

Modernising Individual Tax Residency Consultation Submission

By

Steve Douglas

Managing Director

Australasian Taxation Services

Registered Tax Agent

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Contents

Introduction	3
Quick Historical Perspective – From a Different Viewpoint	4
Consultation Question Responses	6
45-day threshold	6
Factor tests.....	8
ATO Residency Suggested Alternative Factor Test	11
Commencing residency.....	12
Ceasing short-term residency	12
Ceasing long-term residency.....	13
Temporary residents	13
Overseas employment rule	13
Other matters.....	14
Double Tax Agreements	15
Capital Gains Tax	15
Confirm Foreign Tax Credits	15
Genuine Simplicity	15
Promise for Review	15
Conclusion.....	16
Appendix I SMATS Tax Residency Changes Survey.....	17

Introduction

Australasian Taxation Services was established in 1995 in Singapore and is a specialised taxation services with particular emphasis on Australian expatriates, foreign investors and intended migrants to Australia.

Over the years we have grown to become the leading firm looking after the taxation affairs of these taxpayer types and it is my understanding that we may be lodging more Non-Resident tax returns than maybe any other Australian Tax Agent.

We arranged the Parliamentary Petition EN2834 in August 2021 (<https://www.aph.gov.au/e-petitions/petition/EN2834>) which gathered 5,730 signatories and was instrumental in leading to this consultative process.

For almost 30 years, we have provided simple, cost-effective advice and support for the thousands of our clients that need clarification on residency and consider ourselves to be a leading expert on this matter through experience and specific practical application.

We also are in the unique position of being able to see the residency issues and behavioural issues of those that are impacted by tax residency change, or where levels of confusion evolve as changes in travel habits, work location issues, family togetherness, technology and capability have altered choice and perception over the many years.

We are pleased to provide this submission for the committee and in further support thereof, we have arranged a detailed survey of those most affected, Australian expatriates, which has gathered over 800 respondents and is the most comprehensive insight to the views, actions, and perceptions of those whom this review will be targeted. The full survey has been attached as Appendix I.

We hope this survey and submission, combined with our views and depth of experience will prove valuable to the committee and assist to create a more workable and effective framework for any proposed changes that may be put to Parliament.

Quick Historical Perspective – From a Different Viewpoint

Tax Residency in Australia has been largely unaltered, in regards to legislation, over the past 40 years.

In our view, this is not because of lack of attention or detail, but largely because the current law has been effective in managing the issue.

In short, a person is a tax resident if they are in Australia more than 183 days UNLESS the Commissioner is satisfied that they are indeed living overseas.

It is only the later “UNLESS” portion that has led to some level of subjective judgement on the part of the Commissioner over the years that has resulted in the need to test reasonable standards in the courts.

In my over 3 decades of experience, I have never met anyone who doesn’t genuinely know where they are “resident”, and there is always a preponderance of evidence to suggest one or the other, or the “tie break” if there are any blurred lines, but that doesn’t mean people won’t test boundaries, regardless of prudent advice.

I mean this not just in regard to the taxpayer, but also the Australian Tax Office, which also has on occasion sought to overreach.

I do think the current system is more than adequate and equally clear, but it is fair to say times are changing and the Pandemic, technology, mobility and modern relationships have all combined to create environments quite different to the past where we now see work from home, families willing to live apart and access to travel creating a different life pattern than the traditional family unit staying year round in one set location.

The “modernisation” of residency definitions and rules is welcome if it is embracing this change and understanding that more change is likely to come in the future, perhaps even at a greater pace than present, so a clear eye to what may come is also necessary.

We welcome an intention to simplify, however we raise concern that in the current form, the method of simplification seems to be leading to more complication and confusion, so hopefully some of our points and suggestions can assist in taking a sensible step towards real simplification, or perhaps an understanding that the current law is adequately managing the process.

