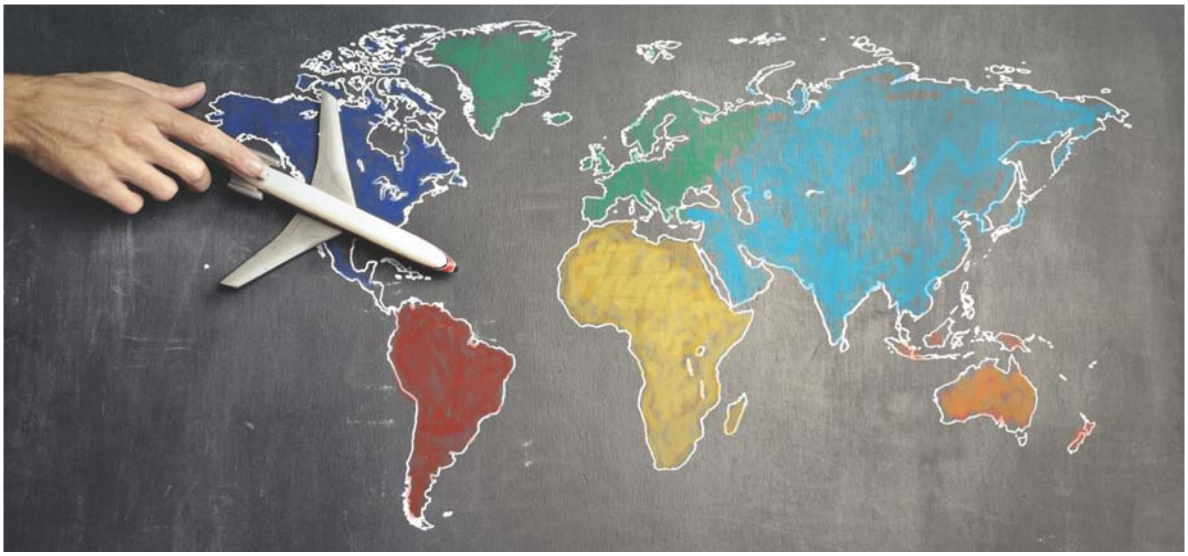
Important tax residency issues to consider



What happens from a tax point of view when a person leaves Australia part-way through the income year? How is the income they derived before that time taxed? And how is any income they derived *after* that time taxed (whether from Australian or foreign sources)?

Well, the answer will primarily depend on whether the person ceases to be a "resident of Australia" for tax purposes at the time they leave Australia.

This can be one of the most difficult issues in tax law to determine. Not only will it depend on the precise facts and the intention of the taxpayer, but it can also involve what often seems to be a "judgement-call" at the relevant time. This is especially the case as a taxpayer's residency status is worked out on an income year basis, and this can change from one income year to another.

But putting aside all the issues involved in determining whether a person ceases to be a resident of Australia for tax purposes part-way through an income year, let us assume this is the case.

So, what are some of the general tax consequences associated with such part-year residency?

For a start, the person's tax threshold for the relevant income year will be adjusted downwards (pro-rated) to reflect the fact that the person ceased to be a resident for tax purposes part-way through the income year. As a result, this pro-rated threshold will apply to the person's assessable income:

- from all sources both within and outside Australia for the period they are a resident of Australia, and
- from sources within Australia while they are a foreign resident.

Importantly, this in effect means that the resident tax rates do not change on the basis of a person's part-year residency – but only the relevant tax-free threshold.

It should also be noted that assessable income derived from sources outside Australia during the period in the income year that the person is a "foreign resident" will not be subject to tax in Australia as it will be outside the Australian taxing jurisdiction.

And, of course, for the following income years the person will be assessed as a foreign resident and therefore only pay tax in Australia on Australian-sourced assessable income at foreign resident rates.

continued overleaf

Important tax residency issues cont

Another consequence that is often overlooked is that a person ceasing to be a resident of Australia for tax purposes will be deemed to have disposed of all their Australian-sourced CGT assets for their market value at that time. However, this is subject to an exception for "taxable Australian property" (which always remain subject to CGT regardless of the taxpayer's residency status) and any "pre-CGT" assets of the taxpayer.

Furthermore, a person can instead choose to opt out of this "deemed disposal" rule – in which case all their Australian-sourced CGT assets will be treated as taxable Australian property until they are actually disposed of or the taxpayer becomes a resident of Australia again for tax purposes.

So, these are some of the tax considerations to be taken into account on a person ceasing to be a resident of Australia.

But the key question of determining a person's residency for tax purposes remains – and this is not always an easy issue.

For example, in a recent tax decision, the Administrative Appeals Tribunal held that a person was a resident of Australia for tax purposes even though they were working outside the country for substantially more than half the year and even though this occurred over a four-year period.

The AAT found that because the taxpayer's wife and family remained in Australia and because he had other connections to Australia such as the ownership of property and motor vehicles here, then he was a resident for tax purposes – as he had no "plans to abandon Australia".

The case illustrates something of the difficulty of determining a person's residency for tax purposes. It is clearly a "case-by-case" matter.

And it is clearly something on which professional advice should always be sought. ■

Six super strategies cont

6 Receive the government co-contribution

If you're a low or middle-income earner earning less than $58,445 in 2023/24 and at least 10% is from your job or a business, you may want to consider making a NCC to superannuation before 1 July 2024. If you do, the Government may make a 'co-contribution' of up to $500 into your superannuation account.

The maximum co-contribution is available if you contribute $1,000 and earn $43,445 pa or less. You may receive a lower amount if you contribute less than $1,000 and/or earn between $43,445 and $58,445 pa.

Like the superannuation spouse tax offset, the definition of total income for the purposes of the co-contribution includes assessable income, reportable fringe benefits and reportable employer superannuation contributions.