



Residency tests

Work out if you're an Australian resident or a foreign resident for tax purposes using the residency tests.

Residency – the resides test

The resides test is the primary test for working out if you're a resident of Australia for tax purposes.

Residency – the domicile test

The domicile test is one of the tests used to determine if you're a resident of Australia for tax purposes.

Residency – the 183-day test

The 183-day test is one of the tests used to determine if you are a resident of Australia for tax purposes.

Residency – the superannuation test

The superannuation test is one of the tests used to determine if you are a resident of Australia for tax purposes.

Australian and foreign resident examples

These examples may help you determine whether you are a

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Residency – the resides test

The resides test is the primary test for working out if you're a resident of Australia for tax purposes.

Last updated 1 July 2024

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The meaning of 'resides'

The courts and the ATO rely on the ordinary meaning 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

TR 2023/1 *Income tax: residency tests for individuals* outlines the residency tests for individuals for tax purposes. It considers people entering Australia such as:

- migrants
- academics teaching or studying in Australia
- students studying in Australia
- tourists
- 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 an Australian resident if your day-to-day activities in Australia are relatively similar to your behaviour before entering Australia.

Your residency is determined by considering all the relevant facts and circumstances. 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:

- period of physical presence in Australia
- intention or purpose of presence
- behaviour while in Australia
- family and business or 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: 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's well prepared for a lengthy or ongoing stay. In this case, Markus is likely to be an Australian resident for tax purposes.

Example: 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 6 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 an Australian resident for income tax purposes.

Family and business or employment ties

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

Example: family and business or employment ties

Yusef comes to Australia to work. His wife and 4 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 doesn't mean that he'll 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
- household effects.

However, maintaining a place of residence isn't the same as actually residing in that place. A person may have residences in various countries, but this doesn't mean that they would 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 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 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
- habit.

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

We consider that 6 months is a considerable time when deciding whether your behaviour is consistent with residing here. That's not to say that if you're here for less than 6 months, you'll always be a foreign resident, and if you're here for more than 6 months, you'll always be an Australian resident. Generally, it's 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're a resident in one country and visit another, important factors to be considered in determining whether you're also a resident in the other country are both the frequency and the duration of your visits.

Short visits to another country don't always exclude residency in that country, if the visits are in regular 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 aren't 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're an Australian resident.

When you have dual residency, any relevant double tax agreements may determine 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 agreements](#).

What if I don't satisfy the resides test?

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

What to read or do next

For information on the other 3 residency tests, read:

- [Residency – the domicile test](#)
- [Residency – the 183 day test](#)
- [Residency – the superannuation test](#)
- [Australian and foreign resident examples.](#)

If you've recently arrived in Australia, the [Are you a resident?](#) tool can help you to work out your residency status.

If you have recently entered Australia, you can find more detailed examples in [TR 2023/1](#).

If you need to lodge a tax return, see [Lodging an Australian tax return](#).

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Residency – the domicile test

The domicile test is one of the tests used to determine if you're a resident of Australia for tax purposes.

Last updated 1 July 2024

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What is the domicile test

The domicile test is the first statutory test. You're an Australian resident if your domicile is in Australia, unless we're satisfied that your permanent place of abode is outside Australia.

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, as established by common law and statutes:

- **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
 - a married woman can acquire her own domicile, independent of her husband
 - the age of capacity to have an independent domicile is fixed at
 - 18 years old

- when the person marries.

In practice, if you're a resident who has always lived in Australia, you'll retain a domicile here when you're absent overseas, unless you choose to permanently migrate to another country.

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.

When does this test apply?

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

In this situation:

- you may fail the **resides test** as you'll be away for a lengthy period
- the absence would raise considerable doubt as to whether you're residing in Australia during that period
- it is a reasonable assumption that you'll be overseas for a lengthy period you'll normally set up some form of abode there
- unless there are other significant factors, such as family and financial ties remaining in Australia, it is usually a foregone conclusion that you don't reside in Australia.

However, you would normally have a domicile in Australia (unless you choose to change it) and therefore the **domicile test** can be applied. In doing so, the most important consideration will therefore be determining if you have a permanent place of abode abroad.

Determining your permanent place of abode

There are no 'hard and fast' rules that can be used to determine your permanent place of abode. TR 2023/1 *Income tax: residency tests for*

individuals outlines some relevant factors that are used by the courts, tribunals and ATO in deciding such cases.