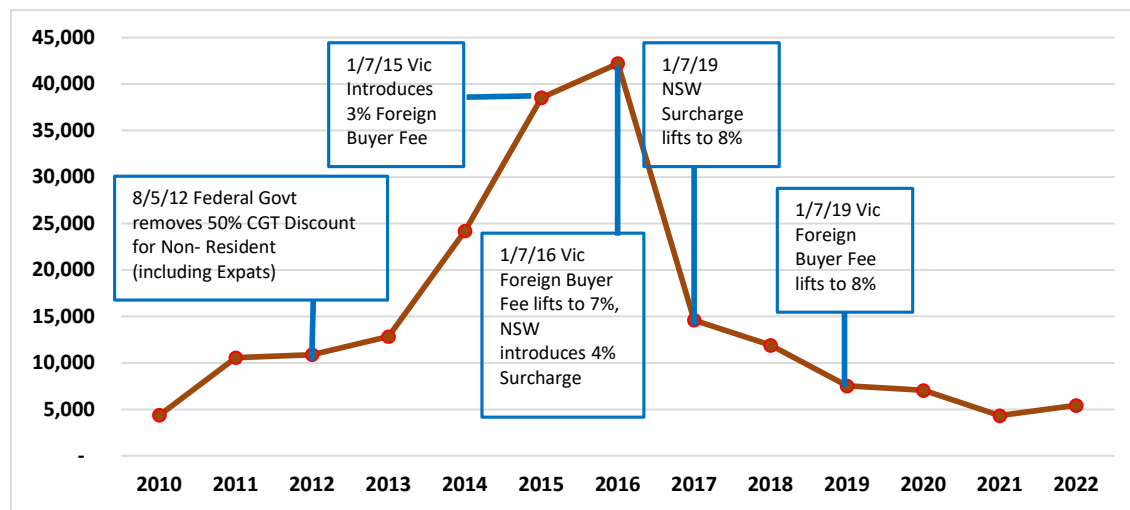
It should also be noted that there have been two significant taxation law changes, in recent past that have had massive impact on the Capital Gains of Australian property for expats and migrants. It is not an unreasonable statement to suggest that these are having large scale unintended consequences as contributors to the current rental crisis in Australia, as anyone owning a property whilst living abroad is providing valuable rental stock for Australia’s booming population.

- 2012 Removal of 50% Capital Gains Tax Discount for Ownership Period while living overseas.
- 2021 Removal of 100% Principal Residence Exemption if property sold whilst living overseas.

At the same time changes to the cost of FIRB Applications and the State Governments introduction of Foreign Buyer & Land Tax surcharges as well as increased difficulty for property finance options for foreign based buyers, have all combined to see a significant drop off of foreign property investment activity.

The impact of these can be clearly seen through the drop off of Foreign Investment Review Board applications since these changes start in 2015, and subsequent rapid escalation in 2016 & 2017.

Australian Residential Property FIRB Approvals



Source: FIRB Annual Reports

When you combine these with the Pandemic bringing an unusually high number of expats back to live permanently in Australia, the law of unintended consequences prevails when these “solutions” introduced have resulted in a bigger problem that is being now felt in the broader domestic community in the form of an affordable housing and rental crisis.

The committee should be mindful of how some changes may impact future habits.

In our survey, we asked that question specifically as below:

22 Would the potential of being a tax resident if in Australia more than 45 days a year affect your decision making or travel plans when, or if, you were living out of Australia?		
Yes	800	92.92%
No	61	7.08%
23 How would it change your planning?		
I would holiday less in Australia	710	32.75%
I would invest less in Australia	454	20.94%
I would consider selling my Australian property	263	12.13%
I would consider other countries to live in	246	11.35%
I would consider coming back to Australia sooner	65	3.00%
I would consider staying overseas longer	376	17.34%
Other	54	2.49%

It is overwhelming when almost 93% of respondents say yes it would impact their decision making.

Furthermore, 81.52% (710 of the 861 total respondents) said they would holiday less in Australia and 52.12% (454 of the 861 total respondents) said they would invest less in Australia.

The economic impact of these unintended consequences could well be in the billions of lost economic activity in tourism & construction and further worsen the rental crisis by dampening activity from this important investor landlord group.

Any changes to current residency rules need to consider all direct and indirect consequences and carry a heavy weight of financial burden and community disruption if all aspects are not properly considered. History teaches us this lesson a regular basis.

Consultation Question Responses

We have made our responses to all questions below for the Committee review.

45-day threshold

1. How many days in an income year should an individual with strong connections to Australia be able to spend in Australia before they are considered a tax resident?

Under current law, residency is confirmed if a taxpayer spends more than 183 days in Australia, unless the Commissioner is satisfied that they are genuinely living overseas.

In our opinion this test has been in the main satisfactory.

In our survey below, over 92% considered that a test after 45 days in Australia would make their tax affairs more confusing than the current situation.

In response to the question of how many days would be appropriate before a test applied, over 75% suggested 90 to 180 days would be most suitable with the largest response in the 180 day period.

