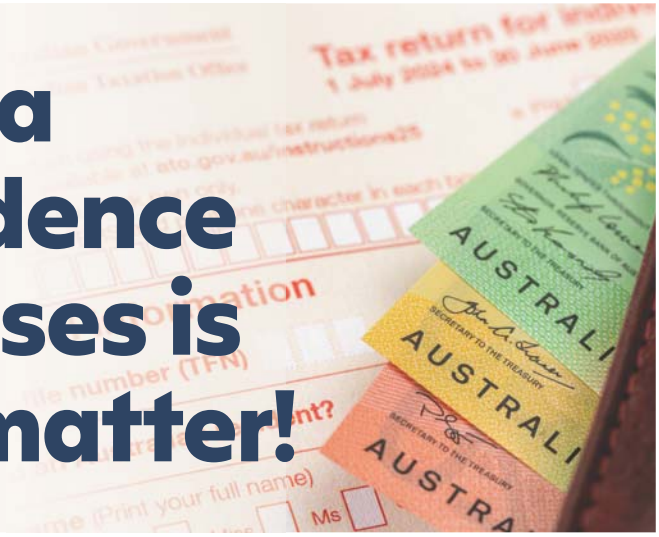
Determining a person's residence for tax purposes is not an easy matter!



A recent Federal Court decision once again outlined the importance of determining a person's residency status for tax purposes – and moreover how difficult that may be. And that it may not just be a matter of having lived overseas for several years.

In that case, the taxpayer lived in Australia for 6 years with his young family before taking up an employment contract with a construction company in Dubai where he worked for 5 years. However, he returned to Australia to visit his family twice a year for periods of up to 5 weeks.

In addition, he only leased an apartment in Dubai – with most of his investments, belongings and personal ties remaining in Australia.

Even though he did not "reside" in Australia (in the ordinary sense of that phrase), the Court nevertheless found that he was a resident of Australia for tax purposes. This was essentially because under another element of the "tax residency test" he had not established a "permanent place of abode" outside of Australia and because his connections were still strongly with Australia.

In these circumstances, the Court held that he was "a resident of Australia" for tax purposes. Moreover, this meant that he was liable for tax in Australia on the wages he earned from working in Dubai and on any other foreign sourced income – as well as, of course, any income he earned in Australia (eg bank interest).

So, this is the main consequence of being a resident for tax purposes: you are liable for tax in Australia on income earned both in Australia and outside Australia – including capital gains from any property a person may own overseas (eg a rental property, shares).

But you also get some good tax advantages if you are a resident of Australia for tax purposes.

For a start, you are taxed at individual resident tax rates – which are far more generous than those that apply to a foreign resident. You can also access the CGT discount (at least until its general abolition from 1 July 2027) and thereafter the inflation adjusted indexation for any capital gains (whether sourced in Australia or overseas).

On the other hand, if you were a non-resident for tax purposes you could not access these concessions (albeit interestingly, a foreign resident can also use the generous CGT small business concessions if they qualify for them).

So obviously on the flip side, if you are a non-resident you will be taxed at harsher non-resident tax rates and, generally, you won't be able to access the CGT discount or the new indexation method for taxing capital gains.

But before any of these tax rules are applied, it is vital to determine a person's residency status for tax purposes. And this may not be an easy matter. As the above Federal Court case illustrates, even if you "live" overseas for a number of years you still may be considered to be a resident for tax purposes – depending on your exact circumstances.

And then there is the often more difficult issue of when exactly you become a non-resident for tax purposes, or resident (as the case may be) – and the tax rules that apply in that case. And this includes where you have a young adult child who is heading off to work and travel overseas.

So, if you or a loved one is in this type of scenario or think you will be, it is important to come and speak to us so that we can work things out and discuss the tax consequences with you.

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.