

Moving to the United States of America

The purpose of this memorandum is to provide the following:

- A brief overview of the tax residence rules as they relate to the United States.
- Common Tax Issues to consider before commencing U.S. tax residency:
- Ensure that your Australian investment assets are correctly structured having regard to potential U.S. taxation on income generated from those assets.
- Consider the possibility of reorganizing the structure of loans or debt facilities to obtain Australian tax deductibility once in the United States.
- The U.S./Australia double tax agreement needs to be considered in terms of business activities which may continue to be conducted by you or related entities after you become a U.S. tax resident.
- Ensure that you have an understanding of how State Taxation works depending upon the particular U.S. state you will be residing in.
- Consider how your current family home will be taxed after your move to the United States. There are instances where you may be subject to significant capital gains tax upon a disposal of the family home once you are a U.S. tax resident.
- Ceasing to be an Australian tax resident.
- Profile of CST Tax Advisors and the services we can offer.

Overview of U.S. Tax Residence Rules

The taxation of aliens by the United States is significantly affected by the residency status of such aliens.

Although the immigration laws of the United States refer to aliens as immigrants, non-immigrants, and undocumented (illegal) aliens, the tax laws of the United States refer only to 'resident' and 'nonresident aliens'.

In general, the controlling principle is that 'resident aliens' are taxed in the same manner as U.S. citizens on their worldwide income, and 'nonresident aliens' are taxed according to special rules contained in certain parts of the Internal Revenue Code.

A major distinguishing feature of this special tax regime concerns the source of income: a nonresident alien is normally subject to federal income tax only on income which is derived from sources within the U.S. and/or income that is effectively connected with a U.S. trade or business.

The rules define residency for tax purposes in a way that is very different from the immigration laws. Under the residency rules of the Internal Revenue Code, any alien who is not a resident alien is a nonresident alien.

An alien will become a resident alien in one of three ways:

- 1) By being admitted to the United States as, or changing status to, a Lawful Permanent Resident under the immigration laws, which is the Green Card test;
- 2) By passing the Substantial Presence Test; or
- 3) By making what is called the "First-Year Choice".

Ceasing to be Resident of Australia

A frequently asked question by a prospective Australian expatriate is what period of time is regarded as sufficient to sever one's connection with Australia for the purposes of its income tax laws.

Case law suggests that a minimum of 2 years is required.

Our view though is that whilst this is a useful starting point the following additional steps should be undertaken in order to demonstrate that you have ceased being an Australian resident.

Establish a permanent home outside Australia

The purchase or lease of a residence outside Australia would add weight to the argument that you intend to 'reside' overseas.

Apply for residency in the U.S.

Australians are generally in a good position to apply for employment visas in the United States as compared to citizens of other countries.

This area of law is particularly complex though and our view is that you should use a suitably qualified immigration lawyer to advance your application to the U.S. Citizenship and Immigration Services.

Consider the disposal or transfer of assets

Consideration should be given to disposing of one's Australian assets subject to receiving advice about the tax consequences of so doing.

Australia's capital gains tax laws operate so as to deem a disposal of certain assets upon a change of residency and CST Tax Advisors is able to assist with specific advice in this regard.

For example in becoming a non-resident of Australia a taxpayer who sold his personal motor vehicle, closed his personal bank accounts and transferred monies to an offshore jurisdiction would provide clear evidence that he is no longer residing in Australia.

Remove your name from the Australian Electoral Role

Declaring that one does not intend to vote or take part in Australian political life adds weight to an argument that one is no longer a resident.

Also writing to one's superannuation provider is advisable to provide further evidence of the change of one's address.

Limit the frequency of your travel to Australia

The 183-day test is not applicable for Australians who had their original domicile in Australia.

Therefore one should be aware that whilst the 183-day test applies to nonresidents it will have little practical impact to Australian passport holders.

We note that one should limit the frequency of travel to Australia.

Ensure your family joins you overseas

This would add considerable weight to the argument that you are a resident elsewhere and have a permanent home outside of Australia.

Join overseas clubs

The joining of overseas sports or social clubs will add more weight to an argument that you are non-resident because these actions indicate a pattern of behavior that is consistent with residing permanently in a place.

U.S./Australia Double Tax Agreement

In cases where the domestic law of both Australia and the U.S. view the taxpayer as a resident, the U.S./Australia DTA contains a 'tiebreaker' provision to determine how the taxpayer should be treated for the purposes of the treaty.

Important tests in interpreting the tiebreaker provision include the existence of a permanent place of abode in either or both jurisdictions; a habitual abode in either or both jurisdictions; and the place of a taxpayer's closer social and economic relations.

About CST Tax Advisors

With over 20 years of client service experience our professionals can assist you achieve your strategic tax and accounting objectives.

We have the technical and industry knowledge to provide both professional advice and practical solutions.

We are a wholly independent accountancy practice with offices in Sydney, Los Angeles, New York, Hong Kong, and Singapore.

We have expertise in providing professional services in the following areas:

Australian Tax & International Tax

Expatriate Tax Advice

Trusts & Superannuation Funds

Professional Accounting Services

Specifically we can assist you with:

- Taxation planning prior to your departure from Australia taking your personal circumstances into consideration.
- Preparation of your personal income tax return in the U.S.
- Preparation of your Australian income tax return in respect of Australian sourced income.
- Provision of tax advice in relation to investing in Australian and U.S. property.

Contact us

We would be pleased to discuss your personal position.

Please contact us via email: intro@csttax.com

For further information please visit our website:
www.csttax.com