24 Do you feel that a tax residency test after 45 days visiting Australia makes your tax affairs?

Easier to understand	61	7.09%
More confusing and difficult	799	92.91%

25 What period of time in Australia do you feel would be more sensible if a test was introduced?

Less than 45 days	19	2.22%
90 days	197	23.07%
120 days	163	19.09%
150 days	33	3.86%
180 days	255	29.86%
More than 180 days	187	21.90%

We believe that a minimum of 90 days should apply (with specific exclusions discussed in Question 2) or if no exclusions a minimum of 180 days would be more appropriate.

The rationale behind this is to reflect the changes in society that now see many global citizens with the freedom to take extended holiday and travel with the modern convenience of “work from home” which is easily extended to vacation accommodations.

In more recent times, the rising cost of travel post Covid-19 has seen many people seek to extend trips to get better value for the high spend of each trip, whereas pre Covid-19 the lower cost of travel meant people were more likely to travel more often for lesser periods.

It is likely that travel costs will remain high in the foreseeable future, and that may have a prolonged and evolving impact that may see travel patterns continue to change. As such, there is a genuine danger of setting the days too low and having an unexpected impact on a far greater number of people than may be expected.

In our survey, over 75% of respondents indicated that they would possibly spend more than 45 days in Australia each year, meaning this threshold may unintentionally capture a far greater portion of genuine non-resident taxpayers and increase their personal and the ATO administration burden unnecessarily.

14 Would you possibly spend more than 45 days in Australia per year?		
Yes	650	75.41%
No	212	24.59%
15 What would be the main reason to be back in Australia?		
Holiday	146	22.46%
Family Obligations	395	60.77%
Work Commitments	36	5.54%
Visiting your children from a former relationship	22	3.38%
Other	51	7.85%

As can be seen above, the main reason people travel back to Australia is for family obligations such as birthdays, Xmas, parental visits and just reconnecting after long periods apart.

This is not surprising or unusual, and certainly does not warrant unnecessary or inappropriate scrutiny in regard to taxation affairs.

It clearly demonstrates that the proposed timeline of 45 days is too short to have that as the trigger point for any tests on residency, as at that level too many people would be included causing great cost, confusion and unnecessary disruption.

Our recommendation of 90 days with specific exclusions, would be a far more logical point and ensure that only taxpayers that may genuinely warrant a level of review and scrutiny are affected, making any proposed change fair and efficient.

2. Do you consider that days spent in Australia under certain circumstances should be disregarded for the purposes of the 45-day count? If so, why should days be excluded in some circumstances and not others. Who would decide?

There is no doubt that some days of travel to Australia should be excluded.

First amongst those should be any days of Government imposed Quarantine. At the current time, we are all grateful that the impact of Covid-19 has softened to the point where we once more have freedom of movement across International and State borders. However the experience of Covid-19 should be well learned and just in case there is an unfortunate relapse in the future, any changes should be pre-emptive and exclude any potential forced quarantine on travel.

We asked in our survey what other travel should be disregarded of any proposed visit day count, with the answers below expressed as a percentage of the total select options, as multi choice was permitted for the 861 respondents.

26 What items do you think should be excluded from the 45 days?		
Work required travel	667	24.63%
Compassionate care of family	772	28.51%
Visiting children of a former relationship that cant travel abroad	420	15.51%
Funerals	665	24.56%
Other	184	6.79%

Compassionate care of family was selected by almost 90% of the 861 respondents. This is understandable given that expats, often feel additional guilt and mental health issues due to the fact that they live far from family and have limited time with them when they chose to live abroad.

This is not surprising given that over 60% of respondents were over 50 years old and therefor parents would be now coming into their 70's or above and needing more attention and beginning a period of deteriorating health in their later years.

To simplify the inclusion of this category, there could be a requirement of a doctor's letter of support and perhaps the setting of an upper limit of say 90 days per financial year.

Next most selected was Work required travel with 77% (667 of 861). This category makes sense to exclude as it is likely that it was not on the request of the employee, rather a direction of the employer. It would also make sense to exclude this category to ensure there are no adverse economic impacts of any test in stopping important trade or services between Australia and the country of residence.

A simple employer's letter would suffice, and the current legislation already captures cases of extended stays beyond 183 days (such as Double Tax Agreements).

Funerals attracted a similar 77% (665 of 861) and would be considered appropriately compassionate as the expat community continues to age. It could easily be managed with a simple cap of say 2 days per funeral exclusion.