The relevant factors are:

- intended and actual length of stay overseas, including the continuity of that stay
- existence of an established home overseas
- existence of a residence in Australia (while overseas)
- family and financial ties.

You would **not** be considered to have adopted a permanent place of abode outside Australia if you have no fixed or habitual place of abode overseas but move from one country to another.

You would therefore be considered an Australian resident under the **domicile test**.

How the test works

There are 2 steps to this test:

1. Determine your domicile

- If not in Australia, the domicile test is **not** satisfied.
- If in Australia, go to step 2.

2. 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.

What to read or do next

For more general information about residency, read [Your tax residency](#).

For information on the other 3 residency tests, read:

- [Residency – the resides test](#)
- [Residency – the 183 day test](#)

- Residency – the superannuation test
- Australian and foreign residents examples.

TR 2023/1 outlines some relevant factors that are used by the courts, tribunals and ATO in deciding which country is your permanent place of abode.

If you need help applying this information to your own situation, you can contact us.

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Residency – the 183-day test

The 183-day test is one of the tests used to determine if you are a resident of Australia for tax purposes.

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What is the 183-day test

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.

In this test, we must be satisfied that your **usual** place of abode is outside Australia. This is different to the first test (domicile) that

requires us to be satisfied that your **permanent** place of abode is outside Australia.

What is a 'usual place of abode'?

The phrase 'usual place of abode' should not be given the same or similar meaning as the phrase 'permanent place of abode'. The terms 'usual' and 'abode' should be given their ordinary and natural meanings.

The Macquarie Dictionary gives the following definitions:

- **usual** means habitual, customary
- **abode** means a dwelling, habitation.

The shorter Oxford Dictionary gives the following definitions:

- **usual** means current, ordinary, customary
- **abode** means habitual residence, place of habitation, house or home.

Determining your usual place of abode

Whilst the question of a usual place of abode is a question of fact, generally the phrase is interpreted as the abode customarily or commonly used by you when you are physically in a country.

Your place of abode does not have to be fixed but must have the attributes of a place of residence or a place to live. It can't have the attributes of an overnight, weekly or monthly accommodation of a traveller.

Applying the 183-day test

Your presence in Australia doesn't need to be continuous for the purposes of the 183-day test. All the days you're physically present in Australia during the income year will be counted. This includes the day of your arrival and departure. It's important to note that the 183-day test applies in relation to the year of income, not the calendar year.

Example: foreign resident

Lars lives in Munich and is granted a 12 month working holiday maker visa. He plans to return to Munich, and resume his career as a carpenter, after his 12 month working holiday in Australia. He takes 12 months leave from his work. He owns a home in Munich which he doesn't rent out.

Lars arrives in August 2023 and has 5 different jobs while he travels around Australia, visiting every capital city during his 12 month stay. He stays in no place for longer than 2 months. Lars only works for 7 of the 12 months he's in Australia as he is primarily here to see as much as he can, picking up carpentry work to supplement his funds as he travels. Lars isn't an Australian resident under ordinary concepts and although he's in Australia for more than 6 months in the year ended 30 June 2024, Lars will not satisfy the 183-day test, as his usual place of abode is outside Australia.

What to read or do next

For more general information about residency, see [Your tax residency](#).

For information on the other 3 residency tests, see:

- [Residency – the resides test](#)
- [Residency – the domicile test](#)
- [Residency – the superannuation test](#)
- [Australian and foreign resident examples](#).

For more information about residency and income, see [TR 2023/1: Income tax: residency tests for individuals](#).

If you need help applying this information to your own situation, you can [contact us](#).

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Residency – the superannuation test

The superannuation test is one of the tests used to determine if you are a resident of Australia for tax purposes.

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What is the 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).

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.

Both the PSS and CSS include permanent employees and some categories of temporary employees in their definition of member or eligible employee.

These definitions do **not** include a person who is engaged or appointed for employment outside Australia only. If you are no longer employed by the Public Service, you will fail this test.

The test was designed to ensure that Australian government employees working at Australian posts abroad (such as diplomats and officials of the Department of Foreign Affairs and Trade), and their spouses and children under 16 years old, were treated as Australian residents. However, the test only applies to members of the PSS and CSS, which are now closed to new members.

Applying the test – examples

The following examples show how the superannuation test is applied under different scenarios.

Example: resident

Delphi, an officer of the Department of Foreign Affairs and Trade, is posted to Thailand for a period of 3 years and is a member of the Commonwealth Superannuation Scheme (CSS).

