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QC 66058

Your residency status and CGT

Your tax residency may be different to your residency for other purposes.

Last updated 22 June 2026

Know your tax residency status

You can be an Australian resident or a foreign resident for tax purposes. In either case your treatment for tax purposes will be modified if you are also a temporary resident.

It is important to check your tax residency status because we don't use the same rules as other government agencies.

For example, you:

- can be an Australian resident for tax purposes without being an Australian citizen or permanent resident
- may have a visa to enter Australia but are not an Australian resident for tax purposes.

How your residency affects CGT

Generally, foreign and temporary residents are subject to Capital Gains Tax (CGT) only on taxable Australian property, for example real estate in Australia and assets used to carry on a business in Australia.

The full 50% CGT discount is generally not available to foreign and temporary residents for assets acquired after 8 May 2012. However, an apportioned discount may be available if you had a period of Australian residency before you became a foreign resident.

Foreign residents are not entitled to the main residence exemption, unless they satisfy the requirements of the life events test.

If you become an Australian resident, or stop being one, the assets on which you pay CGT in Australia will change.

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

For Norfolk Island residents:

- your asset is exempt from CGT if
  - you acquired the asset on Norfolk Island before 24 October 2015
  - a CGT event occurred immediately before 24 October 2015 and the capital gain or loss would have been disregarded on the basis of you being a resident of Norfolk Island
- all other assets are subject to the normal CGT rules.

Selling Australian real estate

Foreign resident capital gains withholding (FRCGW) may apply when selling your property. For more information on FRCGW, see Foreign resident capital gains withholding overview.

QC 69714

How changing residency affects CGT

How the assets you are taxed on will change if you become or stop being a tax resident.

Last updated 22 June 2026

What is an Australian, foreign and temporary resident?

You are an Australian resident for tax purposes if you reside in Australia or if you satisfy one of the following statutory tests:

- domicile test
- 183-day test
- superannuation test.

If you are not an Australian resident for tax purposes, you are a foreign resident. A foreign resident is also referred to as a non-resident.

You are also a temporary resident if:

- you have a temporary visa
- both you and your spouse are not Australian residents within the meaning of the *Social Security Act 1991* (that is, not an Australian citizen or permanent resident or a protected Special Category visa holder from New Zealand).

You won't be a temporary resident if, at any time after 6 April 2006, you have been an Australian resident and:

- you didn't have a temporary visa
- either you and your spouse were Australian residents within the meaning of the *Social Security Act 1991* (that is, are an Australian citizen or permanent resident or a protected Special Category visa holder from New Zealand).

A temporary resident may be an Australian resident for tax purposes or a foreign resident. If you satisfy the requirements for being a temporary resident, your capital gains will be taxed in the same way as a foreign resident.

Becoming an Australian resident

When you become an Australian resident for tax purposes (except when you are also a temporary resident after this occurs), you are

taken to have acquired your CGT assets on the same day, at their market value. This is called 'deemed acquisition'.

This doesn't apply to assets:

- you acquired before CGT started on 20 September 1985
- that were taxable Australian property, for example real estate in Australia and assets used to carry on a business in Australia – the general cost base rules apply to taxable Australian property.

Example: becoming an Australian resident

Alex owned shares in several different public companies.

Alex became an Australian resident, but not also a temporary resident, for tax purposes on 15 May 2026.

Alex is taken to have acquired his shares for CGT purposes on 15 May 2026 when he became an Australian resident for tax purposes. The cost of Alex's shares will be their market value on 15 May 2026.

If you stop being an Australian resident

If you stop being an Australian resident for tax purposes, you are taken to have disposed of CGT assets for their market value at the time you stopped being a resident, except for any taxable Australian property. This is called 'deemed disposal'.

The same applies if you stop being a resident trust for CGT purposes.

Foreign and temporary residents are subject to CGT only on taxable Australian property. This is the reason you are not taken to have disposed of these particular CGT assets when you stop being an Australian resident for tax purposes.

If you stop being an Australian resident for tax purposes, the full CGT discount will not be available when you dispose of an asset that you acquired after 8 May 2012 and is sold after you became a foreign resident. You may get an apportioned discount for the part of the ownership period of the asset where you were an Australian resident.

If you have assets that are not taxable Australian property that you are taken to dispose of when you stop being an Australian resident, you can claim the full 50% CGT discount if you have always been an Australian resident while owning the asset.

If you have any indirect Australian real property interests, or options or rights to acquire such interests, you are taken to have immediately re-acquired these assets for their market value.

Example: stops being an Australian resident

Jemima and Maurice were born in Australia and have always resided in Australia. Maurice gets a job in Italy, so Jemima and Maurice decide to move there permanently.

Maurice and Jemima jointly own an apartment which they decide to keep and rent out. Jemima and Maurice also own some shares in publicly listed companies.

They leave Australia on 15 January 2026 and stop being Australian residents at that date.