Another category well worthy of exclusion is visitation for parental visits (48% of respondents). This is becoming more significant in a society where divorce rates sit around 50%. In many cases, children may not be permitted to leave the country to see the parent living abroad, so they are forced to come to Australia, often for up to 50% of school holiday times of approximately 12-14 weeks.

Excluding up to 50% of school holiday periods where there is a Family Court agreement confirming visitation rights and no travel permitted would be easy to manage, sensible and appropriately compassionate.

Factor tests

3. Could any of the four factors be defined differently to better achieve the design goals whilst remaining objective and identifiable?

It is concerning that the Factor Test appears to be too simplistic and given only 2 of 4 answers are required, it would be very easy for someone that is genuinely tax non-resident to be considered tax resident. For example, an Australian citizen with a holiday home would be classed as resident under the proposed 4 point Factor Test.

With right to reside in Australia an automatic for any Australian Citizen or Permanent Resident, that means effectively just one other question in the affirmative defaults them as tax resident, even if the preponderance of other evidence would clearly suggest otherwise.

It is important that if any test is to be imposed that it should be fair and reasonable and be sufficient to correctly assess the true nature of residency.

As such, we suggest that more relevant questions are considered and also that there be consideration to a weighting of responses to more appropriately assess the potential impact on residency or otherwise.

We have proposed below some additional questions as well as weighting points for consideration.

This would seem more appropriate as for example the current question of Economic interests suggests that having a "bank account" would satisfy this test, even if it was a small account of just a few hundred dollars retained after their relocation overseas. In my over 30 years of experience with expats, I can not recall ever meeting one that did not have a bank account. So by default, every expat may meet the 2 of 4 criteria and be marked as tax resident under the proposed Factor test if in Australia more than the currently proposed 45 days.

This would explain why almost 93% of respondents advised the test after 45 days would be more confusing and difficult.

I am sure this would not be the intention of the simplification process.

To further emphasise the issues with the proposed 4 Factor test, consider the following:

Right to reside permanently in Australia

Every Australian Expatriate would get this, so impacts 100% of the expatriate community.

Australian Family

In the modern era, it is becoming increasingly common for a family to make the difficult personal decision to split the family.

When I started my journey in 1995, I very rarely met anyone whom was not accompanied by their spouse, whereas now I find it not that unusual.

Indeed our survey shows that 21% of respondents did not have their spouse or children living with them overseas.

8 Does your immediate family (spouse or children) live with you abroad?

Yes	521	78.94%
No	139	21.06%

9 Why are they not living with you?

Spouse didn't like living overseas	10	6.02%
Schooling costs prohibitive	16	9.64%
Where I live isn't family friendly	14	8.43%
Children grown up and left home	33	19.88%
Other family obligations kept spouse in Australia	23	13.86%
Other	70	42.17%

It would not be surprising to see this number rise further in the future, so this should be factored into the deliberations.

Australian accommodation

Including accommodation in the test will impact a significant majority of expatriates given the below results of over 81% owning a property.

17 Did you own an Australian property while living overseas?

Yes	702	81.06%
No	164	18.94%

Whilst the current intention is to exclude properties that are rented from the accommodation test, the fact that properties are indeed rented is largely due to an economic need to help service loans or assist fund State Land Tax.

As below, just under 12% of respondents suggested they didn't rent their property, which is still a large pool statistically that by default would be captured under this test.

21 Do you intend to, or did you, rent your Australian property while overseas?

Yes	611	88.04%
No	83	11.96%

As can be seen below, most respondents had the property as their residence prior to going abroad, so this test in its current form has more reach than may have been expected.

19 Did you live in any of your properties before going overseas?

Yes	357	51.07%
No	342	48.93%

Australian Economic Interests

In the current form, this question includes someone with a modest bank account in the same capture as a multi-million dollar investor.

This would seem inappropriate and unfair.

As we have suggested at Consultation question 4 below, it would seem more sensible to provide a weighting based on the value of their economic interests rather than a simple yes or no response.

In summary, the current 4 question, yes/no response Factor Test is clearly not either fair or reasonable for the significant number of Australian Expatriates that may inadvertently be in Australia more than the 45 days proposed allowance.

4. Are there other factors better suited to identifying individuals strongly connected to Australia in an objective, simple and certain way?

We feel it to be appropriate to expand the factors both with additional questions and a weighting score system rather than a simple yes or no response.

