

# TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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## 6 | Australia's Tax Residency Rules are Broken

When Australia's tax residency rules confuse even the ATO, it is time for change. Becoming an Australian tax resident is easy, but ceasing to be one can be incredibly hard. Too hard as Clint Harding of [Arnold Block Leibler](#) will argue.

Residency is the gateway into our Australian tax system. Something as fundamental as this should be simple and result in a clear answer. Yes or no. Resident or not. Instead we have a complicated framework of rules and case law that is anachronistic and unwieldy. Far from the practical realities of life and commerce in the 21st century. Listen in as Clint makes a plea for urgent change.

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### Australia's Tax Residency Rules are Broken

There is much uncertainty. Costs to comply are high. Outcomes often feel unfair. Clients fear visiting sick relatives or owning a goldfish for fear the ATO might use it as evidence of residency.

It is probably easier to convince the ATO that you have been dead and come back to life. Than that you are a non-resident visiting your parents in Australia.

Looking at past cases the ATO has sought to rely on an astonishing array of facts to buttress a taxpayer's arguments for non-residency.

Unless everything magically lines up exactly on the date a taxpayer departs Australia, the ATO is unsympathetic. And willing to challenge non-residency claims all the way to the AAT.

The ATO suffered a blow in 2014 when the tribunal found Peter Dempsey was not a resident for tax purposes. Peter worked in Saudi Arabia but maintained a house in Australia and regularly visited family. The tribunal accepted that Peter had a domicile in Australia. But conceded that he also had a permanent place of abode in Saudi Arabia, and hence was not a resident for tax purposes.

Still, this case hasn't really helped making Australia's tax residency rules any less complicated. The same confusion prevails.

But there is a simple solution if we are willing to face change. For individuals use the 183-day test to determine tax residency. 183 days in Australia and you are in. Less and you are out. And for companies use the country of incorporation to determine tax residency. Incorporated in Australia and the company is in. Not and it is out.

And then let rules around source, permanent establishment, MAAL, foreign conduit income, Part IVA and others carry the weight.

Would a simpler set of residency rules result in a gambling of the system? So far there is little evidence that it would. And nobody has put any numbers on the table yet to prove that it will.

So this is why Australia's tax residency rules are broken. Right now it just too hard. It shouldn't be this hard.

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