

Worldwide personal tax guide 2022-2023

Going to/leaving Australia

Local information	
Tax authority	Australian Taxation Office (ATO)
Website	www.ato.gov.au
Tax year	1 July to 30 June
Tax return due date	31 October
Is joint filing possible	No
Are tax return extensions possible	Extensions may be available if the return is filed by a registered tax agent.

2022/23 income tax rates for residents

Taxable income band AUD	National income tax rates
0-18,200	Nil
18,201-45,000	19%
45,001-120,000	32.5%
120,001-180,000	37%
180,001 +	45%

The AUD18,200 tax-free threshold is reduced if the taxpayer spends fewer than 12 months in Australia in the year of arrival or departure. Resident taxpayers may be liable for the 2% Medicare Levy in addition to income tax at the above rates. High-income resident taxpayers who do not have adequate private health insurance may be subject to an additional 1% to 1.5% Medicare Levy surcharge.

Income tax for the 2022-23 tax year is levied on non-residents at the following rates:

Taxable income band AUD	National income tax rates
0-120,000	32.5%
120,001-180,000	37%
180,001 +	45%

Non-residents are not liable for the Medicare Levy.

Resident and non-resident taxpayers with taxable income and superannuation contributions of more than AUD250,000 per year may be liable to the Division 293 tax. This is an additional tax on superannuation contributions whereby an individual's income is added to certain superannuation contributions and compared to the Division 293 threshold. Division 293 tax is payable on the excess over the threshold, or on the super

contributions, whichever is less. The rate of the Division 293 tax is 15% and may be paid by the individual or deducted from the superannuation contributions, at the individual's choice.

Who is liable?

Australian residents are subject to Australian tax on worldwide income. Non-residents are subject to Australian tax on Australian-source income only.

An exemption from Australian tax on certain income is available for individuals who qualify as a temporary resident. Temporary residents are generally exempt from Australian tax on foreign-source income (including foreign investment income but not foreign employment income earned while a temporary resident) and capital gains realised on assets that are not taxable Australian property (TAP).

Residence status for tax purposes

In general, a resident is defined as a person who resides in Australia according to the ordinary meaning of the word, and includes a person who meets any of the following conditions:

- ▶ They are domiciled in Australia, unless the tax authority is satisfied that the person's permanent place of abode is outside Australia.
- ▶ They are actually present in Australia continuously or intermittently for more than half of the tax year, unless the tax authority is satisfied that the person's usual place of abode is outside Australia and that the person does not intend to reside in Australia.
- ▶ They are an active member of a Commonwealth Superannuation Scheme or Public Sector Superannuation Scheme.

A non-resident is a person who does not satisfy any of the above tests.

The content of this document was updated in April 2023. The content is next expected to be updated in April 2024.

A temporary resident refers to an individual who satisfies the following conditions:

- ▶ The individual must be working in Australia under a temporary resident visa.
- ▶ The individual must not be a resident of Australia for social security purposes (this covers Australian citizens, permanent residents, special visa categories such as refugees and certain New Zealand citizens).
- ▶ The individual's spouse (legal or de facto) must not be a resident of Australia for social security purposes.

No time limit applies to the temporary resident status. If an individual applies for Australian permanent residency, temporary resident status ends on the date on which permanent residency is granted and the individual is taxable as a resident (that is, taxable on worldwide income) thereafter.

Income subject to tax

Employment income – Salary, wages, allowances and most cash compensation is included in the employee's assessable income in the year of receipt. Most noncash employment benefits received by an employee are subject to Fringe Benefits Tax (FBT), payable by the employer.

Self-employment and business income – The taxable income from self-employment or from a business is subject to Australian tax. Each partner in a partnership is taxed on their share of the partnership's taxable income.

Directors' fees – Directors' fees are included in assessable income as personal earnings and are taxed in the year of receipt.

Dividends – The assessable income of resident shareholders includes all dividends received. Franked dividends (that is, dividends paid from taxed corporate profits) paid by Australian corporations are grossed up for the underlying corporate taxes paid. The shareholders may claim the underlying corporate tax as a credit in their personal tax return. Whether additional tax must be paid on the franked dividends by a shareholder depends on the individual's marginal tax rate. Under certain circumstances, excess credits may be refunded.