In our suggestion below, we have given items that are more likely to suggest residency a lower score, hence if the weighted score falls below a suggested 16, that would mean that the person is most likely tax resident. We also propose that the test be applied after 90 days not including any excluded days such as compassionate leave or required work travel.

We have added questions deemed to be more relevant such as how long abroad, duration of overseas contract, type of accommodation abroad, value of Australian investments and intended return time to Australia.

The weighting system provides a more sensible and considered outcome as it can allow the varied circumstances of each individual to be more properly assessed.

For example:

- holding Citizenship is a stronger indication of residency than holding a Visitor Visa so there should be a heavier burden on the Citizen than long term tourist,
- The longer you have been out of Australia the less likely you are to be resident,
- If your immediate family is in Australia without you or living with you overseas makes a big difference, and
- The value of your economic connection to Australia being larger may suggest a stronger tie and warrant further scrutiny.

Using this proposed weighting will allow fairness and also prove to be a more effective tool in order to ensure only taxpayers that are genuinely worthy of review and enhanced scrutiny are selected.

It would also be very simple to have these questions readily available online and through tax advisors so that anyone could quickly establish if they may be required to consider themselves resident if they find themselves in Australia beyond the qualification period.

This weighting provides a simpler and fairer method to assess the potential residence of the taxpayer.

ATO Residency Suggested Alternative Factor Test						
Proposed Factor Test - Resident on Score of 16 or less		8	14	22	17	23
To become effective if more than 90 days in Australia	Points	Likely Resident	Likely Resident	Likely Non Resident	Likely Non Resident	Def Non Res
Q1. Are you an:						
Australian Citizen	1	1			1	1
Permanent Resident Visa Holder	2		2	2		
Visitor Visa	3					
Q2. When did you depart Australia to live overseas						
Less than 1 year	1	1				
1 and 3 years	2		2		2	
More than 3 years	3			3		3
Q3. How long is remaining on your current employment Contract						
Less than 1 year	1	1				
Between 1 and 2 years	2		2			
Between 2 and 5 years	3			3	3	
Indefinite	4					4
Q4. What is the situation of your Home in country of residence						
Serviced Apartment	1	1				
Shared Room	2		2			
Leased for less than 12 months	3			3		
Leased for 12-24 Months	4				4	
Leased for more than 24 months	5					
Owned	6					6
Q5. Where is your immediate family living						
In Australia	1	1	1			
In Australia but we are separated/divorced	2				2	
Overseas with me	3			3		3
Q6. How many days in a year do you expect to be in Australia						
More than 120	1	1	1		1	1
Between 90 and 120	2			2		
Q7. What is the value of your investments and property in Australia						
More than A\$5m	1	1				1
Between A\$2 and A\$5m	2		2		2	
Under A\$2m	3			3		
Q8. When do you intend to return to live permanently in Australia						
Within 6 months	1	1				
6-12 months	2		2		2	
12-24 months	3			3		
Over 24 months	4					4

5. How would any additional factors affect the proposed Factor Test, in particular the operation of the two-out-of-four aspect of the rule?

The expanded proposed test above, or something similar, would allow each person to be more appropriately assessed to ensure the current tax residency outcome can be easily established.

It does not accidentally capture those genuine cases, and clearly identifies those that have significant ties likely to demonstrate residency.

Commencing residency

6. Does having three points of connection (i.e. being physical present in Australia for more than 45 days in an income year, together with two factors) strike the right level of connection to commence residency?

Definitely not. Under current ATO practices and case laws, the generally accepted principles focus on the concepts of disconnection with previous country and reconnection with Australia.

These established tests seem more relevant to confirm and establish commencement of residency and include:

- Termination of employment in former country of residence,
- Cancellation of former residential lease or renting of owned residence,
- Shipping of personal effects to Australia including pets,
- Moving into Australian residence or long-term lease,
- Commencement of long-term employment in Australia,
- Enrolment of children in school,
- Expansive long-term presence and/or intention to remain in Australia (more than 45 days).

All of the above are a clear indication of a person's intent to begin a new, long term life in Australia that are far more appropriate than the proposed 45 days and 4 Factor Test.

As such it would be best to maintain the current methodology rather than adopt the current proposed method.

Ceasing short-term residency

7. Does maintaining two points of connection to Australia (i.e. meeting two factors) strike the right level of connection to maintain residency in income years during which an individual is physically present for less than 45 days?

Similarly, to question 6, the same key factors apply to someone ceasing to live in Australia.

The ATO has been clear that it expects a taxpayer to have a long-term intention, currently accepted as 2 years, to be out of Australia for residency to cease.