Delphi will remain an Australian resident under this test.

Example: foreign resident

Peter, a retired public servant in receipt of a superannuation pension from the Public Sector Superannuation Scheme (PSS) – a Commonwealth superannuation fund – moves to South Africa for a period of 3 years to look after an ailing relative.

Peter doesn't satisfy the superannuation test as he is no longer a contributing member.

Example: resident

John is not an eligible employee in the CSS or PSS schemes. He has been living in Tokyo for 10 years. His spouse is a

Commonwealth employee and is an eligible employee of the CSS scheme.

John is an Australian resident under this test.

Example: foreign resident

Rachael is posted overseas and is a member of the Public Sector Superannuation Accumulation Plan (PSSAP). Rachael is not an Australian resident under the resides test, the domicile test or the 183-day test.

The superannuation test does not apply to Rachael as she is not a member of the PSS or CSS.

What to read or do next

For more general information about residency, read [Your tax residency](#).

For information on the other 3 residency tests, read:

- [Residency – the resides test](#)
- [Residency – the domicile test](#)
- [Residency – the 183-day test](#)
- [Australian and foreign resident examples](#).

Other information about residency and income:

- [Tax on Australian income for foreign residents](#)
- [Tax exempt income from foreign employment](#)
- [TR 2023/1: Income tax: residency tests for individuals](#)

If you need help applying this information to your own situation, you can [contact us](#).

Australian and foreign resident examples

These examples may help you determine whether you are a resident of Australia for income tax purposes.

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Simon – a new migrant who changed his mind

Facts

Simon migrated from England to Australia with his family on a permanent resident's visa.

Shortly after arriving in Sydney, he bought a house and secured a job with an accounting firm.

The children went to a local private school while his wife took up various leisure activities similar to those that she had been engaged in overseas.

Simon still owned an overseas property which the family lived in before migrating to Australia.

Four months after arriving, the family decided that they were unhappy here and returned to England for good.

At the time of departure they were still British citizens, as they did not stay in Australia long enough to qualify for citizenship – even if they had wanted to be naturalised.

Outcome – why is Simon considered an Australian resident?

Although Simon and his family were in Australia for only 4 months, they are considered **Australian residents** on the basis that they were residing here for the duration of their stay. This is despite the fact that Simon owned a family home overseas during that period.

Their intention of residing permanently in Australia was obvious through their actions of:

- obtaining a permanent resident's visa
- Simon getting a job
- the children going to school
- his wife engaging in activities that were similar to previous ones
- their purchasing a home and treating it as such.

Although the family was not physically present in Australia for long, they were displaying behaviour consistent with residing here from the moment they arrived.

These factors allow the family to satisfy the **resides test**. Therefore, it's not necessary to consider the statutory tests. The fact that they are British citizens all along is irrelevant in arriving at the decision.

Emily – teaching in Japan

Facts

Emily leaves Australia to work in Japan as a teacher of English.

She has a one-year contract, after which she plans to tour China and other parts of Asia before returning to Australia to resume work here.

During her time in Japan, she lives with a family who treat her as one of their own.

She rents out her property in Australia during her absence.

Emily is single. Her parents live interstate, and her brother has moved to France.

Outcome – why is Emily considered an Australian resident?

Even though Emily is residing in Japan, under the **domicile test**:

- her domicile is in Australia (a resident who has always lived in Australia will generally retain a domicile here when they are absent overseas, unless they choose to permanently migrate to another country)
- her permanent place of abode remains in Australia.

Gerhardt – a new migrant who hasn't quite left his old country

Facts

Gerhardt migrated from Sweden to Australia with his family.

He had to return to Sweden to see out a performance contract that had 2 years to go.

He departed one month after arriving and settling the family here.

In Sweden, he stayed in the family house that they had been living in before moving to Australia.

He also retained the family car so that he could travel around for his work in Sweden.

He used to play tennis with a local club in Sweden and, on his return, resumed his association with the club.

Although he intends to join his family in Australia for good at the end of his contract, he is leaving his options open in case he is able to secure another contract.

In the 9 months that he has been back in Sweden, he has only visited his family in Australia once.

Outcome – why is Gerhardt considered a foreign resident?

From the above facts, Gerhardt is a foreign resident for income tax purposes.

The following table outlines the reasons why the 4 residency tests were not satisfied.

