ShineWing AUSTRALIA | Advisors & Accountants

Take the lead

Alert
Australian tax residency

It is critical that you remain aware of your Australian tax residency status and the associated Australian tax obligations to avoid unexpected tax liabilities.

In recent years we have experienced increased Australian Taxation Office (ATO) activity in questioning the Australian tax residency status of individuals. The ATO has brought a substantial number of cases around the application of the residency tax rules.

What your tax residency status means

Australian tax residents

If you are considered an Australian tax resident, you will be required to pay tax on your worldwide income and capital gains from all sources, at the high Australian tax rates. You may also be subject to the Medicare levy and Medicare Levy Surcharge.

Additionally, you will be required to make an assessment on your foreign investments to determine the implications in Australia as well as a revaluation of your assets to determine the deemed acquisition value for Australian Capital Gains Tax purposes.

Non-residents

If you are considered a non-resident, you are only taxed on income earned and sourced specifically in Australia. Therefore, any investments or assets that you have offshore will not be captured by the Australian tax system.

> Seeking professional advice in advance of changing circumstances can save you money, time and the stress of an ATO audit.

Determine your Australian tax residency status

Your Australian tax residency status is based on your own facts and circumstances. You should complete this process annually, as it may change from year to year.

If you are not an Australian "resident" according to ordinary concepts within the common definition, you may still be considered a tax resident under one of the alternative residency tests.

- Residency – the "resides" test
- Residency – the "domicile" test
- The 183 day rule
- The Superannuation test

To apply these tests, you need to understand the considerations of the ATO relating to tax residency in Australia.

ATO considerations of an individual entering Australia

Factors the ATO deem important in determining the residency status of an individual entering Australia, include:

- Behaviour while in Australia
  - » Intention or purpose of presence
  - » Family and business/employment ties
  - » Maintenance and location of assets
  - » Social and living arrangements.
- The period of physical presence in Australia

Being present in Australia for less than 183 days does not automatically mean you are a non-resident of Australia. Conversely, spending greater than 183 days in Australia does not automatically mean you are a tax resident of Australia.

Benefits and disadvantages of tax residency in Australia

Australia divides individuals into 3 categories for tax residency purposes:

1. Residents of Australia
2. Temporary residents
3. Non-residents.

There can be both tax benefits and disadvantages of being a tax resident of Australia. Some of the implications to consider include:

- Taxable in Australia on worldwide income
- Access to the Capital Gains Tax 50% discount
- Subject to the deemed acquisition and deemed disposal Capital Gains Tax rules
- Limitations to the proposed main residence Capital Gains Tax exemption
- Application of Common Reporting Standards
- Access to Australian resident tax rates, including tax free threshold.

Next steps

If you are spending more and more time in Australia, thinking of relocating to Australia, considering applying for Permanent Residency in Australia or looking to locate from Australia to another country, it is important that you seek professional tax advice to understand what the tax consequences will be for you.

Due to the difference in how tax residents, temporary residents and non-residents are treated from a tax perspective in Australia, getting it wrong can be costly.

Our ShineWing Australia tax specialists can help you:

1. Understand and document your Australian tax residency status
2. Apply the residency tie-breaker provisions in the Double Tax Agreements
3. Deal with or minimise your tax residency risk areas
4. Manage or prevent disputes or audits with the ATO.

Sam Morris
Partner, Tax
T +61 3 8635 1980
E smorris@shinewing.com.au

Justin Batticciotto
Associate Director, Tax
T +61 3 8635 1946
E jbatticciotto@shinewing.com.au

shinewing.com.au | in