8. If not, how should the Ceasing Short-Term Residency Rule operate to strike the appropriate balance between adhesive residency, certainty and simplicity?

The current assessment factors (as discussed in Consultation question 6) seem more appropriate than the proposed rule.

Ceasing long-term residency

9. Does the Ceasing Long-Term Residency Rule strike an appropriate balance between increasing adhesiveness of residency for individuals with enduring ties to Australia while also providing a clear pathway to non-residency?

With the modification of the period allowed in Australia and appropriate exclusions, the proposed test to acknowledge Ceasing Residency for limited visitation to Australia for consecutive years has some merit.

It is still strongly felt that current legislation and case law are more than adequate to appropriately manage this issue and there is far less confusion on residency that may be otherwise suggested by the Board. This may be because the Board had limited direct access to individuals that were affected and the main contributor to the proposals were Australian based advisors and the Australian Taxation Office.

It is important to note that the great majority of expats live abroad for long periods, with over 91% of our respondents confirming they were overseas for more than 5 years.

2 How long were you overseas?

2-5 years	68	8.56%
more than 5 years	726	91.44%

Regardless, the current evidence-based system would still be considered a superior model.

Temporary residents

10. Is it appropriate to only treat a 'temporary resident' as a long-term resident if they have been a tax resident for six or more consecutive years? (Note that other individuals will be treated as long-term residents if they have been a tax resident for three or more consecutive income years.)

Under current practices, the temporary resident status is reserved for certain visa types. This is very easy to understand and manage.

Given the Visa is potentially limiting any entitlements to various Government benefits or services, it seems to make sense that the temporary status remains while the restrictions do.

In seeking to change the treatment for taxation, this should be done in collaboration and in alignment to the visa rules. For example, if the temporary residence for tax was to be set at 6 years, then it would make sense that a temporary residence visa should not be offered after the same 6 year period with the holder either required to upgrade to permanent visa or move back to his country of origin.

Regardless, the decision to change should not be made in isolation and should be considered as part of the migration process as well.

Overseas employment rule

11. The Overseas Employment Rule allows individuals with enduring connections to Australia to immediately cease being a tax resident, thereby reducing the tax and compliance burden for those individuals and their employers. Do the settings strike the appropriate balance between facilitating the skill development of Australians through international experience while maintaining sufficient integrity?

The general mechanics of this test seem to make sense with some minor exceptions including:

Overseas Employment Period of over 2 years

In my experience, most employment contracts for expatriates would be 2 years or less, most common being 12 months renewable.

The current practice is to ensure the “intention” is to stay abroad longer than 2 years, so there would be concern if this needed to be a contracted timeline of say 25 months or more, when international practices may not permit that.

The current proposed terms also do not make provision for someone that may be going abroad to establish a business or indeed to enjoy a long-term retirement or lifestyle change. A taxpayer should not be penalised for the fact they are not in a long-term employment contract or are not employees, so this needs to be further considered.

Spending Less than 45 days in Australia

As discussed in numerous sections, the 45 days is simply too short a period to seek to draw a line of differentiation, especially with no exclusions.

Furthermore, it should be noted that it may not be unusual for a taxpayer to visit Australia more in their first year abroad due to finalising matters of long-term departure, so a longer period is far more sensible before the proposed tests commence.

12. The effect of the Overseas Employment Rule is to cause the individual to become a nonresident (and provide certainty for employees and their employers) rather than to exempt the overseas employment income. Is this the appropriate outcome?

I do not believe so, as the standard of a “more than 2 year” contract and exclusion of non-employee arrangements may make this untenable and become more problematic than intended.

Other matters

13. There will be a need for transitional rules when moving from the existing residency rules to the new framework. How would you suggest these transitional rules operate? For example, how should the Overseas Employment Rule apply to individuals who are already partway through their overseas employment at the time the new residency rules come into effect?

It would seem to be near impossible to properly articulate any appropriate transition rule.

The only sensible option would be to start the new test for all departures from the day of commencement of the new regime. For anyone abroad on that day, the current framework would remain.

Given the current legislation has worked effectively for many decades, has clear case law reference and is widely understood and accepted, this should cause no problems in the administration of effective tax policy.

Any new regime can effectively commence for all new departures or arrivals, without causing undue concern or unintended disruption to genuine taxpayers that demonstrate the obvious traits of residency or non-residency based upon the current intention and evidence-based approach.

