

THE AUSSIE EXPAT STILL THE LUCKIEST PERSON ON EARTH?

Q&A



Are there tax advantages living in the United States? Some with the build up of future tax credits in Australia, however it is a similar tax cost to Australia if in the expensive tax states.

How can I avoid getting taxed in Australia while working in the US? If you are genuinely living with permanent intent (more than 2 years) in the USA then you will likely be considered non-resident for tax in Australia and only taxed on Australian rental income, not USA salary etc.

I haven't submitted a tax return since 1997 or notified the ATO when I left Australian in 1998. What would I need to do if I moved back to Australia? You would only need to formally lodge if you had been collecting property rent, if not then a simple notification that "no return was necessary" can be lodged to let the ATO know that you were away and non-taxable over the period.

What are the rules with taxes on Australian shares? If you are a non-resident for tax in Australia, then Australian shares are tax free and not required to be lodged for Australian tax purposes, only USA Tax would apply.

Are there Australian tax implications for holding US stocks? If you are a non-resident for tax in Australia, then USA shares are tax free and not required to be lodged for Australian tax purposes, only USA Tax would apply. On return to live in Australia, they become taxable only for profits made after the date of arrival - not previous years gains.

What are the best tax strategies for US born children, should I consider setting up trusts? If they have citizenship in USA, then can get complicated. Would not generally recommend a trust unless there were other reasons such as genuine intent for them to have the funds etc, needs more specific advice to give a proper answer.

I am a US permanent resident living the US but working remotely for an Australian company - which jurisdiction to I have to pay tax? Only taxed in USA as services are provided in the USA where you are tax resident. Does not matter client is Australian.

As an expat I am finding it difficult to get an attractive Australian property mortgage and refinance my current Australian loans, any tips? Yes, use our Specialist Mortgage Brokers with 27 years experience in helping expats, there is no cost or obligation, but a lot of help to find you the best options available.

RESIDENCY RULES

What are the proposed residency rule changes and are there US tax implications if there are introduced? Still waiting on legislation, will likely only affect those that are spending considerable time in Australia.

How would the proposed residency rules interact with the "tie-breaker" provisions of the dual taxation agreements? Still waiting on legislation but likely the DTA will have stronger impact than the proposed changes.

I live in Australia but am in the US for much of this year. I have bought an off the plan property which settles in Dec 2022. What are rules around considering this property as my primary residence and pay no capital gains tax. Do I need to live in it and for how long? There is no official period of time required to live in the property, but you need to ensure that you are a tax resident, that no one else is living in the property and paying rent, that you have utilities bills etc in your name and ideally would be able to show personal belongings and furniture as would be normal for a home.

Could you speak to the proposed changes to residency rules, where do they stand now.... expats may soon become inadvertent residents. Also are expats living in us who become "Australian residents" under new rules if implemented entitled to Australian Medicare coverage? We lodged a Parliamentary Petition and got 5,730 signatures on this. Still waiting to see the proposed Legislation, but the Assistant Treasurer has confirmed in his response to the Petition that he will seek our feedback to ensure no adverse affects. <https://www.aph.gov.au/e-petitions/petition/EN2834> We are hoping to make the rules more sensible before being enacted.

REPATRIATION TAX PLANNING

What are the key things to keep in mind when repatriating back to Australia. I have lived in the USA for some years and own property in Australia? Get good valuations on USA and investment assets, assess USA residency retention/departure issues, feel free to move funds back, assess whether you can live in current properties or not.

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Are there any down-sides associated to keeping a US bank account open when I return to Australia? No, just need to declare interest earned and potentially FX gains/losses (only if over A\$250,000 in account).

SUPERANNUATION

If I am not contributing to my superannuation fund, do I need to file an Australian tax return and is this taxable in the USA? Not generally, only if you are considered Aust tax resident or if you have rental property income in Australia

How do distributions from an Aussie super fund get reported on US tax returns? Would likely be taxable as foreign pension.

INHERITENCE TAX

If I inherit Australian Property through a will, how is capital gains tax calculated for the beneficiaries living in the USA? Depends if property was owners previous residence, if so then inherited at market value on date of death and only future profits taxed, if not then it is as if the beneficiary was the original owner to you inherit the underlying tax as well as the property. No other Estate/Death duty in Australia.

