A warning for Expats with a home in Australia – Rush Home

It is going to cost Expats, with a home in Australia, a lot of money if they don't come back to Australia to live before 30th June, 2027

It may no longer be tax effective to claim you are a non resident of Australia for tax purposes while working overseas. Better that the ATO get to tax your overseas wages than all the capital gains on your home right back to the day you purchased it with no main residence exemption and no reset to market value when first rented out.

Generally, Expats try to argue they are non residents for tax purposes, while they are working overseas so they can avoid paying tax in Australia on their overseas wages. Since the budget announcement that there will be a deemed sale of all assets as at 1st July, 2027 and a deemed re acquisition, it is now more important to be considered a tax resident if you have a home in Australia.

The second tranche of the CGT reforms will include Australian real estate owned by non residents in the deemed sale and reacquisition rules if at some time during the property's ownership period the owner had been an Australian resident. This was probably intended as a carve out for expats to allow them to lock in their 50% discount for the period they owned the property while Australian residents. But it is counter productive if that property was their main resident. Like so many of the problems associated with the budget changes the legislators have not looked beyond their thought bubble to see how it interacts with other parts of the legislation. In this case section 118-110(3) ITAA 1997 has not been considered. This is where a non resident for tax purposes is not entitled to any main residence exemption on their Australian home if they sell it while living overseas even if it had been their home for 30 years before going overseas.

The new provisions in the second Tranche designed to treat properties owned by expats similar to those owned by residents will deem a sale to have happened on 1st July 2027 possibly while the owner is living overseas. So all of the main residence exemption is lost. If caught even the 6 year absence rule will not protect you and there is no reset to market value when first used to produce income.

Ideally, expats need to return to Australia to live before 1st July, 2027 but how many will even know about this change let alone be able to relocate at such short notice. It is a trap most will fall into. The only way out is to argue you were still a resident of Australia while you were living overseas. That is not that hard to do because until now it has been in the ATO's interest to argue an expat is still a resident of Australia while living and working overseas and they have set their net very wide.

So let's look at how you can remain a resident of Australia for tax purposes if at all possible. This is a bit of a change in tactics most expats are busy trying to be considered not residents for tax purposes to keep their overseas wages from being taxed in Australia but if you are going to lose your main residence exemption on your home of 30 years, wages tax is chicken feed besides you will likely get a credit for tax paid overseas.

Quy's case is a recent Federal Court decision and interesting example where the taxpayer wanted to be considered a non resident but was found to be still a resident of Australia for tax purposes even while living in Dubai for 6 years. Relevant points from the case:

- Quy was employed by an Australian company
- Quy lived and worked in Dubai for 6 years though started as a 2 year assignment
- Quy is an Australian citizen though immigrated to Australia when he was 16
- Quy was paid in Australian dollars and covered by Australian law
- Quy lived in an apartment provided by his employer, he purchased a car in Dubai
- Quy returned to Australia twice a year for periods of 5 to 35 days
- Quy held a residency permit in Dubai
- Quy's passenger cards varied from stating "resident returning to Australia" or an "Australian resident departing temporarily". Then sometimes stating "visitor or temporary entrant" nominating the UAE as his country of residence or the place where he spent the most time abroad, and indicated that he did not intend to live in Australia for the next 12 months.

- Quy maintained a home in Australia where his adult daughters lived and where he garaged several vehicles. He did not move his furniture to Dubai.
- Quy had Australian bank accounts and family cover for private health insurance
- Quy's wife spend more time in Australia than Dubai

Of course there are many circumstances that are not going to fit within these perimeters. TR 2023/1 has some interesting examples:

Example 6 - person leaving Australia - non-resident when they depart

127. *Sophie, an Australian resident for tax purposes, decides to start her own business in Singapore. Sophie has spent several years researching Singapore and has spent a number of months there over the last few years meeting with prospective clients and investors and deciding if it is the right move for her. On one of these trips she locates suitable business accommodation and takes all the necessary steps to legally commence her business in Singapore. It is Sophie's intention to live in Singapore with no set plans to return to Australia. She maintains a bank account and superannuation in Australia and sells or gifts her possessions to her adult children. One of her adult children will live in the family home rent-free. Sophie is accompanied by her spouse who runs a global consulting business from their home.*

128. *They initially stay in short-term accommodation until they find a suitable long-term home. After 6 weeks, they purchase a home to live in. In the 2 years after leaving, Sophie and her spouse return to Australia only to attend the funeral of a close friend.*

129. *Sophie is not a resident of Australia under the ordinary concepts test from the date of her departure. Her intention is to leave Australia indefinitely and her observable behaviours are consistent with this. Sophie's remaining connection with Australia (her superannuation and assets) are not, in Sophie's circumstances, consistent with continuing to reside in Australia.*

