

Proposed changes to corporate tax residency rules

Proposed changes to the corporate tax residency rules announced in the Budget aim to return the rules to where they were before the Bywater case ruling.

9 October 2020

The Government announced in the Federal Budget that it will be amending the current corporate tax residency test in response to the Board of Taxation's recommendations. The proposed change will amend the law so that a foreign incorporated company will only be an Australian resident company if it has a 'significant economic connection' to Australia.

The new residency test will be satisfied for a foreign incorporated company if both its:

- core commercial activities are undertaken in Australia and
- central management and control is in Australia.

The key changes

The prevailing interpretation of the current residency treats a foreign incorporated company as a resident if the company's 'central management and control' is in Australia. This interpretation is relatively new and arose as a result of the High Court decision in the *Bywater Case* and the consequent withdrawal of the ATO's previous view on corporate residency in Taxation Ruling TR 2004/15.

The existing interpretation ignores the location of the actual operations of the company as well as the day to day management, but rather focuses on the location of the controlling mind(s). This may result in a company becoming an Australian resident by virtue of a single person undertaking board level management activities in Australia - regardless of the location the company physically carries out its business.

This change is particularly welcomed during the COVID-19 pandemic where directors of foreign companies may be stranded in Australia as a result of travel restrictions.

Next steps

Review corporate tax residency positions and wait for the passing of legislation before amending guidelines for what activities may be undertaken by management in Australia.

Who will this impact?

Multinational groups and certain private client groups with international business operations.

Important dates

Announced on the 6 October 2020 Federal Budget.

The legislation will have effect from the first income year after the date that the enabling legislation receives Royal Assent.

However, taxpayers will have the option of applying the new law retrospectively from 15 March 2017 (the date on which the ATO withdrew its ruling TR 2004/15).

How ShineWing Australia can assist

When the changes are legislated ShineWing Australia can provide updated guidance on the Australian tax residency status of foreign companies that may have some form of management and control in Australia.



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