Dividends from Australian sources that are paid to non-residents are generally subject to a final withholding tax of 30% (or 15% under applicable treaties) on the unfranked portion (that is, the portion paid from untaxed corporate profits).

Foreign-source dividends are included in the assessable income of Australian residents. If tax was paid in the foreign country, a foreign income tax offset (broadly equal to the lower of the foreign tax paid or the amount of the Australian tax payable, capped at any applicable treaty tax rates) is allowed.

Temporary residents are not assessable on foreign source investment income and gains.

Interest, royalties and rental income – Interest, royalties and rental income derived by residents are included in assessable income with a deduction allowed for applicable expenses. Eligibility for building depreciation deductions on a rental property depends on the building's nature and its construction date.

If tax is paid in the foreign country on the foreign rental income, the resident may claim a foreign income tax offset (broadly equal to the lower of the foreign tax paid or the amount of Australian tax payable). If the foreign investment results in a tax loss (that is, deductible expenses exceed assessable income), the tax loss can be offset against all Australian assessable income.

Temporary residents are not assessable on foreign investment income and, consequently, may not offset foreign expenses or losses against other assessable Australian income.

Interest paid by a resident to a non-resident lender is subject to a final withholding tax of 10%. Interest paid by a temporary resident to a non-resident lender (for example, an overseas mortgagee) is exempt from the interest withholding tax. Royalties paid to non-residents are generally subject to a final withholding tax of 30% (or 10% to 15% under applicable treaties).

Converting transactions denominated in foreign currency into Australian dollar amounts

– Taxpayers are generally required to convert income amounts denominated in foreign currency into Australian dollar (AUD) amounts at the time of derivation of the income. Likewise, taxpayers must convert expense amounts into Australian dollar amounts at the time of payment. This also results in the deeming of assessable income or allowable deductions for residents (but not temporary residents) who have acquired or disposed of foreign currency rights and liabilities. For resident taxpayers, these rules normally apply with respect to foreign-currency debt (for example, mortgages) and foreign-currency accounts (for example, bank accounts). Special rules apply to the acquisition or disposal of capital assets or depreciable assets.

Certain elections can change the amounts of assessable income or allowable deductions arising under the foreign-currency rules and/or reduce the compliance burden. However, because of the significant tax implications of the elections, taxpayers should seek specific advice suited to their circumstances.

The above rules provide limited exceptions for certain assets and obligations. Proposed reforms to simplify these rules have been announced. However, at the time of writing, the reforms had not yet been legislated.

Temporary residents may be exempt from the above tax rules on certain foreign-currency denominated accounts that are located outside Australia.

Concessions for individuals who are considered to be living away from home – Limited tax concessions are available to employees who are required to live away from home for employment purposes and who maintain a home for their use in the home location in Australia. In addition, if the concessional treatment is available, it is generally limited to a maximum period of 12 months. These concessions typically do not apply to foreign employees working temporarily in Australia.



A limited number of other benefits may be provided on a concessional basis to employees who are permanently relocating to Australia.

Taxation of employer-provided stock options – Discounts provided to employees on shares or options acquired under an employee share scheme (ESS) are generally included as ordinary income in the employee's assessable income in the year they are acquired. The governing rules are complex and professional advice should be sought.

A qualifying share or option is a share or option acquired under an ESS that satisfies certain prescribed conditions.

The taxable discount amount for shares is generally the difference between the market value of the share and the amount paid for the share by the employee. For options, the discount is the greater of the following two amounts:

- ▶ The amount equal to the share value less exercise price
- ▶ The value determined according to a formula similar to the Black and Scholes model for valuing exchange-traded options

No tax withholding obligation is imposed in Australia with respect to benefits under employee share schemes unless the employee fails to provide their Australian Tax File Number (TFN) to the employer by the end of the financial year.

Capital gains and losses

Residents (but not temporary residents) are taxable on their worldwide income, including gains realised on the sale of capital assets. Capital assets include real property and personal property, regardless of whether they are used in a trade or business, and shares acquired for personal investment. However, trading stock acquired for the purpose of resale is not subject to capital gains treatment.