How about an inherited estate? Do you need to be in the country to sell that for the benefits you just mentioned?

If you inherited a property that was the deceased persons principal residence, then you are deemed to have acquired it at market value on date of passing. If it was an investment property then you inherit the underlying Capital Gains Tax with the property as you are treated as if you were the original purchaser, from the original purchase date and cost.

If I inherit a part share of a property whilst living in the US and that property is then sold by my siblings is tax payable? Yes, depending on the previous use of the property. If it was the owners residence then Australia taxes only on profit above market value on inheritance. If it was the owners investment property then Australia taxes back to original cost.

If I inherit a portion of property assets whilst in the US and my siblings want to sell the properties – how long do I need to return to Australia to be considered “living back in Australia” to reduce Capital Gains Tax? It may not be applicable to be back in Australia in this case, depending on the previous use of the inherited property. If it was the residence of the deceased, then you are deemed to acquire it at market value on date of passing, so previous gains to that are tax free in Australia regardless of where you may have been. If not a residence, then you are taxed back as if you were the original owner.

CAPITAL GAINS TAX

Are there US or Australian tax implications of selling or owning properties in Australia? Implications on both sides, but tax payable in one is offset in the other.

How does the tax treaty between Australian and the USA work with Capital Gains tax on your Australian home?

Both countries have different calculation methods. USA will allow tax credit for taxes paid in Australia and may offer discount if former residence.

Is it more profitable to rent properties long term or a short term buying/selling strategy in a good market? In Australia usually better to own as long term rental as entry & exit costs quite high (stamp duty 5-6%, selling fees 1-2%, Capital Gains Tax 32.5%+).

PROPERTY TAX

What are the tax considerations when buying property as an Australian living in the USA? Must lodge an Australian return each year if rental income received, some positive long term benefits and stable market can be enjoyed.

What are the tax implications for owning property in Australia while living in US? As above.

What is best strategy when Australian properties are cash flow positive? Either make contribution to Super to offset rental profit or consider another purchase to offset.



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Are there any efficient ways to purchase Australian property while on an E-3 in the US? Sensible level of debt, eye on future residence, take advantage of rental income to cover the repayments.

I had an asset valuation done on my property back in 2014 & received a depreciation schedule from valuers at that time. Can I still use that depreciation schedule or is depreciation only on new items from 2017? Depending on the items and how quickly they depreciate, there may be some left still to claim. Once they are fully claimed only new items purchased will be claimable. You should note that the original construction cost is claimed over 40 years if built after 1985, so there is likely still an ongoing claim there to be considered.

A particular Australian state announced it is considering calculating land tax on properties owned in other states, do you think this is likely to come into effect? (Queensland) It is likely but disappointing. Land Tax has escalated sharply as prices have risen in recent years so there is no need for this and indeed there is a strong argument for reduction in Land Tax & Stamp Duty due to the rises, but there is no co-ordinated voice of opposition on this, and because most Australians don't pay any Land Tax (their home is Land Tax free), many don't even know this tax exists.

<https://www.hotspotting.com.au/land-tax-yet-another-disincentive-for-investors/> Land Tax is becoming an increasingly expensive cost of ownership. It is only payable if a property is rented (not if you are living in it) and you get a tax free allowance in each state that often means little or no tax payable if one modest investment property is owned, however recent growth has pushed many properties into Land Tax range and some very expensive. It isn't a deterrent in a rising market, but it needs to be fully considered. If you own a property and rent it out, it is essential that you check if Land Tax is payable as there are high penalties and back log assessments if you are found to be payable and have not informed them.

Do I need to lodge a tax return even when running at a loss (related to rental income on a property in Australia)? The obligation to lodge a return is if you receive any income, such as rent, not that the income is higher than the expenses. So if you have a property and the costs are more than the rent then you still need to lodge a return even though no tax may actually be payable, and the shortfall can carry forward each year to offset future profits.

Will inadvertent residents be able to sell Aust home while in US (because "deemed resident of Australia") and get full resident tax benefit....? (hope that one clear), will need for valuation of all assets crystallized upon deemed "residence"? If you are living in USA at time of selling a former Australian home, then you will get no tax free allowance for the period the property was in fact your home. A valuation will not assist in this regard. Only if you sell when living in Aust can you still get your tax free principal residence concession.

