

Jurisdiction's name:	Australia
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Information on residency for tax purposes
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Section I – Criteria for Individuals to be considered a tax resident

The Australian Taxation Office (ATO) has published online [guidance](#) and [tools](#) to assist individuals in determining whether they are an Australian resident for tax purposes, including in situations where individuals have arrived in, or are departing Australia.

Generally the determination of whether a person is or is not an Australian tax resident is achieved by considering the person's facts and circumstances in light of certain common law and statutory tests described below. For example, a person who spends more than half of the tax year in Australia is likely to be an Australian tax resident under these tests.

Anyone seeking further assistance in determining whether they are an Australian tax resident (for example, because they have complex affairs) should consult their tax advisor or may [contact the ATO](#).

Common law test

An individual is considered to be an Australian tax resident if the individual "resides" in Australia according to the ordinary meaning of that word ([subsection 6\(1\) of the Income Tax Assessment Act 1936](#) (ITAA 1936)). The ordinary concept of residency takes into account a person's overall circumstances in the relevant income year, including:

- the intention or purpose of the individual's presence in Australia;
- the extent of the individual's family or business and employment ties within Australia;
- the maintenance and location of the individual's assets; and
- the individual's social and living arrangements.

[Taxation Ruling 98/17](#) provides the Australian Commissioner of Taxation's interpretation of the ordinary meaning of the word "resides" within the definition in [subsection 6\(1\) of the ITAA 1936](#).

Statutory tests

If an individual does not satisfy the common law test of residency, the individual is still considered to be an Australian tax resident if the individual satisfies one or more of three statutory residency tests in [subsection 6\(1\) of the ITAA 1936](#):

- The person's domicile is in Australia (unless their permanent place of abode is outside of Australia);
- The person is actually in Australia for more than half of the financial year (unless their usual place of abode is outside Australia and they do not intend to take up residence in Australia); or
- The person is (or is the spouse or child under 16 of) a contributing member of a superannuation fund for Commonwealth government officers.

It is also possible for an individual to fall within the special category of [temporary Australian resident](#). Generally, temporary residents have visas that allow them entry to Australia for a restricted period (for example, an employee of an international firm who is transferred to the Australian branch for three years) and are subject to specific [income tax](#), [capital gains tax](#) and [superannuation](#) consequences.

Section II – Criteria for Entities to be considered a tax resident

Australia's tax residency rules for entities depend on the type of entity being considered.

The ATO has published [guidance](#) on the residency requirements for companies, corporate limited partnerships and trusts.

Companies

Under the statutory definition in [subsection 6\(1\) of the ITAA 1936](#), a company is resident in Australia if:

- it is incorporated in Australia; or
- if not incorporated in Australia, it carries on business in Australia and has either its central management and control in Australia or its voting power controlled by shareholders who are residents of Australia.

Trusts

Under Australian tax law, trusts are typically treated as fiscally transparent and are not regarded as separate taxable entities (rather, persons such as the beneficiaries and/or the trustee, in certain cases, are treated as the relevant taxable entity with respect to the income of the trust).

Nevertheless, a trust is an 'entity' under Australian tax law and there are residency rules that determine whether a trust is 'resident' in Australia. These rules will also determine whether a trust is an Australian Reportable Person for CRS purposes.

For a trust other than a unit trust, [subsection 95\(2\) of the ITAA 1936](#) defines whether the trust is an Australian resident trust. A trust will be considered a resident trust in any given income year if either:

- a trustee of the trust estate was a resident in Australia at any time during the income year; or
- the central management and control of the trust was in Australia at any time during the income year.

For unit trusts, a definition of "resident unit trust" is provided in [subsection 995-1\(1\) of the ITAA 1997](#). A unit trust is a resident unit trust for an income year if at any time during the income year:

- either any property of the trust is situated in Australia, or the trustee carries on business in Australia; and
- either the central management and control of the trust is in Australia or Australian residents hold more than 50 per cent of the beneficial interests in the income or property of the trust.

Partnerships

Partnerships are generally treated as fiscally transparent under Australian tax law.

For ordinary partnerships, there are no specific rules akin to Australia's trust taxation rules regarding the residency of a partnership. Therefore for CRS purposes an ordinary partnership is to be treated as an Australian resident entity (and an Australian Reportable Person) under the CRS if its place of effective management is situated in Australia.

A corporate limited partnership is treated as a company in certain cases – see [Subdivision 5B of the ITAA 1936](#) – and is considered a resident of Australia (and an Australian Reportable Person) if either:

- the partnership was formed in Australia; or
- the partnership either carries on business in Australia, or has its central management and control in Australia.

Section III – Entity types that are as a rule not considered tax residents

A partnership is generally not liable to tax in Australia. Instead, income earned through a partnership is taxed in the hands of its partners. For the purposes of the Common Reporting Standard, a partnership (not being a corporate limited partnership) with its place of effective management situated in Australia is a resident of Australia.

Section IV – Contact point for further information

The following website contains useful information on contacting the ATO in relation to tax residency questions: <https://www.ato.gov.au/About-ATO/About-us/Contact-us/>