

client alert | explanatory memorandum

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CURRENCY:

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Working overseas doesn't automatically make you a tax non-resident

A recent Federal Court decision is a useful reminder that working overseas for an extended period doesn't necessarily end Australian tax residency. In *Quy v Commissioner of Taxation*, the taxpayer spent around five years living and working in Dubai. Despite the length of the assignment, the Federal Court dismissed his appeal from a decision that he remained an Australian resident for tax purposes under the domicile test.

Different tests can produce different answers

One of the most interesting features of the case is that the taxpayer was found not to reside in Australia under the ordinary concepts test, but he was still an Australian tax resident under the domicile test.

Australian tax law contains several separate residency tests, and satisfying or failing one test doesn't necessarily decide the outcome under another. Under the domicile test, a person whose domicile is in Australia is generally treated as an Australian resident unless the ATO is satisfied that the person's permanent place of abode is outside Australia. It wasn't disputed that the taxpayer's domicile was in Australia. The key issue was therefore whether his permanent place of abode was outside Australia.

The taxpayer's circumstances

The taxpayer was a mechanical engineer who had worked for an Australian company in Australia and on overseas assignments for many years. In 2015, he accepted a full-time position with the company in Dubai.

His connections with Dubai included:

- living and working there for several years;
- holding UAE residency permits;
- living in an apartment leased by his employer; and
- developing a social life overseas.

However, he also retained significant connections with Australia. These included:

- the family home in Perth;
- Australian investment properties;
- Australian bank accounts and superannuation;
- motor vehicles and personal belongings kept in Australia;
- a wife and children who spent most of their time in Australia; and
- 12 return visits to Australia between 2015 and 2020.

His point of hire remained Perth, his employment contract was governed by Australian law, his base salary was paid in Australian dollars into an Australian bank account, and super contributions continued to be made under Australian law.

A lengthy overseas assignment wasn't enough

The ART accepted that the taxpayer wasn't residing in Australia under ordinary concepts during the relevant period. However, it wasn't satisfied that he had established a permanent place of abode outside Australia for the purposes of the domicile test. In this context, "permanent" doesn't mean that a person must intend to live overseas forever. Instead, it contrasts with a place of abode that is temporary or transitory.

The Federal Court rejected the argument that living, working and socialising overseas for an extended period was enough, without more, to establish a permanent place of abode outside Australia. It found that the ART had applied the correct legal principles and was entitled to weigh the taxpayer's overseas circumstances against his continuing connections with Australia. The decision doesn't establish that any one Australian connection will determine a person's residency. It instead reinforces that the overall circumstances need to be considered.

Why residency matters

Australian residents are generally taxed on their worldwide income, while foreign residents are generally taxed only on Australian-sourced income.

In this case, the ATO accepted that the taxpayer's overseas salary was foreign-sourced. However, because he remained an Australian resident for tax purposes, that income was still relevant to his Australian tax liability. Having a foreign payroll, an overseas bank account or a right to live in another country won't, by itself, determine Australian tax residency.

Practical questions for clients

Clients contemplating overseas employment often focus mainly on how long they'll be away. The case shows that broader matters can be equally important, including:

- whether their spouse or children will remain in Australia;
- what will happen to the Australian family home;
- the nature and expected duration of the overseas assignment;
- whether Australian banking, employment or super arrangements will continue;
- the nature of their overseas accommodation;
- how often they expect to return to Australia; and
- whether their arrangements demonstrate that they've settled outside Australia on more than a temporary basis.

Documents such as employment contracts, assignment letters, leases, residency permits and travel records may become important if the person's residency position is later questioned.

No automatic overseas-work rule

There's no automatic time-based rule that makes someone a foreign resident after working overseas for a set period. Residency remains a fact-driven question, and even a posting lasting several years may not be enough. The Government previously announced plans to replace the existing individual residency rules with a new framework, but the existing tests remain in force. Clients should therefore review their residency position under the current law before lodging as foreign residents.

This case is a useful prompt to speak with clients before they leave Australia, rather than after a tax return's lodged. Residency may also affect other matters, including foreign income reporting, foreign income tax offsets and the Australian tax treatment of assets.