What year does the \$1050 fee for not filing tax apply, for rental Australian property? Any year that you collected rental. I can't recall exactly when they changed it, around 2010 I think. We have a good track record in requesting this be remitted if you go to the ATO voluntarily rather than they having found you and demanded the returns.

What about if I never have lived in my investment properties; that is, they were never my sole/home residence? The full capital gains tax will apply in sale. The 50% CGT discount will be pro rated for the period you owned the property before May 2012 and whilst living in Australia after that date.

If I am taxable in the USA and pay CGT on a property in Australia - is the tax covered by the tax treaty and credited in the USA? Yes, you should be entitled to a credit of the Australian tax against any tax payable in USA

We're Australians living in the US and just learnt about land tax which we haven't paid since 2014. Any advice on minimising the tax owed? Sadly not, the State's are very unforgiving on this situation. Check the valuation and ask politely for discount on penalties, that is the best you can expect.

DUAL TAX QUESTIONS

How do deductions work when you have some on your Australian tax return? Can you also add them to your USA tax return? Likely can claim against both declarations.

Do I need to report negative Australian property income to the IRS? Yes, you need to declare the income and report it as a negative.

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As a US Greencard holder, can I still be paying into my Aussie superannuation as a US Resident? Yes you can, but may not be advantageous unless you are offsetting Australian rental income, if not make sure you tell Super Fund that no tax claim is being made by the contribution otherwise they will deduct 15% tax unnecessarily.

How do I avoid liability for double taxes in AUS and US? There is an agreement that protects you from double up, just make sure you declare the income and claim the foreign tax credit as applicable.

Can E3 visa holders own rental properties in the US? Don't believe there are any restrictions.

Can I transfer 401k to Aussie super? Is there tax implications for having both 401K and Superannuation? Can not transfer, can only cash out at tax cost in USA and then decide if you want to put funds into Super or not.

Do we need to declare Australian assets and bank account while filing US tax return? All income is earned in US only. We are not American citizens: Depending on your tax status and visa, but likely yes.

Are there tax advantages or disadvantages to becoming an American citizen vs Green Card Holder? Just right to live in USA, can be an issue if you intend to return to Australia as it can mean you are hit with an "exit tax" on leaving USA.

I am a US Government employee who will be moving to Australia to work. I've heard there is no double taxation under such circumstances. Is that true? Will I have to make some declaration to the ATO while there? If you are working officially for the US Government at the Embassy, then usually you will be treated as a USA Taxpayer and not required to report anything to the ATO.

Is a dual citizen exempt of taxes such as land tax, capital gains tax and inheritance tax? Not at all.

Say you become an Australian resident and you own a home in the U.S. worth \$500,000 at the time. If you sell the home a year later, CGT is assessed on any gain over \$500,000, correct? Yes, in Australia only the profits on sale above the market value on date of arrival into Australia are taxed.

How does it work if you are here on an E3 visa for say 10 years and then get a green card, but leave before the 8 years as a green card holder is up? Does the previous 10 years under E3 status count? I don't believe so, my understanding is that you need to have held the Green Card (Permanent Residency) for the 8 years, so any period of Temporary Residence may not apply. Best to check with a US Tax Attorney to confirm your residency requirements to be sure in your personal situation.

How does 401k and college savings accounts get treated by Australian tax office if I move back and keep those assets? Do they remain tax advantaged or does the Australian authorities treat as regular investments? Australia will not provide any specific tax advantage on these. Only profits after arrival are taxable once you cash in the funds, and if you don't sell within 12 months, then the profits since arrival will be entitled to a 50% Capital Gains Tax discount.

Have invested in the us share market vs property. Short term planning to go back to Australia. Should I start selling shares/ moving funds now to buy property in Melbourne? Tax should not be the consideration for selling, that should be based on your investment assessment and objectives. Only profits made after arrival are taxed in Australia anyways, and you need to assess USA Tax implications as well. If you need the funds in Australia, for example to buy a home, then that may be the motivation to sell, but tax is not.