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GMS Flash Alert

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Australia – Recent Residency Decisions Clarify How Domestic Residence and Tax Treaty Tie-Breakers Interact

Two Australian tax residency decisions issued in the last few months illustrate how different outcomes may arise under Australia's domestic residency rules and an applicable income tax treaty.

In *Quy v Commissioner of Taxation*, [2026] FCA 1316 ("*Quy*"),[1] the Federal Court of Australia dismissed an appeal concerning the domestic domicile test. In *Bulie v Commissioner of Taxation*, [2026] ARTA 1003 ("*Bulie*"),[2] the Administrative Review Tribunal applied the Australia-Singapore tax treaty tie-breaker in favor of Singapore residency for treaty purposes.

WHY THIS MATTERS

The decisions illustrate that an employee may remain an Australian resident under domestic law despite living and working overseas for an extended period. If the employee is also resident in another country, however, an applicable income tax treaty may assign the employee's residency to the other country for treaty purposes.

Employers, payroll teams, and mobility managers may therefore need to assess domestic residency and treaty residency separately. Assignment terms, payroll arrangements, family location, housing, travel, assets, and the location of an employee's principal economic activity may affect withholding, reporting, and tax-equalization or tax-protection positions.

Background

Under Australia's domestic income tax rules, an individual may be an Australian resident if the individual resides in Australia according to ordinary concepts. An individual whose domicile is in Australia may also be a resident unless the Commissioner of Taxation is satisfied that the individual's permanent place of abode is outside Australia.

Australian residents are assessable on ordinary income from all sources. Foreign residents are assessable on ordinary income from Australian sources.

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If an individual is a resident of both Australia and another jurisdiction under the respective domestic laws, an applicable income tax treaty may contain tie-breaker rules. In *Bulie*, Article 3(2) of the Australia-Singapore tax treaty required the sequential consideration of permanent home, habitual abode, and the country with which the individual's personal and economic relations were closest.

Domestic Residency: The *Quy* Decision

The taxpayer lived and worked in Dubai in the United Arab Emirates between 2015 and 2021 after being deployed there by his Australian employer. The relevant income years were the years ended 30 June 2016 through 30 June 2020.

The Administrative Review Tribunal (the "Tribunal") found that the taxpayer did not reside in Australia according to ordinary concepts. Because it was not disputed that he remained domiciled in Australia, however, under the "domicile test" the taxpayer would continue to be an Australian resident unless the Tribunal was satisfied that his permanent place of abode was outside Australia. The Tribunal was not satisfied and found that the taxpayer was an Australian resident during the relevant income years.

The taxpayer appealed the decision of the Tribunal. The Federal Court (the "Court") dismissed the appeal, concluding that the Tribunal had applied the correct legal test and that its conclusion was legally made based on the evidence. The Court's role was to determine whether the Tribunal had made a legal error, rather than to conduct a fresh assessment of the evidence.

Factors Considered in *Quy*

Factors connecting the taxpayer with Dubai included:	Factors connecting the taxpayer with Australia included:
• full-time employment in Dubai; • residence in an apartment leased by the employer or host entity; • Dubai residency permit; • a local vehicle; • local phone and internet arrangements; • living allowances; and • social and recreational activities in Dubai.	• the retention of the family home in Perth; • the location of family members in Australia for much of the relevant period; • Australian investment properties and bank accounts; • salary arrangements involving an Australian bank account; • superannuation contributions under Australian law; • vehicles and personal belongings retained in Australia; • return visits to Australia; and • an Australian driver's license and Australian vehicle registrations.

The Court did not determine that any one factor was conclusive and held that the Tribunal's evaluation of the evidence did not disclose a legal error.

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Treaty Residency: The *Bulie* Decision

The taxpayer was a tax resident of both Australia and Singapore under the respective domestic laws for the relevant income years ended 30 June 2018 through 30 June 2022.

It was accepted that the taxpayer had a permanent home and habitual abode in both countries. The Tribunal therefore considered the country with which his personal and economic relations were closest under Article 3(2) of the Australia-Singapore tax treaty.

The taxpayer lived and worked in Singapore as Head of Crude Oil Trading for Equinor Asia Pacific and earned most of his income there. His wife and youngest child continued to live in the family home in Sydney. He also retained Australian assets, bank accounts, private health insurance, and superannuation interests.

The Tribunal set aside the Commissioner's objection decision and substituted a decision allowing the taxpayer's objection in full. It found that, considered as a whole, the taxpayer's closest personal and economic relations were with Singapore.

Weight Given to Economic Relations

The Tribunal gave significant weight to the taxpayer's employment and recurring income-producing activity in Singapore. It regarded Singapore as the center of his day-to-day life and the source of the economic support provided to him and his family.

The taxpayer owned a valuable home in Sydney and transferred funds to Australia to support his family and pay the mortgage. He also held superannuation and maintained other Australian connections. The Tribunal nevertheless placed greater weight on his recurring employment income and economic activity in Singapore. Significant emphasis was placed on the fact that the taxpayer's Australian assets were not income producing in nature (albeit of significant value).

The Tribunal accepted that the taxpayer's family connections with Australia were stronger. It concluded, however, that he also had meaningful personal relations in Singapore and that his Singapore economic relations carried greater weight in the overall treaty analysis.

The Tribunal's decision in *Bulie* closely follows the reasoning of the full Federal Court in the case of *Pike v. Commissioner of Taxation*, [2020] FCAFC 158, which had similar facts and issues.

It is important to note that in both *Pike* and *Bulie* that the taxpayer was employed overseas on a local open ended contract as opposed to an assignment with a set end date. Whether a change in the contractual terms would change the view of the courts **is not clear.**

KPMG INSIGHTS

The decisions should not be viewed as contradictory. They concern different factual circumstances and distinct technical questions: *Quy* addressed domestic residency under the domicile test, whereas *Bulie* proceeded on the basis of dual domestic residency and applied the treaty tie-breaker. The cases reinforce that residency is fact-specific and that, where dual residency arises, the applicable income tax treaty is required to be analysed separately and sequentially.

Against this background, the recent cases provide a timely opportunity for employers to:

- Review outbound assignments or transfers and confirm that the documented working arrangements align with the intended tax residency outcome, taking care to understand the employee's economic relationships in practice and the appropriate weight to be given to the overseas employment.

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- Review the residency position of employees currently on outbound assignment or permanent transfer where the original analysis involved significant uncertainty, taking account of the employee's particular facts and avoiding the direct application of conclusions reached under a different residency test or treaty context.
- Identify and manage the consequences of any revised residency position, including the prospective tax treatment, potential amendments to prior-year filings, and any associated tax equalisation, tax protection, or remuneration implications.

For employees, the cases highlight the importance of:

- Understanding that domestic residency is the starting point and, where the individual is resident in both countries under their respective domestic laws, undertaking a separate and sequential analysis of the applicable income tax treaty tie-breaker provisions by reference to the evidence relevant to each element.
- Maintaining comprehensive contemporaneous records relevant to residency, including travel, accommodation, family location, employment and income, financial accounts and assets, immigration status, and social and community connections.

Readers may wish to contact their usual immigration adviser, tax services or employment law professional, or a member of the KPMG team in Australia (see Contacts).

ENDNOTES:

1 Federal Court of Australia, "Quy v Commissioner of Taxation [2026] FCA 1316."

2 Administrative Review Tribunal of Australia, "Bulie and Commissioner of Taxation (Taxation and business) [2026] ARTA 1003 (4 June 2026)," last updated 5 August 2026.

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