130. *Sophie is not a resident under the domicile test because, although domiciled in Australia, she has abandoned residency in Australia and commenced living permanently overseas.*

Example 7 - person out of Australia for 2 years - resident under ordinary concepts and domicile tests

131. *Mark, an Australian-resident employee of a mining company, is transferred overseas to Brazil for a temporary work assignment for a period of 2 years. He intends to return to Australia at the end of that period. The purpose of the assignment is for Mark to gain wider work experience. Mark is initially accompanied by his wife and children to enable them to experience the sights and culture of Brazil. However, as originally intended, his wife and children return to the family home in Australia so the children can*

continue their schooling. Mark spends as much time in Australia as his leave arrangements permit with his family and friends. He also returns for short periods to celebrate family birthdays and other milestone events. While in Brazil, he stays in a serviced apartment provided by his employer, maintains bank accounts in Australia and continues to contribute to his Australian superannuation. He makes no investments in the overseas country and remits all money in excess of living requirements to Australia for his family to use or for investment.

132. *Mark is considered to be a resident of Australia under the ordinary concepts test as he has maintained a connection with Australia consistent with residing here, albeit being absent for a substantial period.*

133. *Mark is also considered to be a resident under the domicile test because he has a domicile in Australia and his permanent place of abode is not outside Australia. Mark has not abandoned his residence in Australia given his continued presence to maintain his family life, his assets remaining in Australia and the finite period of his overseas assignment. His ties with Brazil are limited to his employment and his way of life reflects this.*

Example 8 - person out of Australia for 2 years - non-resident

134. *Matthew, an Australian-resident employee of the same mining company as Mark, is also transferred to Brazil in January for a temporary work assignment for a period of 2 years, intending to return to Australia at the end. He is not accompanied by his wife as they have been having marriage difficulties and they have decided to spend some time apart. One month after Matthew's departure, the marriage breaks down. Matthew is attracted to the culture and lifestyle of Brazil and decides to start a new life there, with no immediate plans to return to Australia to live. He starts exploring opportunities to gain a permanent position in Brazil and, in July, obtains a promotion to a permanent role in Rio de Janeiro. The role requires some regional travel but he spends the majority of his time at the office in Rio de Janeiro. In July, he also sells his car in Australia and starts the process of selling the family home in Australia that he owned with his wife. This takes 12 months to resolve. He remains in employer-provided accommodation until his Australian home sells and then uses his proceeds to purchase an apartment in Brazil, which he lives in. Matthew joins a Latin dance class in the evenings. He returns to Australia twice in 2 years - the first time is 3 months after his initial departure to collect his belongings after the separation from his wife. He takes most of these with him to Brazil but leaves a few keepsakes at his parents' house. The second time, he returns for his father's funeral, 2 years after his initial departure. His father leaves behind a family business and Matthew stays in a hotel in Australia while deciding what to do with the business. He works for his Brazilian employer remotely from the hotel. After a month in Australia, Matthew decides to resign from his job in Brazil and stay permanently in Australia to run the business.*

135. *Matthew ceased to be a resident of Australia according to ordinary concepts once his intention regarding returning to Australia changed and his connections to Australia were severed. He then resumed Australian residency a month after his return to Australia following his father's death.*

136. *Matthew has an Australian domicile. Once his intentions changed and he purchased an apartment in Rio de Janeiro, he had definitely abandoned residency in Australia and commenced living in Brazil in a permanent way. He was therefore a non-resident under the domicile test from July until a month after his return to Australia following his father's death.*

Example 9 - person out of Australia for 5 years - non-resident

137. *Alicia was born and grew up in Australia and is a professor at a university in Sydney. She takes up an opportunity as the head of the School of Economics at a university in Krakow, Poland on a 5-year contract, starting in September. Alicia intends to extend the contract if circumstances allow. Her husband and children join her in Poland in August. Prior to leaving, they sell their cars and some belongings and rent out their house on a year-by-year tenancy. They are given one month's temporary accommodation on campus upon moving but soon purchase an apartment near the university which they move into.*

138. *Alicia's husband finds work at an accounting firm in Krakow and her children attend the local international school. Alicia and her family return to Australia each Christmas for one month to escape the cold weather in Krakow and visit extended family in Sydney, with whom they stay.*

139. *Alicia is not a resident according to ordinary concepts from the time she leaves in August, as she severs her connection to Australia by making a long-term move overseas with her family.*

140. *She is also not resident under the domicile test. Despite having an Australian domicile, she has definitely abandoned residency in Australia and her permanent place of abode is in Krakow. Although she has retained her house in Sydney, she has rented it out long term and has no access to it. Her trips to Australia are holidays to visit extended family rather than a resumption of living in her house in Australia.*

Example 10 - person out of Australia indefinitely - non-resident

141. *Brian, an Australian resident, is unhappy with his current lifestyle and wants to move overseas, closer to his extended family in Vietnam. In July, he applies for and is successful in gaining a permanent full-time position in Nha Trang, Vietnam and departs Australia to take up his new position. Brian's family agrees to follow Brian to Vietnam in December when the children finish the school year, after which they will attend the international school in Nha Trang. Brian sells his car and other belongings and leaves his*

house for his wife and children to use until they move to Vietnam in December, after which he puts it on the market. In Vietnam, Brian rents an apartment that will accommodate his family when they move over to Vietnam. In the first 6 months away, Brian returns twice for a week at a time to visit his wife and children and help get the house ready for sale. During these visits, he resides with the family at their family home.