Employee shares or options disposed of within 30 days of the cessation time or deferred taxing point are not subject to capital gains tax (CGT). In this case, the entire gain is subject to income tax under the employee share scheme provisions.

For an asset held at least 12 months (not including the dates of purchase and sale), only 50% of the capital gain resulting from the disposal is subject to tax.

Assets acquired before 19 September 1985 are generally exempt from CGT.

Capital losses in excess of current year capital gains (before the 50% discount is applied, if applicable) are not deductible against other income, but may be carried forward to be offset against future capital gains.

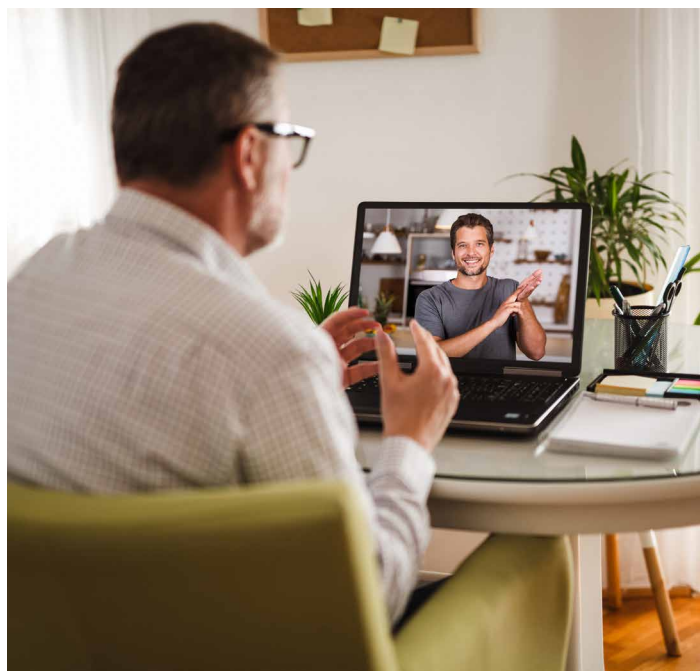
Non-residents and temporary residents are taxable only on gains arising from disposals of taxable Australian property (TAP). The following assets are considered to be TAP:

- ▶ Australian real property
- ▶ An indirect interest in Australian real property
- ▶ A business asset of a permanent establishment in Australia
- ▶ An option or right to acquire any of the CGT assets covered by the first three items above
- ▶ A CGT asset that is deemed to be TAP as a result of the taxpayer making an election to disregard any deemed gain or loss arising on leaving Australia

Individuals who derive a capital gain after 8 May 2012 and are considered either a non-resident or temporary resident at any time on or after that date now have a reduced ability to claim the 50% discount. If the individual undertakes a market valuation of the asset as of 8 May 2012, the portion of the gain that accrued before 8 May 2012 may still be eligible for the full CGT discount.

For Australian residents, any gain or loss realized on the sale of their main residence (home) is generally exempt from Australian CGT. In addition, if the individuals do not rent the property for more than six years and if they do not treat another property as their residence, this exemption can generally continue to apply. From 1 July 2020, any sale of a main residence by a non-resident (including a former temporary resident) does not receive the main residence exemption and is liable to capital gains tax in full.

Anti-avoidance measures ensure that non-residents and temporary residents continue to be taxable on disposals of interests in companies whose balance sheets are largely comprised of real property assets, including mining interests.



Australian residents who are not temporary residents just before breaking residence are subject to a CGT charge on the deemed disposal of all assets held at the date of breaking residence that are not TAP. The taxpayer may elect that this deemed disposal charge not apply. However, such an election deems the asset to be TAP until residence is resumed or the asset is disposed of (even if the asset would not otherwise be TAP). As a result, a CGT charge is imposed if the assets are disposed of while the individual is non-resident.

Temporary residents are generally exempt from tax on gains derived from assets that are not TAP.

Deductible expenses

Expenses of a capital, private or domestic nature, and expenses incurred in producing exempt income, are not deductible.

Specific documentation requirements must be fulfilled for all expenses if employment-related expenses exceed AUD300 a year. Client entertainment expenses are not deductible.

