

GMS Flash Alert

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Australia - Board of Taxation Issues Report on Recommendations for Tax Residency

Australia's Board of Taxation has now released the report on reform of the individual tax residency rules that it provided to the federal government in March this year.¹

The Board has concluded that the tax legislation requires improvement and simplification in order to adequately address 21st-century social and employment circumstances.

WHY THIS MATTERS

Tightening up and modernising the rules around tax residency for individuals would give global mobility managers and employees moving into and out of Australia greater clarity and certainty around how an individual's tax residence in Australia would be determined. This would facilitate better planning around travel to and from Australia and periods of work in Australia and outside Australia. This would also help with budgeting and planning around tax costs tied to international assignments.

Focus of Proposals

According to the Board, what it is proposing would provide greater certainty for taxpayers by re-focusing the tax residency rules in three ways:

- making physical presence the primary measure of residency – moving Australia to closer alignment with international practice;

- focusing on Australian connections – providing that two individuals with identical physical presence and other connections to Australia should be treated the same; and
- adopting only objective criteria – removing any requirement to test intention or undertake broad, holistic examinations.

Key Features of Board’s Proposals

An individual who spends 183 days or more in Australia in an income year would be a tax resident for that income year, regardless of the person’s broader circumstances.

An individual who spends less than 183 days in Australia in an income year could also be a tax resident for all or part of that year, if the person meets certain tests.

An individual who had been resident for three or more consecutive years would have to satisfy more requirements in order to cease Australian tax residence.

An individual who is employed overseas for more than two years, has accommodation available to him at the place of employment throughout, and spends less than 45 days in Australia during each income year of the overseas employment period, would be a nonresident during the overseas employment period.

KPMG NOTE

The federal government has not provided any indication of when or how it may respond to the Board’s report. Therefore it is difficult to predict what might become of these recommendations.

The Board’s work has shone a welcome light on the difficulties that taxpayers encounter in applying the current rules to modern situations. This was also on display in the recent matter of *Commissioner of Taxation v Harding*, where the Commissioner thought a dispute on an individual’s tax residency position was worthy of taking to the High Court.²

The Board’s recommendations would generally represent a more modern approach to determination of individual tax residency. However, they still contain subjective elements, and their interaction with Australia’s bilateral tax treaties would continue to give rise to complexity for taxpayers.

FOOTNOTES

1 For more information on The Board of Taxation’s activities with respect to individuals and tax residency, click [here](#). Also, see GMS [Flash Alert 2018-102](#), 25 July 2018.

2 For prior coverage, see GMS [Flash Alert 2019-145](#), 19 September 2019.

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