never be regarded as residing here. Other factors, like the state of the marital relationship and other aspects of Yusef's behaviour while in Australia could have a bearing on this.

## **Maintenance and location of assets**

The place where you organise your financial affairs (for example, paying bills, operation of bank accounts, insurance policies and so on) is an indicator of where you reside.

The purchase and maintenance of assets are also indicators that you intend to reside in Australia. Such assets can include:

- a dwelling (purchased or leased)
- motor vehicles, and
- household effects.

However, maintaining a place of residence is not the same as actually residing in that place. A person may have residences in various countries, but this does not mean that they would be considered to reside in each of those countries during a particular income year.

## **Social and living arrangements**

In applying this factor, consideration will be given to **the ordinary course of your life**. To establish what is 'the ordinary course of your life', your actions and habits before and after the period in question may be examined. The place where you carry out the ordinary course of your life is usually considered your country of residence.

Your social life and living arrangements may include:

- playing social sport in a local competition
- being a member of a local community club
- redirecting mail to Australia, or
- enrolling your children at the local school.

Work commitments may require you to visit different countries frequently and you may not establish a permanent home in any country. However, it will be the place where you carry out the above and other activities usually associated with a person's ordinary course of life that will most likely be considered your country of residence.

## Physical presence in Australia

To **reside** in Australia you need to display behaviour over a period of time that is consistent with residing here, such as:

- a degree of continuity
- routine, or
- habit.

Therefore the period of time that you spend in Australia is not, by itself, decisive in determining your residency status.

We consider that six months is a considerable time when deciding whether your behaviour is consistent with residing here. That is not to say that if you are here for less than six months you will always be considered a foreign resident, and if you are here for more than six months you will always be considered an Australian resident. Generally, it is a combination of the factors of time and behaviour while in Australia that will determine your residency status.

### A resident in one country visits another

Where you are resident in one country and visit another, important factors to be considered in determining whether you are also resident in the other country are both the frequency and the duration of your visits.

The mere fact that your visits to a country are of short duration does not in itself exclude residence in that country, if the visits are part of the regular order and mode of your life.

In Australian cases, no specific time limit can be set to determine if your stay is long enough for you to be considered to have resided in Australia. The surrounding circumstances must be looked at in each case.

## Nationality

This factor is almost irrelevant in determining where you reside. However, in a borderline case, your citizenship may be useful where all other relevant facts are not conclusive.

### Dual resident

You can be a resident of more than one country at the same time. In determining your residency status, it is important to consider your circumstances in deciding whether you are an Australian resident.

When you have dual residency, any relevant double tax agreements may determine your country of residence for tax purposes and which country has taxing rights over certain classes of income to prevent double taxation. In some cases, this may have the effect of limiting Australia's taxing rights. For more information on double tax agreements see **International tax treaties (double tax agreements)** in [Exempt foreign employment income \(/Individuals/International-tax-for-individuals/In-detail/Foreign-income-of-Australian-residents/Exempt-foreign-employment-income/\)](https://www.ato.gov.au/Individuals/International-tax-for-individuals/In-detail/Foreign-income-of-Australian-residents/Exempt-foreign-employment-income/).

## What if I do not satisfy the resides test?

If you do not satisfy the resides test, you may still be considered an Australian resident for taxation purposes if one of the statutory tests is satisfied.

## What to read/do next

- [Residency - the domicile test \(/Individuals/International-tax-for-individuals/In-detail/Residency/Residency---the-domicile-test/\)](#)
- [Residency - the 183 day test \(/Individuals/International-tax-for-individuals/In-detail/Residency/Residency---the-183-day-test/\)](#)
- [Residency - the superannuation test \(/Individuals/International-tax-for-individuals/In-detail/Residency/Residency---the-superannuation-test/\)](#)
- [Examples of residents and foreign residents \(/Individuals/International-tax-for-individuals/In-detail/Residency/Examples-of-residents-and-foreign-residents/\)](#).

If you have recently arrived in Australia, the [Are you a resident? \(/individuals/international-tax-for-individuals/work-out-your-tax-residency/\)](#) tool can help you to work out your residency status.

If you have recently entered Australia, you can find more detailed examples in [Taxation Ruling TR 98/17 \(/law/view/document?Docid=TXR/TR9817/NAT/ATO/00001\)](#) *Income tax: residency status of individuals entering Australia*.

Other information about residency:

- [Foreign residents - lodging an Australian tax return \(/Business/International-tax-for-business/Foreign-residents-doing-business-in-Australia/Tax-on-income-and-capital-gains/?anchor=lodginganaustraliantaxreturn#lodginganaustraliantaxreturn\)](#)
- [Exempt foreign employment income \(/Individuals/International-tax-for-individuals/In-detail/Foreign-income-of-Australian-residents/Exempt-foreign-employment-income/\)](#).

Last modified: 13 Apr 2017

QC 17137

## Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

## Copyright notice

© Australian Taxation Office for the Commonwealth of Australia

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).