Test	This test is not satisfied because...
Residency – the resides test	<ul style="list-style-type: none">• although he has a residential home in Australia and his family resides here, these factors are not significant enough• he is not physically present in Australia for a considerable period of the income year, and• he intended to return to Sweden after a short stay in Australia for the purpose of settling his family.
Residency – the domicile test	<ul style="list-style-type: none">• he has not conclusively demonstrated that his domicile of choice is in Australia• Gerhardt's circumstances indicate that he has a permanent place of abode in Sweden• his intention of joining his family for good after completion of his contract is also not conclusive, as his actions indicate that his absence from Australia is indefinite, and• his single visit to Australia in the 9 months also adds weight to the conclusion drawn.
Residency – the 183-day test	he was in Australia for only one month.

Residency – the superannuation test	this does not apply in Gerhardt's circumstances.
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Bronwyn – an extended job overseas

Facts

Bronwyn, an Australian resident, has received a job offer to work overseas for 3 years, with the option to extend for another 3 years.

Bronwyn, her husband and 3 children decide to make the move.

They retain their property in Australia, as they intend to return one day.

The house will be rented out during their absence.

Bronwyn is uncertain whether she will extend the option to stay after 3 years, and will decide later, depending on how the family like the life there.

While overseas, they'll rent a house with an accommodation allowance provided under her contract.

Outcome – why is Bronwyn considered a foreign resident?

The following table outlines the reasons why the 4 residency tests were not satisfied.

Test	This test is not satisfied because...
Residency – the resides test	the length of Bronwyn's physical absence from Australia and the surrounding circumstances (such as establishing a home overseas with her family and renting out her family home in Australia) are not consistent with residing in Australia, even though she has retained the family home in Australia.
Residency – the domicile test	<ul style="list-style-type: none"> her permanent place of abode is outside Australia due to

	<ul style="list-style-type: none"> – the length of time she has committed to spending overseas – establishment of a home overseas, and – her family accompanying her • the fact that she will not be selling the home in Australia, although relevant, is not persuasive enough to overcome the finding on the basis of the other factors • it is arguable that she has abandoned her home in Australia for the duration of her stay, by renting it out.
Residency – the 183-day test	this does not apply from the date of her departure for overseas.
Residency – the superannuation test	this does not apply.

Janine – combining work and travel

Facts

Janine is a British national who has longed to spend 12 months 'down under'. After saving for years, she takes 12 months leave from her work and departs for Australia. Although she travels with considerable savings, her intention is to spend at least part of her time working. She has obtained a working holiday visa enabling her to work for no more than 6 months with one employer.

Through a contact in Australia, she acquired work in Perth for the first 3 months. After that period, she decides to travel to the east coast via Adelaide. She spends a month in Adelaide where she works for 2 weeks and then continues her journey to Melbourne.

Once there, she meets some friends from back home. After working for a further 3 months, she decides to spend the balance of her time in Melbourne and uses her savings for living expenses. To keep costs down, she leases a house with 2 friends. At the end of her 12 months

in Australia, she returns to the United Kingdom and resumes living in her house there, which she had been renting out while in Australia.

Outcome– why is Janine a foreign resident?

Although Janine obtains work, by travelling from place to place she hasn't established a pattern of habitual behaviour, even though she is physically present in Australia for 12 months and she co-leases a house. Janine's main purpose for being here is to have a holiday and she is merely supplementing her savings by working. Janine also fails to meet the 183-day test because she had a usual place of abode outside Australia and did not intend taking up residence in Australia.

Carleene – a visitor in search of work

Facts

Carleene is a 22 year old New Zealand resident who has graduated from university with a major in journalism. She decides to travel to Australia in the hope of finding suitable work. Although she has no firm intentions on arrival, she would like to stay in the country for 'a while', particularly if the right job comes along.

After 3 months in Australia with only casual employment as a waitress, Carleene returns to New Zealand, having been unsuccessful in finding suitable employment as a journalist.

Outcome – why is Carleene a foreign resident?

Carleene's stay is not sufficient to establish a pattern of habitual behaviour. On arrival, she is uncertain about her stay and has no other ties here. This conclusion would be further strengthened if she travelled to various cities in search of employment.

What to read or do next

For more general information about residency, read [Your tax residency](#).

For information on the 4 residency tests, read:

- [Residency – the resides test](#)
- [Residency – the domicile test](#)

- Residency – the 183-day test
- Residency – the superannuation test.

To find out if your foreign income is exempt from paying tax, see [Tax exempt income from foreign employment](#).

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