Medicare Levy

A Medicare Levy of 2% of taxable income is payable by resident individuals for health services (provided that they qualify for Medicare services). This is the only levy imposed in Australia that is equivalent to a social security levy. An exemption from the Medicare Levy may apply if the individual is from a country that has not entered into a Reciprocal Health Care Agreement with Australia.

No ceiling applies to the amount of income subject to the levy. However, relief is provided for certain low-income earners. High-income resident taxpayers who do not have adequate private health insurance may be subject to an additional 1% to 1.5% Medicare Levy surcharge. High-income taxpayers whose hospital insurance carries an excess payment of more than AUD750 for single individuals or AUD1,500 for couples or families are also subject to the Medicare Levy surcharge.

Superannuation (pension)

Australia also has a compulsory private superannuation (pension) contribution system. Under this system, employers must contribute a minimum percentage of the employee's ordinary time earnings (OTE) base to a complying superannuation fund for the retirement benefit of its employees. The minimum percentage is currently 10.5% and is expected to remain at this percentage until 30 June 2023. In general, OTE consists of salary and wages and most cash compensation items paid for ordinary hours of work. Transitional measures can apply for certain pre-existing superannuation earnings base arrangements. The maximum OTE base for each employee for the year ending 30 June 2023 is AUD60,220 per quarter. No obligation is imposed to make contributions with respect to OTE above that level unless otherwise required by employment contractual terms.

If an employee comes from a country with which Australia has entered into a bilateral social security agreement, it may be possible to keep the employee in their home country social security system under a certificate of coverage issued by his or her home country and therefore remove the obligation to make the Australian superannuation contributions outlined above.

An exemption from superannuation may be available in limited circumstances for senior foreign executives who hold a certain business visa.

Temporary residents may be able to have their accumulated superannuation paid to them once they have departed Australia permanently and their visa is cancelled. The withdrawal is subject to a final tax.

Tax filing and payment procedures

A tax assessment is issued by the Australian Taxation Office after a tax return is filed. For a timely filed tax return, taxpayers generally have 21 days after the date of assessment to pay tax due and may be allowed a longer period.

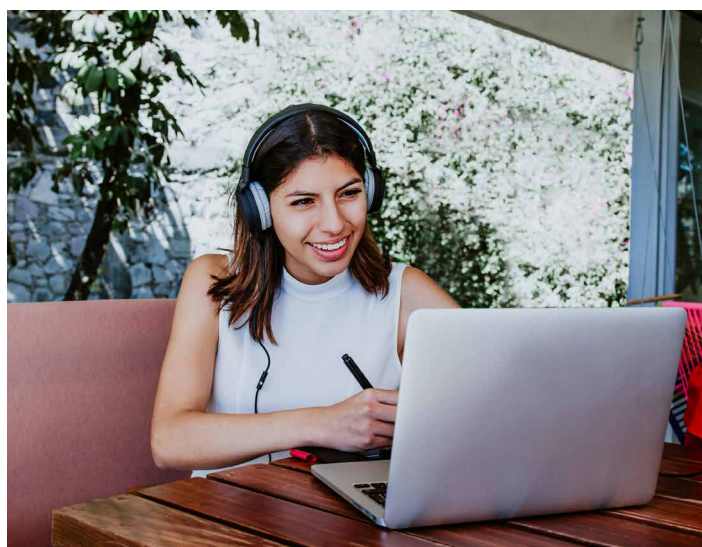
Salary and allowances paid in Australia are subject to monthly withholding under the Pay As You Go (PAYG) tax withholding system. Income other than salary and wages, such as investment income (depending on the amount), may be subject to quarterly or annual PAYG instalments.

Double tax relief and tax treaties

An offset is available for payments of foreign tax that are similar to the Australian income tax payable on the same income. Both Australian and foreign resident taxpayers may claim a tax offset (equal to the lower of an equivalent foreign tax paid or the amount of the Australian tax payable) for an amount included in the taxpayer's assessable income on which they have paid foreign income tax.

Excess foreign tax offsets may not be carried forward.

Australia has entered into double tax treaties with 48 countries.



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