



## Monthly Information Newsletter – Tax & Super

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### Who is a resident for tax purposes?

A person's residency for tax purposes can be one of the most difficult issues to determine in Australian tax law. And it is not just a question of whether a person is a "citizen" of Australia.

Moreover, it is highly relevant from a tax point of view, as a person who is a resident of Australia for tax purposes is liable for tax in Australia on their income from "all sources" (i.e. both from Australia and overseas) – including capital gains. On the other hand, a person who is not a resident of Australia for tax purposes, is only liable for tax in Australia on income and capital gains that are considered 'sourced' in Australia.

A recent decision of the Administrative Appeals Tribunal (AAT) illustrates some of the issues involved in determining this complex matter (see *PQBZ v FCT* [2023] AATA 2984).

In that case, the AAT found that the taxpayer was a resident of Australia for tax purposes under the 'ordinarily resides' test or principle – without having to consider the 'subsidiary' tests which involve, for example, questions of the person's 'domicile' and whether they intended to take up residency in Australia.

Significant to the AAT's decision was that, apart from his business interests in an overseas country and the unit he lived in there to carry on that business, all of the taxpayer's personal (and other) 'connections' were otherwise clearly with Australia.

These Australian connections included his family home, his personal and other business assets, where his wife and children lived, Australian bank accounts and his Australian health insurance.

It was also relevant that for the several years in question, the majority of the time he had spent living in Australia.

As a result the taxpayer, as a resident of Australia for tax purposes, was liable to tax in Australia on his overseas business income.

But not all residency issues are apparently as clear cut as this.

In other cases, it is necessary to consider issues such as whether the taxpayer has been in Australia for half the income year or more and whether they intend to take up residency in Australia.

It may also be necessary to consider the complexities of any 'double tax agreement' with the country in question.

And suffice to say, if the issue is relevant to you, not only is the advice of your professional adviser invaluable, it is also essential.

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