



AFP
AUSTRALIAN FEDERAL POLICE

Review of the individual income tax residency rules

AFP Submission

POLICING FOR A SAFER AUSTRALIA

Report title	Review of the individual income tax residency rules
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Introduction

1. The Australian Federal Police (AFP) national tax team has prepared this submission to summarise the AFP's comments on the Board of Taxation's *'Review of the Individual Income Tax Residency Rules for Individuals'* and the likely impacts of any future tax reform in this area.
2. This submission will be focused around options for reform of the superannuation test as this is the feature of the proposed reform that has the potential for the greatest impact to the AFP.
3. The AFP desires that there be no additional administrative burden imposed by reform. Any outcome that required the AFP or its employees to review income tax residency as an issue would be an additional complexity compared to the current framework.
4. An effective government services rule is desirable so that the AFP and its employees do not need to consider the bright-line tests. An effective government services rule should provide clarity and certainty around income tax residency to the AFP and its employees.

AFP overseas operations

5. The AFP's default position is that AFP employees deployed overseas, including those on long term deployments of 3-4 years are treated as Australian tax residents. Currently we assume that either the domicile or superannuation test will apply to any AFP employee deployed overseas because the expectation that employees will return to Australia at the end of their deployment makes it difficult for an employee to abandon their domicile or to establish a permanent place of abode in their deployment location.
6. While it is open to individual AFP employees to argue their tax residency has changed within the current residency rules, we are not aware that any AFP employee has tried to do so. As noted above, this would be difficult, and a number of AFP employees deployed overseas still have access to tax-exemption through section 23AG of the *Income tax Assessment Act 1936* and therefore have less to gain from losing their tax-residency.
7. AFP does not typically directly employ locally engaged staff; DFAT bears the administrative burden for such arrangements, and costs are passed on to us. Regardless of where the administrative burden falls, the AFP is concerned that this burden should not increase.

Comments on reform to the Superannuation rule

8. The AFP supports the development of a new “government services” provision that provides legislative justification for the AFP’s default position that all employees deployed overseas remain Australian tax residents.
9. The AFP does not support the removal of the superannuation rule without a replacement provision, nor a government services rule that does not clearly capture AFP employees deployed overseas. Either result would increase the administrative burden to both the AFP and our employees by requiring engagement with the complexity of the income tax residency framework.

Should the residency rules continue to deem spouses and dependants of Government officials to be Australian residents?

10. The AFP supports a government services rule that captures spouses and dependants of AFP employees deployed overseas. This approach is simpler to understand and apply for both the AFP and its employees, and avoids any additional administrative burden.
11. In the absence of such a rule, the proposed outbound bright-line tests would not be sufficient to capture the spouses and dependants of AFP employees who choose to work full-time while overseas. This would require the AFP or DFAT to consider the income tax residency status of spouses and dependents when employing them in locally engaged positions, substantially increasing the administrative burden.
12. It is preferable that the current default position that all spouses and dependents of employees deployed overseas remain Australian income tax residents is maintained.

Do the proposed design considerations capture the appropriate Government officials and functions? If not, what else should be considered?

Locally engaged staff and contractors

13. The AFP does not support the government services rule capturing locally engaged staff by virtue of their performance of a government function, as this is a departure from the current policy and legislative framework. Focusing on the function that they are performing to determine whether they are inside or outside the residency net would introduce unnecessary complexity.
14. The tax-residency status of locally engaged staff prior to employment should be the primary consideration, and is a satisfactory approach considering the administrative nature of the positions that are generally available to foreign nationals.

AFP Appointee contractors and non-Appointee contractors

15. In accordance with the *Australian Federal Police Act 1979* (AFP Act), AFP contractors can be designated as either appointee or non-appointee contractors. Appointee contractors are subjected to the AFP Act and its higher accountability measures, and are essentially employees in this sense.
16. Designation as an appointee contractor generally depends on whether the contractor will be working on AFP premises or working with sensitive AFP material/assets, and whether the contractor will have access to the AFP intranet.
17. The distinction between appointee and non-appointee contractors is an AFP specific example of how factors such as citizenship, security clearances, or the degree of accountability that a contractor is subject to may provide a simple and effective means of determining whether a contractor should be captured by the government services provision.

AFP Employees formally seconded, or seconded while taking leave without pay

18. The Board of Taxation should consider whether employees seconded to foreign law enforcement agencies (LEA) or foreign governments should still be captured by a government services rule.
19. These secondment agreements usually involve the AFP remaining responsible for the employee's salary, however in some cases AFP employees have taken leave without pay from the AFP to facilitate the secondment.

Government employees taking leave without pay

20. The Board of Taxation should consider whether simply holding a position as a government employee, even if the individual is not performing the duties of that position, should be sufficient of itself to confer status as a government official for the purposes of a government services rule.

Foreign Law Enforcement Officials seconded to the AFP

21. Foreign law enforcement officials that are seconded to the AFP should not be caught by the government services rule.

Do any of the international comparisons provide a clear guide for reforming the superannuation test?

22. The international comparisons indicate the following factors that the Board of Taxation should consider in constructing a government services test:

- Australian Nationality/Citizenship (generally contained in all Government services tests)
- Being transferred/sent away/assigned to an overseas role (e.g. New Zealand)
- Status as a public/civil servant (e.g. UK, Spain, Japan)
- Exclusion of individuals who are already abroad (e.g. Spain)
- Broad application to all government functions (e.g. the New Zealand test applies to those sent away “in the service of the government in any capacity”)