As Jemima and Maurice have stopped being Australian residents, they are taken to have disposed of their shares for market value on 15 January 2026. They can claim the full 50% CGT discount on the deemed disposal of their shares.

Jemima and Maurice are not taken to have disposed of their apartment because it is taxable Australian property. A CGT event will occur for the apartment when they dispose of it. They can't claim the full 50% CGT discount on the sale of their apartment. However, they may claim an apportioned discount on any capital gains on the sale as they were Australian residents for part of their ownership period. They can use the capital gains tax record keeping tool to help them calculate this.

Exemption for temporary residents

If you are a temporary resident when you stop being an Australian resident, you are not taken to have disposed of any of your assets.

Anyone who is an Australian resident for tax purposes after 6 April 2006 but isn't a temporary resident can't later become a temporary

resident, even if they later hold a temporary visa.

Choosing to disregard capital gains and losses

An individual can choose to disregard all capital gains and losses when they stop being an Australian resident for tax purposes.

If you do this, your assets are taken to be taxable Australian property until the earlier of:

- a CGT event happening to the assets (for example, their sale or disposal)
- you again becoming an Australian resident.

The effect of this choice is that the increase or decrease in the value of your assets after you stop being a resident is taken into account in working out your capital gains or losses on those assets. You don't need to tell us what you decide – the way you prepare your tax return is generally sufficient evidence of your choice.

If you stop being a temporary resident

If you stop being a temporary resident and remain an Australian resident, you are taken to have acquired your CGT assets that are not taxable Australian property for their market value at the time you stopped being a temporary resident.

This rule doesn't apply to employee share scheme shares and rights.

Example: becoming an Australian resident

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

On 12 December 2022, Fred arrived in Brisbane to begin work with an Australian company. Fred held a temporary visa and expected to eventually return to the United Kingdom. During this period, he was an Australian resident who was also a temporary resident as he held a temporary visa and met the other criteria for being a temporary resident.

Fred applied for permanent residency in Australia which was granted from 15 March 2025.The CGT implications for Fred are as follows.

For assets disposed of between 12 December 2022 and 14 March 2025

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 2025

Fred is an Australian resident and is now 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 UK will be subject to CGT in Australia. The cost base for these assets will be set according to the market value of the assets on 15 March 2025. Fred may receive a foreign tax credit for tax paid in the UK on these gains.

QC 66059

CGT discount for foreign residents

Check if you are eligible for the 50% capital gains tax (CGT) discount as a foreign resident.

Last updated 22 June 2026

Assets acquired after 8 May 2012

Foreign and temporary resident individuals, including beneficiaries of trusts and partners in a partnership:

- are subject to CGT on taxable Australian property
- aren't entitled to the full 50% CGT discount for assets acquired after 8 May 2012.

If the asset was purchased after 8 May 2012, and you were a foreign or temporary resident for the entirety of your ownership period, you

aren't entitled to any CGT discount when you sell the asset.

You can claim an apportioned discount for the period you were an Australian resident if you purchased taxable Australian property after 8 May 2012 and you were both:

- a foreign resident when you sold the property
- an Australian resident for some of your ownership period of the property.

You can use the capital gains tax record keeping tool to help calculate the correct discount percentage.

Example: apportioned discount

Eliza purchased a rental property in 2013 in Australia while she was an Australia resident for tax purposes. She left Australia for the United Kingdom in 2016 and became a foreign resident. She sold the property in 2017.

Eliza can't claim the full 50% CGT discount. However, she can claim an apportioned discount for the period she was an Australian resident. She can use the capital gains tax record keeping tool to help her calculate her discount.

Assets acquired on or before 8 May 2012

You may apply a discount to your capital gain on assets acquired on or before 8 May 2012. There are 2 methods, if both apply, you can choose which one to use:

- If you had a period of Australian residency after 8 May 2012, you may pro rata the discount for the number of days you were an Australian resident after 8 May 2012.
- If you were a foreign resident or temporary resident on 8 May 2012, you can use the market value method to calculate your discount instead of the pro rata method.

The easiest way to calculate your CGT discount is to use the capital gains tax record keeping tool.

For the CGT discount formulas see, Section 115-115 of the *Income Tax Assessment Act 1997*.

Example: property acquired before 8 May 2012

Violet is a resident of France. She has never been a resident of Australia. On 30 January 2011 she purchased a property in Australia for $1,000,000. On 8 May 2012 the property was valued at $1,100,000. On 1 July 2018 Violet sold the property for $2,000,000.

Violet has a discount capital gain from the disposal of the property of $1,000,000.

As Violet is a foreign resident, the discount percentage applicable to the gain may be adjusted.

