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## ATO take 'gloves off' on overseas income

**Five years ago, the Australian Taxation Office (ATO) offered a penalty amnesty on undisclosed foreign income. Five years on, the ATO has again flagged that underreporting of foreign income is an issue but this time the gloves are off.**

How you are taxed and what you are taxed on depends on your residency status for tax purposes. As tax residency can be different to your general residency status it's important to seek clarification. The residency tests don't necessarily work on 'common sense.' For tax purposes:

- **Australian resident** - taxed on worldwide income including money earned overseas (such as employment income, directors fees, consulting fees, income from investments, rental income, and gains from the sale of assets).
- **Foreign resident** - taxed on their Australian sourced income and some capital gains. Unlike Australian resident taxpayers, non-resident taxpayers pay tax on every dollar of taxable income earned in Australia starting at 32.5% although lower rates can apply to some investment income like interest and dividends.  
There is no tax-free threshold. Australian sourced income might include Australian rental income and income for work performed in Australia.
- **Temporary resident** – Generally, those who have come to work in Australia on a temporary visa and whose spouse is not a permanent resident or citizen of Australia. Temporary residents are taxed on Australian sourced income but not on foreign sourced income. In addition, gains from non-Australian property are excluded from capital gains tax.

Just because you work outside of Australia for a period of time does not mean you are not a resident for tax purposes during that period. And, for those with international investments, it's important to understand the tax status of earnings from those assets. Just because the asset might be located overseas does not mean they are safe from Australian tax law, even if the cash stays outside Australia. Don't assume that just because your foreign income has already been taxed overseas or qualifies for an exemption overseas that it is not taxable in Australia.

## How your money is being tracked

A lot of Australians have international dealings in one form or another. The ATO's analysis shows China, the United Kingdom, Switzerland, Singapore and the United States are popular countries for Australians.

The ATO shares the data of foreign tax residents with over 65 foreign tax jurisdictions. This includes information on account holders, balances, interest and dividend payments, proceeds from the sale of assets, and other income. There is also data obtained from information exchange agreements with foreign jurisdictions.

In addition, the Australian Transaction Reporting and Analysis Centre (AUSTRAC) provides data to the ATO (and the Department of Human Services) on flows of money to identify individuals that are not declaring income or paying their tax.

It's not uncommon for taxpayers to forget to declare income from a foreign investment like a rental property or a business because they have had it for a long time and deal with it in the local jurisdiction with income earned 'parked' in that country. However, problems occur when the taxpayer wants to bring that income to Australia, AUSTRAC or the ATO's data matching picks up on the transaction and then the taxpayer is contacted about the nature of the income. If the income is identifiable as taxable income (for example, from a property sale or income from a business), you can expect the ATO to look very closely at the details with an assessment and potentially penalties and interest charges following not long after. There is no point telling the ATO the money is a gift if it wasn't, they can generally find the source of the transaction and will know it's not from a very generous grandmother - misdirection is only going to annoy them and ensure that there is no leniency.

## What you need to declare in your tax return

If you are an Australian resident, you need to declare all worldwide income in your tax return unless a specific exemption applies, although in some cases even exempt income needs to be reported. Income is anything you earn from:

- Employment (including consulting fees)
- Pensions, annuities and Government payments
- Business, partnership or trust income
- Crowdfunding

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- The sharing economy (AirBnB, Uber, AirTasker etc.,
- Foreign income (pensions and annuities, business income, employment income and consulting fees, assets and investment income including offshore bank accounts, and capital gains on overseas assets)
- Some prizes and awards (including any gains you made if you won a prize and then sold it for a gain), and
- Some insurance or workers compensation payments (generally for loss of income).

You do not need to declare prizes such as lotto or game show prizes, or ad-hoc gifts.

## Do I need to declare money from family overseas?

A gift of money is generally not taxable but there are limits to what is considered a gift and what is income. If the 'gift' is from an entity (such as a distribution from a company or trust), if it is regular and supports your lifestyle, or is in exchange for your services, then the ATO may not consider this money to be a genuine gift.

## I have overseas assets that I have not declared

Your only two choices are to do nothing (and be prepared to face the full weight of the law) or work with the ATO to make a voluntary disclosure. Disclosing undeclared assets and income will often significantly reduce penalties and interest charges, particularly where the oversight is a genuine mistake.

## How to repatriate income or assets

Before moving funds out of an overseas account, company or trust it is important to ensure that you seek advice on the implications in Australia and the other country involved. This is a complex area and the interaction between the tax laws of different countries requires careful consideration to avoid unexpected consequences.

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