142. *Brian is not considered to be a resident of Australia from when he departs under the ordinary concepts test as he is not residing here and intended to leave Australia indefinitely. While Brian's wife and children remain here, it is for a finite period of 6 months only and Brian's return visits are limited and specific and not consistent with ongoing residency.*

143. *Brian is not a resident under the domicile test because, although domiciled in Australia, he has abandoned residency in Australia and commenced living permanently in Vietnam.*

144. *Brian is not in Australia for 183 days so the 183-day test does not apply.*

Example 11 - person out of Australia indefinitely - resident under domicile test

145. *Stuart was born and raised in Australia. He separates from his spouse and moves out of the family home, leaving his 4 children in the care of his former spouse. He meets and forms a relationship with a Chinese national and visits her in China on many occasions. In time, he resigns from his employment in Australia and moves to Nanning, China, to take up a 3-month short-term employment contract and advance his new relationship. When this contract ends, Stuart takes up the following further fixed term, short to medium-term, employment contracts in various countries in Asia and moves apartments under the arrangements as outlined, to fulfil these roles:*

•*Vientiane, Laos - 5 months - living in employer-provided furnished accommodation*

•*Bangkok, Thailand - 18 months - living in a furnished apartment Stuart rents on a fixed 12-month term and then on a month-to-month basis, and*

•*Phom Penh, Cambodia - 9 months - living in a furnished apartment Stuart rents on an initial 6-month term and then on a month-to-month basis.*

146. *Stuart does not form any social or other ongoing connections in the places in which he undertakes the contracts. Once he leaves a country, he does not return other than for work. Sometimes his partner visits him and sometimes he visits her or spends time with her in the one to 2-months break he had between contracts.*

147. *From time to time, Stuart returns to Australia, usually for his children's birthdays or special events. On average, these visits are for a length of a week. When in Australia, he stays with his parents or friends as he no longer has any assets in Australia.*

148. *Stuart is not considered to be a resident of Australia under the ordinary concepts test as he is not residing here and intended to leave Australia indefinitely. Stuart has not maintained a connection with Australia consistent with residing here and has worked and lived outside of Australia for most of the income year.*

149. *Stuart is domiciled in Australia so he will still be a resident of Australia unless his permanent place of abode is outside Australia. Even though Stuart has abandoned his residency in Australia, he has not established his permanent place of abode outside of Australia, as evidenced by his shifting between a number of countries for employment purposes. Therefore, he is an Australian resident under the domicile test.*

150. *Stuart is not in Australia for 183 days in any income year since his original departure so the 183-day test does not apply.*

Example 12 - person out of Australia for 6 months every year - resident

151. *Corey has an Australian domicile and an established home in Noosa, when he and his spouse establish a second home in Valencia, Spain. Corey and his family spend just over 6 months at the Spanish home and the rest of each year in their Australian home.*

152. *Corey is a resident of Australia under the ordinary concepts test despite being absent for a large part of each year. This is because his intention and presence in Australia demonstrate a continued connection to Australia consistent with the regular order of his life.*

153. *Under the domicile test, Corey is also a resident of Australia. He has an Australian domicile and it is not possible to say that his permanent place of abode is outside Australia as he has not abandoned residing in Australia.*

It is important to note that double tax agreements can override Australian tax law.

There are so many variables that are taken into account in many cases your residency status will not be clear. Nevertheless, there is a lot at stake if you have a home in Australia with a large capital gain. Applying to the ATO for a ruling is your best option, though this will take months and if the ruling advises you that you are a non resident for tax purposes you will need to hurry up and organise to return to Australia to live before 1st July, 2027 to avoid losing your main residence exemption back to the day you purchased the property.

This is the nature of taxation law now in Australia. Consider you lived in your home for 30 years but last year (2025) left to live overseas for a while. If you sold before you left there would be no tax payable at all on the gain to date. Now (2026) if you sell while living overseas you will be taxed on all that gain right back 30 years. But that is ok, you were aware of that before you left and were sure you would return to Australia as a tax resident before you ever sold the home.   Now the government is deeming a sale to happen while you are still overseas so you will lose all that main residence exemption for 30 years. By stealth the government has taxed you retrospectively.