Source: www.ato.gov.au/individuals-and-families/coming-to-australia-or-going-overseas
www.ato.gov.au/calculators-and-tools/tax-return-work-out-your-tax-residency
www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2026/2026fca1316

Crypto tax for individual investors: beware CGT on your digital assets

Cryptocurrency investors often associate tax consequences with converting crypto back into Australian dollars. However, the CGT rules can apply to a much broader range of transactions. The ATO continues to emphasise that crypto assets held as investments are generally CGT assets, meaning the same broad capital gains tax principles that apply to shares and investment property may also apply to digital assets.

Crypto is usually a CGT asset

For most individual investors, crypto is held as an investment rather than for personal use. Where crypto is acquired and held as an investment, transactions such as the following may trigger a CGT event:

- selling crypto;

- exchanging one crypto asset for another;
- gifting crypto; or
- otherwise disposing of a crypto asset.

A common misconception is that tax only arises when crypto is converted into cash. In practice, a crypto-to-crypto swap can also trigger CGT consequences. Clients often focus on purchases and sales, but exchanges between different crypto assets can be just as important from a tax perspective.

Personal-use assets: a limited exception

Some clients are aware of the personal-use asset exemption and assume it applies broadly to crypto, but the exemption is much narrower than many investors realise.

Crypto that is acquired and held primarily as an investment will generally not qualify as a personal-use asset. The exemption's generally relevant only where crypto is mainly kept or used to purchase items for personal use and the relevant conditions are satisfied. As a result, many investors who assume their holdings are exempt may find that CGT still applies.

Calculating gains and losses

A capital gain generally arises where the capital proceeds from a disposal exceed the asset's cost base. Because crypto assets are often traded in foreign currencies or valued using overseas exchanges, clients need to keep sufficient information to establish Australian-dollar values at the time of acquisition and disposal. Gains and losses must ultimately be calculated in Australian dollars, which means accurate records are essential.

The CGT discount

The potential availability of the CGT discount is a point that's frequently overlooked. Where an individual has held a crypto asset for at least 12 months before the relevant CGT event, the 50% CGT discount may be available, subject to the ordinary CGT discount rules. For longer-term investors, this can make a significant difference to the eventual tax outcome.

Capital losses aren't immediately deductible

Another common misunderstanding relates to losses. A net capital loss generally can't be deducted against salary, wages or other ordinary income. Instead, capital losses are generally applied against capital gains. Unused losses may generally be carried forward to future years where the relevant conditions are satisfied. Clients who have experienced significant crypto losses sometimes incorrectly assume those losses will automatically reduce tax payable on employment income.

Record-keeping is critical

The ATO places significant emphasis on record-keeping for crypto transactions. Poor records can make it difficult to calculate gains and losses accurately, particularly where clients have traded frequently or used multiple platforms.

Useful records include:

- transaction dates;
- Australian-dollar values;
- details of the transaction;
- wallet information; and
- records that establish ownership and transfer of the assets.

ATO data matching continues

The ATO's crypto asset data-matching program obtains information from designated service providers and compares those records against information reported by taxpayers. The practical message for clients is straightforward: the ATO is increasingly able to identify crypto transactions and compare reported activity with transaction data held by service providers. That doesn't mean every discrepancy indicates a compliance issue, but it does reinforce the importance of accurate record-keeping and reporting.

People may still view crypto differently from shares and other investments. From a tax perspective, however, the CGT rules often operate in a similar way.

This article provides a useful opportunity to remind clients that crypto transactions shouldn't be left until tax-return time. Maintaining good records throughout the year can make reporting significantly easier and may reduce the risk of errors, missed concessions or unexpected tax outcomes.

Source: www.ato.gov.au/individuals-and-families/investments-and-assets/crypto-asset-investments/how-to-work-out-and-report-cgt-on-crypto

Fuel tax credits: are you using the right rate?

Fuel tax credit rates changed again on 3 August 2026 following routine CPI indexation. While a normal indexation adjustment would not usually attract much attention, this latest change follows several earlier rate movements during 2026, increasing the likelihood of mistakes when preparing BASs.

Businesses claiming fuel tax credits have had to navigate a series of rate changes during 2026:

- 2 February 2026 – routine CPI indexation;
- 1 April 2026 – temporary fuel excise relief and a temporary reduction of the heavy vehicle road user charge to zero;
- 1 July 2026 – rates changed again when the temporary relief ended; and
- 3 August 2026 – further CPI indexation.