Violet chooses to use the market value method. The discount percentage is worked out as follows:

> Calculate the CGT asset's excess (which is the market value of the asset as at 8 May 2012 less the cost base as at 8 May 2012).
>
> $1,100,000 − $1,000,000 = $100,000

As the amount of the gain accrued before 9 May 2012 of $100,000 is less than the total discount capital gain of $1,000,000 from the disposal of property, the discount will need to be adjusted. Violet uses the CGT record keeping tool to calculate her capital gain for the year as $950,000 with a discount percentage of 5% applied to the total gain of $1,000,000.

If the excess calculated was greater than the discount capital gain from the disposal, she would have been entitled to the full 50% discount.

QC 66060

Taxable Australian property

As a foreign resident, find out which of your assets are taxable in Australia.

Last updated 22 June 2026

About taxable Australian property

Foreign and temporary residents are subject to capital gains tax (CGT) only on taxable Australian property.

Taxable Australian property includes:

- Australian real property, for example a house, apartment, commercial building or land
- an indirect interest in Australian real property
- a mining, quarrying or prospecting right in Australia
- a CGT asset that you have used to carry on a business through a permanent establishment in Australia
- an option or right over one of the above – for example, a contract to purchase property off the plan.

Foreign residents are subject to the full rate of foreign resident capital gains withholding (FRCGW). FRCGW is applied to the sale price (or market value if non-arm's length) when selling Australian real property (property), unless there is a variation notice that reduces the rate.

For CGT events happening on or after 20 May 2009, a leasehold interest in land in Australia is Australian real property.

If you stop being an Australian resident, you are taken to have disposed of each of your assets that are not taxable Australian property for their market value at the time you stopped being a resident.

You have the option of disregarding capital gains and losses at that time. If you do this, your assets will be taken to be taxable Australian property. For example, if you disregard the capital gain or loss on Australian shares you own, those shares would become taxable Australian property.

Indirect interests in Australian real property

If you are a foreign or temporary resident, any indirect interest you have in Australian real property is subject to CGT.

You have an indirect interest in Australian real property if both the following are true:

- you and your associates together own 10% or more of another entity, whether Australian or foreign – this is called the 'non-portfolio interest test'
- the market value of the assets of that entity is mainly attributable to Australian real property – this is called the 'principal asset test'.

Indirect interests acquired before 11 May 2005

If you acquired an indirect interest in Australian real property before 11 May 2005, you are taken to have acquired it at its market value on 10 May 2005 if:

- you are a foreign resident or the trustee of a trust that was not a resident trust for CGT purposes
- the interest didn't have the necessary connection with Australia but is taxable Australian property.

Foreign currency

The entity through which you have an indirect Australian real property interest may keep its accounts mainly in a foreign currency.

If so, when you dispose of your interest you must apply functional currency rules to calculate your capital gain or loss.

This means if the entity uses the foreign currency to account for its transactions, you will convert your capital gain or loss into Australian currency.

Main residence exemption for foreign residents

Check what the requirements are for foreign residents to claim the main residence exemption for property.

Last updated 22 June 2026

How the exemption works for foreign residents

Foreign residents can't claim the main residence exemption for property sold after 30 June 2020, unless they satisfy the requirements of the life events test.

If you're a foreign resident when you dispose of the property and you don't meet the life events test (even if you were a resident for some of the ownership period), you aren't entitled to the main residence exemption. This also means you aren’t entitled to either:

- a partial or apportioned main residence exemption
- the home first used to produce income rule.

Only foreign residents who sold property before 30 June 2020 may be eligible for the main residence exemption without meeting the life events test.

If you're an Australian resident at the time you dispose of your property, this doesn't affect you unless you acquired the property due to the death of a foreign resident.

Life events test

When you dispose of your residential property, you satisfy the requirements of the life events test if both of the following are true:

- you were a foreign resident for tax purposes for a continuous period of 6 years or less
- during that period, one of the following occurred

- you, your spouse or your child under 18 years old had a terminal medical condition
- your spouse or your child under 18 years old died
- the capital gains tax (CGT) event happened because of a formal agreement following the breakdown of your marriage or relationship.

If you satisfy both of these criteria and meet the general requirements for the exemption, you can:

- claim the main residence exemption
- use the exemption as a reason to vary the capital gains withholding that would otherwise apply to your property.

Disposal of property by 30 June 2020

You don't need to apply the life events test to a property that you:

- acquired before 7:30 pm (Canberra time) on 9 May 2017
- disposed of by 30 June 2020.

You can claim the main residence exemption if you meet both of these requirements in addition to the general requirements for the exemption.

If you were not an Australian resident for tax purposes while living in your property, you are unlikely to meet the requirements for the CGT main residence exemption.

If you dispose of your property under a contract, the disposal time is when you enter into the contract. If there is no contract, the disposal time is when you settle.

Effects on your deceased estate

If you are a foreign resident for tax purposes when you die, these rules also apply to:

- legal personal representatives, trustees and beneficiaries of your deceased estate
- surviving joint tenants

- special disability trusts.

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