14. Do you have any other insights or observations to make about the framework?

There are some other matters of consideration worthy of note when considering changes to tax residency rules.

Double Tax Agreements

Long standing agreements have been very successful in cases of dual residency and should have precedence over any new regime on residency to maintain consistency and fairness in our tax system.

Capital Gains Tax

There is a significant risk that the current proposed rules could create an environment of residency fluidity. That is if the 45 days remains the test period, a taxpayer, through pure circumstance alone, may find himself moving from resident to non-resident on a regular basis.

This can be very difficult to manage when you consider that current CGT rules create a CGT event on change of residency, so this could be very problematic and extremely hard to manage.

Many years ago, there was a provision in the CGT laws to exclude capital gains on assets held prior to commencing tax residence if residence ceased within a certain period. As I recall it was if you had been tax resident in Australia for less than 5 out of 10 years.

Something similar should be well considered to ensure that if an unintended consequence of this change is indeed regular technical change to a person's tax residence, that not every change creates a CGT event. This is a complex issue needing further thought and assessment.

Confirm Foreign Tax Credits

There is often confusion with Foreign Tax Credits where it comes to the alignment of income from countries that have different financial year end dates to Australia.

With the potential of these changes to reach up to 3 years after a taxpayer's departure, due consideration needs to be given to how the pairing of income to tax paid between Australian and the new country of residence can be easily managed.

Genuine Simplicity

Whilst we welcome and applaud the Committee's effort and desire to simplify the issue of residency, we feel strongly that the proposals have not achieved that objective.

To replace one section of law with many more, replace one test with many, and seek to capture activity based on a very small number of days, the outcome here is that thousands more taxpayers will be in confusion and conflict than under the current residency regime.

If fixing the confusion was the main objective, then the simplest option is to just state that if a person is in Australia more than 183 days, then they are resident FULL STOP, and just remove the UNLESS.

Promise for Review

Given the proposed changes are seemingly far more complicated than the current regime, it would seem both prudent and essential that if a change is made, there is a commitment to review and assess the impact in a reasonable time period, perhaps 2 to 3 years?

Conclusion

I do have grave concerns over the unintended consequences of the proposed changes and feel that the stated policy criteria of the Committee's August 2017 review of "*simplicity, efficiency, equity (fairness) and integrity*" will not be appropriately met under the current proposals.

When you consider that there have been almost 1 million expats throughout most of the past 30 years, yet much fewer than 1,000 cases before the courts on residency, one needs to gain appropriate perspective on the view that the current laws are too complex.

An evidence-based system should always be fairer than a 4 point Factor Test and it will allow the unique circumstances of every individual to be assessed on merit rather than generalisation. The depth of knowledge, case law and ATO information has made the current regime far **simpler** to understand than ever before, so change at this time is likely to cause more confusion than the present environment.

To set the starting point of 45 days would seem to create a system that captures far more innocent travellers than people seeking to work the residency situation for personal gain, would not seem to be very **efficient**.

To have test that almost every single person would meet the standard of 2 of 4 general tests would definitely not demonstrate a level of **fairness** in the general community.

The current system brings integrity by requiring every taxpayer to provide evidence of their position, to a very high standard, whereas the mechanics of the proposed changes would in effect stop anyone being able to demonstrate their real and genuine position. That clearly diminishes the **integrity** of our system and flies against the stated objectives of this review.

We hope that our survey, responses to the questions and practical recommendations can assist to find a more equitable solution that meets the needs of a progressive tax system, an evolving global world and a modern standard of fairness for all.

We welcome further participation in progressing these matters should that be required.