The practical result is that businesses may have fuel purchases spread across multiple rate periods within a relatively short timeframe.

The ATO has emphasised that fuel tax credit rates are generally determined by when the fuel was acquired, not when it was used. Clients may assume the current rate can simply be applied to all fuel purchased during a BAS period. However, where fuel was acquired across different rate periods, claims may need to be split and calculated using the rate that applied when each purchase was made. This is likely to be particularly relevant for businesses that:

- make regular fuel purchases;
- hold bulk fuel stocks;
- operate heavy vehicles; or
- use significant volumes of fuel in plant or equipment.

Who may be affected?

Fuel tax credits are relevant to a broad range of businesses, including:

- transport operators;
- primary producers;
- trades and contracting businesses;
- construction businesses;
- businesses using generators, pumps and other equipment; and
- businesses storing and drawing down bulk fuel over time.

The applicable rate may also depend on factors such as the type of fuel and whether it is used in heavy vehicles that travel on public roads, or in other eligible business activities.

A simplified option for some small claimants

Businesses that claim less than \$10,000 in fuel tax credits each year may be able to use a simplified method. Where a fuel tax credit rate changes during a BAS period, they can generally use the rate that applies at the end of that BAS period instead of splitting fuel purchases between different rates. This can significantly reduce the record-keeping and calculation burden for smaller claimants.

Good records matter

Accurate records help ensure claims are calculated correctly and support the position taken if questions arise later. Useful information includes:

- purchase dates;
- litres acquired;
- fuel type;
- how the fuel was used; and
- any private or non-business use that must be excluded.

Accurate records help ensure claims are calculated correctly and support the position taken if questions arise later.

It's all about the acquisition date

The most practical message for clients is that fuel tax credits are not a “set and forget” BAS item. After four separate rate changes during 2026, it's increasingly important to check that the correct rate is being applied to each claim. The ATO's fuel tax credit calculator can help by automatically applying rates according to the date the fuel was acquired.

For many clients, a quick review before lodging the next BAS may be enough to avoid under-claiming or claiming more than they are entitled to.

Source: www.ato.gov.au/businesses-and-organisations/small-business-newsroom/fuel-tax-credit-rates-have-changed-again-on-3-august

www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/fuel-tax-credit-rates-changed-from-1-april-2026

Drawing on super doesn't necessarily mean stopping work

A common misconception among clients approaching retirement is that once they start drawing on their super, they can only earn a limited amount from part-time work. For self-funded retirees, that's generally incorrect. The issue is often confused with Age Pension income testing, transition-to-retirement rules or the conditions that allow a person to access their super in the first place.

The key point is that drawing on super does not, by itself, create a cap on employment income. For many clients, the more important question is whether they've met a valid condition of release that allows them to access their super benefits.

Common conditions of release include:

- reaching preservation age and retiring;
- turning 65; or
- certain other circumstances, such as permanent incapacity.

Once an individual turns 65, they can generally access their super regardless of their work status. This means it's entirely possible for a person aged 65 or over to draw a lump sum or pension from super while continuing to work part-time, casually or even full-time.

Retirement before age 65

The position becomes more nuanced for clients aged between 60 and 65. One of the more misunderstood rules is the superannuation definition of retirement. For superannuation purposes, a person aged 60 or over may satisfy the retirement condition of release if they cease an arrangement of gainful employment after turning 60. Clients are often surprised that the retirement definition can operate differently from the ordinary meaning of “retirement”.

Where a person's not yet retired, a transition-to-retirement income stream may also be available, subject to the relevant restrictions.

Tax treatment

The tax treatment of super is often one of the reasons people are interested in working during retirement. For most people aged 60 and over:

- benefits paid from a taxed super fund are generally tax-free; and
- employment income continues to be taxed under the ordinary income tax rules.

This means many retirees receive part of their overall income from tax-free super benefits while continuing to earn taxable employment income. Depending on their circumstances, some clients may also qualify for offsets such as the seniors and pensioners tax offset.

A common source of confusion

Clients often mix together several separate concepts:

- superannuation conditions of release;
- Age Pension income testing;
- employment income;
- superannuation taxation; and
- transition-to-retirement arrangements.

