



Australian  
National  
University



# Individual Tax Residency Tests

# Status of Residences for Tax Purposes

## ➤ **Australian Resident:**

- Declare all income earned both in Australia and overseas
- Subject to Medicare levy and Medicare levy surcharge
- Can claim tax-free threshold

## ➤ **Temporary Resident (Australian Resident for tax purpose)**

- You only declare:
  - income you derived in Australia and;
  - capital gains on taxable Australian property
  - income you earn from employment or services performed overseas while you are a temporary resident of Australia.
- Can claim tax-free threshold and tax at ordinary rates
- Other foreign income and capital gains don't have to be declared.
- Can apply for Medicare levy exemption

<https://www.servicesaustralia.gov.au/how-to-get-medicare-entitlement-statement?context=23266>

# Status of Residences for Tax Purposes

## ➤ Part-year Australian resident

- If you are an Australian resident for part of the year, your tax-free threshold will be less than the full tax-free threshold of \$18,200 that applies to Australian residents if you:
  - became an Australian resident for tax purposes
  - ceased being an Australian resident for tax purposes.
- **Part-year residents** have a tax-free threshold of at least \$13,464. The remaining \$4,736 of the full tax-free threshold is pro-rated according to the number of months during the financial year you were a resident for tax purposes.
- When you complete your individual income tax return, you must include:
  - The date that you became or stopped being an Australian resident for tax purposes;
  - The number of months that you were an Australian resident.

# Status of Residences for Tax Purposes

## ➤ Dual residents

You're a dual resident if you're a resident of both:

- Australia for domestic income tax law purposes
- another country for the purpose of that other country's tax laws.

Where Australia has a double tax treaty with a foreign country, a treaty tie breaker test would usually determine which country has the right to tax Australian and foreign sourced income.

For tax treaties: <https://www.ato.gov.au/general/international-tax-agreements/>

# Status of Residences for Tax Purposes

## ➤ **Foreign Resident:**

As a foreign resident:

- you have no tax-free threshold;
- you don't pay the Medicare levy – in your Australian tax return, you can claim an exemption from paying the Medicare levy for the number of days in the income year you are a foreign resident;
- you don't declare any Australian-sourced interest, dividends or royalties you derive while you are a foreign resident, provided the Australian financial institution or company that pays you has already withheld tax;
- the capital gain on your Australian home may need to be included if you are a foreign resident at the time you sign the contract of sale.

# How to determine your Status of Residences

## Four tests to determine your tax residency:

- Main test: Resides test.
  - If you don't satisfy this test, you'll still be considered an Australian resident if you satisfy one of following three tests.
- Domicile and permanent place of abode test.
- 183-day test.
- Commonwealth superannuation test.

# Residency test

## 1. Resides test

- **Primary test** of residency requires some physical presence in Australia in the income year
- Some of the factors that can be used to determine residency status include:
  - physical presence
  - intention and purpose
  - family
  - business or employment ties
  - maintenance and location of assets
  - social and living arrangements

If you don't satisfy the resides test, you'll still be an Australian resident if you satisfy one of 3 statutory tests.

# Residency test

## 2. Domicile test

The domicile test of residency usually applies where an Australian resident goes to work in an overseas country for an extended period of time.

### How the test works:

- **Step1:** Determine your domicile
  - If not in Australia, the domicile test is not satisfied
  - If in Australia, go to step 2.
- **Step2 :** Determine your permanent place of abode
  - If not in Australia, the domicile test is not satisfied.
  - If in Australia, you're considered an Australian resident for income tax purposes.

# Residency test

## 2. Domicile test --- What is a domicile?

Your domicile is the place that is:

- considered by law to be your permanent home
- usually something more than a residence.

You may have no fixed place of abode but under the law you'll always have a domicile. You can only have one domicile at the one time, whereas you may be resident in 2 or more places.

There are 3 basic types of domicile:

- Domicile by origin, which is attributed to everyone at birth. For example, a nuptial child adopts the domicile of its father, an ex-nuptial child that of its mother.
- Domicile by choice, which will be inferred by law, if there is both a change of residence and an intention of making the change permanently or at least indefinitely. Any person without a legal disability can have a domicile of choice.
- Domicile by operation of law, which is imposed by law. For example, an infant's domicile is that of its parents and changes when the parent's domicile changes.

# Residency test

## 2. Domicile test --- What is permanent place of abode?

The following meanings have been established through case law:

- permanent does not have the meaning of everlasting or forever, but is used in the sense of being contrasted with temporary or transitory.
- your place of abode is your residence, where you live with your family and sleep at night.

# Residency test

## 3. 183-day test

This test only applies to individuals arriving in Australia. You will be a resident under this test if you're actually present in Australia for more than half the income year, whether continuously or with breaks. unless it is established that your 'usual place of abode' is outside Australia and you have no intention of taking up residence here.

If you're in Australia for more than half the income year, continuously or intermittently, you will be a resident of Australia unless both:

- your usual place of abode is outside Australia
- you have no intention to take up residence here.

# Residency test

## 4. Commonwealth Superannuation test

Under the test, you are an Australian resident if you are a contributing member of:

- the Public Sector Superannuation Scheme (PSS), or
- the Commonwealth Superannuation Scheme (CSS).

The test does not apply if you are a member of the Public Sector Superannuation Accumulation Plan (PSSAP).

# Residency test

## 4. Commonwealth Superannuation test

If you are an Australian resident under this test, your **spouse and any children under 16 years old** are also Australian residents for income tax purposes.

“Spouse” includes another person (of any sex) who:

- you were in a relationship with that was registered under a prescribed state or territory law
- although not legally married to you, lived with you on a genuine domestic basis in a relationship as a couple.



# Residency test

You can use the Are you a Resident tool to find out your status of residence for tax purposes:

<https://www.ato.gov.au/Calculators-and-tools/Host/?anchor=AreYouAResident&anchor=AreYouAResident&anchor=AreYouAResident/questions#AreYouAResident/questions>



Australian  
National  
University



Australian  
National  
University

## ANU Tax Clinic

### Book a Free Consultation

For eligibility criteria and bookings,  
visit

»» [rsa.anu.edu.au/anu-tax-clinic](https://rsa.anu.edu.au/anu-tax-clinic)

For any enquiries contact us at

»» [taxclinic@anu.edu.au](mailto:taxclinic@anu.edu.au)

Or call us on

»» **02 6125 4853**