Yours Sincerely



Steve Douglas
22nd September 2023

Appendix I SMATS Tax Residency Changes Survey

SMATS Group Survey Summary Report

Survey equals Tax Residency Changes Survey Sep 23



1 Have you currently or previously spent more than 2 years living and working out of Australia?		
Yes	807	95.73%
No	36	4.27%
2 How long were you overseas?		
2-5 years	68	8.56%
more than 5 years	726	91.44%
3 Are you considering living and working out of Australia in the future?		
Yes	31	88.57%
No	4	11.43%
4 How long do you intend to be overseas?		
1-2 years	5	16.13%
2-5 years	7	22.58%
5 or more years	19	61.29%
5 Please let us know your current age grouping?		
Under 30 years old	9	1.04%
Between 30 and 40 years old	77	8.92%
Between 40 and 50 years old	243	28.16%
Between 50 and 60 years old	363	42.06%
Over 60 years old	171	19.81%
6 Are you still living overseas?		
Yes	679	86.17%
No	109	13.83%
7 Which Australian State did you or do you live in?		
NSW	315	36.42%
VIC	208	24.05%
QLD	178	20.58%
WA	93	10.75%
SA	48	5.55%
ACT	14	1.62%
TAS	5	0.58%
NT	4	0.46%
8 Does your immediate family (spouse or children) live with you abroad?		
Yes	521	78.94%
No	139	21.06%
9 Why are they not living with you?		
Spouse didn't like living overseas	10	6.02%
Schooling costs prohibitive	16	9.64%
Where I live isn't family friendly	14	8.43%
Children grown up and left home	33	19.88%
Other family obligations kept spouse in Australia	23	13.86%
Other	70	42.17%

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10 What are the main reasons you went overseas (tick all that are relevant)?

Career	784	38.06%
Lifestyle	283	13.74%
Improve Savings Power	302	14.66%
Travel	297	14.42%
Family	136	6.60%
Improved Taxation	228	11.07%
Other	30	1.46%

11 Which area are you living in?

Asia	364	54.41%
Europe	54	8.07%
Middle East/Africa	152	22.72%
Americas	88	13.15%
Other	11	1.64%

12 Which area did you spend the most time living in?

Asia	71	65.74%
Europe	6	5.56%
Middle East/Africa	17	15.74%
Americas	13	12.04%
Other	1	0.93%

13 Which industry do you work in?

Hospitality	34	3.92%
Aviation	140	16.15%
Manufacturing	23	2.65%
Medicine	44	5.07%
Financial Services	130	14.99%
Technology	107	12.34%
Agriculture	7	0.81%
Other	325	37.49%
Property & Construction	57	6.57%

14 Would you possibly spend more than 45 days in Australia per year?

Yes	650	75.41%
No	212	24.59%

15 What would be the main reason to be back in Australia?

Holiday	146	22.46%
Family Obligations	395	60.77%
Work Commitments	36	5.54%
Visiting your children from a former relationship	22	3.38%
Other	51	7.85%

16 What type of long term accommodation did you have overseas?

House/Apartment/Villa leased for more than 12 months	524	60.51%
House/Apartment/Villa owned	294	33.95%
Serviced Apartment	24	2.77%
Lived with other Family (parents or siblings)	16	1.85%
Lived with friends	8	0.92%

17 Did you own an Australian property while living overseas?

Yes	702	81.06%
No	164	18.94%

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18 Which State do you own property?		
NSW	268	29.74%
VIC	197	21.86%
QLD	247	27.41%
WA	109	12.10%
SA	48	5.33%
ACT	15	1.66%
TAS	9	1.00%
NT	8	0.89%
19 Did you live in any of your properties before going overseas?		
Yes	357	51.07%
No	342	48.93%
20 What were your main reasons to buy/own and Australian property?		
Already owned - Previous family home kept	243	21.35%
Future home on return	314	27.59%
Investment	432	37.96%
Children's schooling accomodation	57	5.01%
Other family members to live in (Parents/Siblings)	67	5.89%
Other	25	2.20%
21 Do you intend to, or did you, rent your Australian property while overseas?		
Yes	611	88.04%
No	83	11.96%
22 Would the potential of being a tax resident if in Australia more than 45 days a year affect your decision making or travel plans when, or if, you were living out of Australia?		
Yes	800	92.92%
No	61	7.08%
23 How would it change your planning?		
I would holiday less in Australia	710	32.75%
I would invest less in Australia	454	20.94%
I would consider selling my Australian property	263	12.13%
I would consider other countries to live in	246	11.35%
I would consider coming back to Australia sooner	65	3.00%
I would consider staying overseas longer	376	17.34%
Other	54	2.49%
24 Do you feel that a tax residency test after 45 days visiting Australia makes your tax affairs?		
Easier to understand	61	7.09%
More confusing and difficult	799	92.91%
25 What period of time in Australia do you feel would be more sensible if a test was introduced?		
Less than 45 days	19	2.22%
90 days	197	23.07%
120 days	163	19.09%
150 days	33	3.86%
180 days	255	29.86%
More than 180 days	187	21.90%

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26 What items do you think should be excluded from the 45 days?

Work required travel	667	24.63%
Compassionate care of family	772	28.51%
Visiting children of a former relationship that cant travel abroad	420	15.51%
Funerals	665	24.56%
Other	184	6.79%