A person may be able to continue earning employment income while receiving super benefits, yet still be affected by completely separate rules if they are receiving the Age Pension or another means-tested payment.

The result is that there is rarely a single answer to the question, “how much can I earn in retirement?” Instead, the answer depends on which set of rules is being considered.

The question isn’t always how much you earn

This topic provides a good opportunity to remind clients that earning income after retirement is often possible without affecting their access to super. However, before accessing super or restructuring employment arrangements, it’s worth confirming:

- whether a condition of release has been met;
- whether any transition-to-retirement rules apply;
- the tax treatment of the relevant super benefits; and
- whether any government payments are affected.

Getting those questions right early can help avoid costly mistakes and unintended consequences later.

Source: www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-the-workforce

www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-the-workforce/accessing-your-super-to-retire

A little about account-based pensions

Choosing how to draw an income from superannuation is one of the most important financial decisions many clients will make as they approach retirement. While there are several retirement income options available, account-based pensions remain one of the most common.

What’s an account-based pension?

An account-based pension is a retirement-phase income stream funded by transferring money from a superannuation accumulation account into a pension account. The money remains invested and regular pension payments are drawn from the account over time. The balance will generally change according to investment performance, fees and costs, pension payments and any lump-sum withdrawals.

Unlike some other retirement income products, account-based pensions don’t generally provide a guaranteed lifetime income. The account balance will usually reduce over time as pension payments are made, although investment earnings may offset some of that reduction.

Transfer balance cap considerations

A common client question is how much super can be transferred into an account-based pension.

The amount that can generally be transferred to retirement phase is limited by an individual's personal transfer balance cap. For the 2026–2027 financial year, a person's transfer balance cap may be between \$1.6 million and \$2.1 million, depending on their personal circumstances and transfer balance cap history.

Clients with superannuation balances exceeding their available cap may need to leave some funds in an accumulation account or consider other options. The consequences of these choices can vary significantly depending on personal circumstances.

Income payments and minimum drawdowns

Clients often assume they can simply choose any pension amount they'd like to receive. While there's generally flexibility in determining pension payments, minimum annual drawdown requirements apply. These minimum percentages increase with age and are based on the member's account balance at 1 July each year. For example, a person aged 65 to 74 must generally draw at least 5% of their account balance during the financial year. It's worth reminding clients that withdrawing more than the minimum may provide additional income in the short term, but can also reduce how long retirement savings last.

Investment risk remains important

One common misunderstanding is that moving from accumulation phase to pension phase somehow removes investment risk. In reality, account-based pensions remain subject to investment risk because the underlying assets continue to be invested.

Clients often focus on the tax advantages of retirement phase without fully considering how investment choices may affect the sustainability of their retirement income. This can create useful conversations around risk tolerance, expected returns and retirement objectives.

Tax treatment

The tax treatment of account-based pensions is a significant attraction for many retirees.

In general:

- earnings on assets supporting an account-based pension are generally exempt from tax within the super fund; and
- most people aged 60 or over do not pay tax on payments received from a taxed account-based pension.

Clients with very large superannuation balances may face additional tax considerations and should obtain advice about how the rules apply to their circumstances.

Switching funds or changing pension arrangements

People are sometimes surprised to learn that changing investments, switching providers or restructuring pension arrangements can have tax, administrative or financial consequences. Before implementing significant changes, it's important to understand any costs, restrictions or unintended consequences that may apply.

Getting the basics right matters

For many people, an account-based pension isn't simply an income product. It sits at the intersection of retirement planning, tax outcomes, investment risk and estate planning. That means the most appropriate retirement income arrangement will often depend on the person's broader circumstances and objectives. This topic provides an opportunity to remind clients that retirement decisions can have long-term consequences and that appropriately licensed financial advice can be valuable before major decisions are made.

Source: <https://moneysmart.gov.au/retirement-income-sources/account-based-pensions>

www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/withdrawing-and-using-your-super/retirement-withdrawal-lump-sum-or-income-stream/transfer-balance-account

www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf/paying-smsf-benefits/income-stream-pension-rules-and-payments

www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/withdrawing-and-using-your-super/early-access-to-super/tax-on-super-benefits

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