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Expatriates: Part-year resident or non-resident for tax purposes?

So, what happens from a tax point of view when a person leaves Australia part-way through the income year? How is the income they derived before that time taxed? And how is any income they derived after that time taxed (whether from Australian or foreign sources)?

Well, the answer will primarily depend on whether the person ceases to be a "resident of Australia" for tax purposes at the time they leave Australia.

And this can be one of the most difficult issues in tax law to determine. Not only will it depend on the precise facts and the intention of the taxpayer, but it can also involve what often seems to be a "judgement-call" at the relevant time.

This is especially the case as a taxpayer's residency status is worked out on an income year basis, and this can change from one income year to another.

But putting aside all the issues involved in actually determining whether a person ceases to be a resident of Australia for tax purposes part-way through an income year, let us assume this is the case.

So, what are some of the general tax consequences associated with such part-year residency?

For a start, the person's tax threshold for the relevant income year will be adjusted downwards (pro-rated) to reflect the fact that the person ceased to be a resident for tax purposes part-way through the income year. As a result, this pro-rated threshold will apply to the person's assessable income:

- from all sources both within and outside Australia for the period they are a resident of Australia, and
- from sources within Australia while they are a foreign resident.

Importantly this, in effect, means that the resident tax rates do not change on the basis of a person's part-year residency – but only the relevant tax-free threshold.

It should also be noted that assessable income derived from sources outside Australia during the period in the income year that the person is a "foreign resident" will not be subject to tax in Australia as it will be outside the Australian taxing jurisdiction.

And, of course, for the following income years the person will be assessed as a foreign resident and therefore only pay tax in Australia on Australian sourced assessable income at foreign resident rates.

Another consequence that is often overlooked is that a person ceasing to be a resident of Australia for tax purposes will be deemed to have disposed of all their Australian sourced CGT assets for their market value at that time.

However, this is subject to an exception "taxable Australian property" (which always remain subject to CGT regardless of the taxpayer's residency status) and any "pre-CGT" assets of the taxpayer.

Furthermore, a person can instead choose to opt out of this "deemed disposal" rule – in which case all their Australian sourced CGT assets will be treated as taxable Australian property until they are actually disposed of or the taxpayer becomes a resident of Australia again for tax purposes.

So, these are some of the tax considerations to be taken into account on a person ceasing to be a resident of Australia. But it leaves unanswered the key question of determining if this has in fact occurred — and the equally important question of, if so, when does it occur?