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SUBJECT: Certificates of residency

Dear Mr Liao

I refer to your letter of 19 January 2009 (your ref: ITTD - 09 - 01 - 19) to the Australian Treasury Department which has been forwarded to the ATO for our response.

We received a similar request from Mr Ji Feng of your administration in May 2008 which was also addressed to our Treasury Department. We replied to Mr Ji Feng on 17 June 2008. A copy of our response is attached for your information.

Regards

Michael Nugent
Authorised Competent Authority
Australian Taxation Office

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17 June 2008

Mr Ji Feng
Tax Treaty Division
International Taxation Department
State Administration of Taxation
5 Yangfangdian West Road
Haidian District
Beijing 100038
PEOPLE'S REPUBLIC OF CHINA

Dear Mr Feng

**AUSTRALIA/ PEOPLE'S REPUBLIC OF CHINA DOUBLE TAXATION
AGREEMENT: CERTIFICATES OF RESIDENCE**

Thank you for your email dated 29 May 2008 where you requested information on the latest version or format of our certificates of residence.

Your email was addressed to Ms Lyn Redman in the International Tax and Treaties Division of the Australian Treasury, however she has forwarded your request on to us as the Australian Taxation Office (ATO) administers Australia's income tax laws, including certificate of residency matters.

The ATO does not produce an actual form which taxpayers must complete to prove their residency status for tax treaty purposes. However, we do provide certification of residence by way of an ATO letter upon the request of the Australian taxpayer.

We also certify many foreign tax forms for a large number of mainly European countries where a higher rate of tax has been withheld at source and the taxpayer is seeking to invoke the relevant (lower) tax treaty rate.

We can issue (in letter form) certificates of residency for individuals and for non-natural persons such as companies, trusts and superannuation funds. We provide this only where the other country needs it for their domestic purposes. The certificates are mainly used by Australian taxpayers as evidence of Australian residency for Double Taxation Agreement purposes to reduce withholding tax to the relevant treaty rates, but could be used for other treaty purposes, such as pension or teacher exchange exemptions etc.

There are two types of residency certification requests. An Australian resident may request that the ATO certify an original tax relief form from a foreign tax authority. In these cases, the Australian resident will send the form to the ATO and we would stamp the form with our official stamp. If the foreign tax authority does not have its own tax relief form, the

Australian resident may ask the ATO to issue a certificate of residency or a certificate of taxable status (used for non-natural persons).

These requests are typically handled at the local tax office level (usually in our Client Account Services area in the Sydney office). However, if the taxpayer is a large business, the request is completed by an officer in our Large Business & International area. Under our internal rules, these certificates are not required to be signed off by the Australian competent authority, although this can be done if required, for example in respect of Mutual Agreement Procedure cases involving dual residency.

To make a request for a certificate of residency/status, the Australian resident needs to put a request in writing and send it to the following address:

Australian Taxation Office
Attention: Certificate of residency/status
CAS Income Tax Product Delivery
GPO Box 4991
Sydney NSW 2001
AUSTRALIA

Within the written request, information such as

- name,
- residential address,
- tax file number,
- number of certificates required,
- country the certificate is for, and
- the nature of business (for certificate of status requests only)

must be supplied. The ATO accepts certification of residency without consular legalisation or apostille.

Local ATO staff then process the request, determine residency using our internal systems, and send a letter signed by an authorised officer on ATO letterhead to the individual/entity confirming their residency status. I have enclosed as Attachment A, information that can be found on our website that further explains this process.

The Australian Taxation System for non-residents

Our non-resident interest, dividend and royalty withholding tax system operates on an address basis. If a non resident is deriving income from Australia, and their residential address is in a country that we have a Double Tax Agreement (DTA) with, the lower DTA rate is withheld from that income by the payer of the income automatically. There is no need to withhold at a rate higher than the specified DTA rate.

In most cases, we apply the treaty rate up front. Only in cases where the payer of the income is in possession of information which clearly indicates that a person is not a resident of one of Australia's DTA partner countries would the specified Australian non-treaty tax rate be required to be withheld.

In practice, the question of the ATO needing to make a refund of part or all of the previously withheld amount rarely arises, except in cases of mistakes or when a new DTA comes into force and perhaps taxpayers are unaware of the lower withholding rate now applicable or where an income tax exemption is subsequently granted but was not available at the time of

the withholding. In these cases, the individual or entity would need to write to the ATO and request a refund. These cases are generally dealt with through our Medium Enterprises and Individuals business line.

Given the above system, we generally do not require residency certificates from taxpayers issued by foreign tax offices to substantiate their claims. However, in cases of doubt, we may take up a particular case with the other relevant competent authority under the DTA (for example, in cases of dual residency).

I hope that this information has fully answered your questions. If you require further clarification please let me know.

Yours sincerely

Michael Nugent

for (Gregory Dick)

Senior Assistant Commissioner
International Strategy and Operations
Large Business and International



Certificates of residency or status

Overview

Tax treaties are special treaties that Australia has entered into with over 40 countries. They prevent double taxation and fiscal evasion and foster cooperation between Australia and other international tax authorities in enforcing their respective tax laws.

As part of some of the agreements, if a person or entity is certified as an Australian resident for income tax purposes and receives income from these countries, they can request the tax authorities of these countries to reduce their withholding tax or to exempt them from paying tax in these countries. They can do this by supplying a tax relief form or a certificate of residency or status.


What is a tax relief form?

Tax relief forms are forms supplied by overseas authorities to residents of Australia whose overseas sourced income is subject to overseas tax. The forms are to be completed by the Australian resident and certified by the Tax Office to confirm residency status.

These forms will only be certified if there is a comprehensive tax treaty with Australia. If an agreement is not in place, the Tax Office will supply a certificate of residency.

What countries have tax treaties with Australia?

We have available a list of all countries that currently have a comprehensive [tax treaty with Australia](#).

 **Please note:** There is also an agreement between the Australian and Timor-Leste governments in respect of the exploration for, or the exploitation of, petroleum in the Joint Petroleum Development Area (JPDA).

How do you lodge a tax relief form?

Mail the tax relief form to:

Australian Taxation Office
Attn: Certificate of residency/status
CAS Income Tax Product Delivery
GPO Box 4991
SYDNEY NSW 2001

What is a certificate of residency or status?

A certificate of residency or status is a document issued by the Tax Office to Australian residents who require proof of their residency status (they are valid for one year).

How does a resident request a certificate of residency or status?

Send a signed letter or fax.

What information is required for a certificate of residency or status?

The following information is required:

- name of the Australian resident
- residential address of the Australian resident
- tax file number (TFN) and/or Australian business number (ABN)

- number of certificates required
- country the certificate is for, and
- nature of business (for certificate of status requests only).

How do you lodge a request for a certificate?

Mail the request to:

Attn: Certificate of residency/status
Australian Taxation Office
CAS Income Tax Product Delivery
GPO Box 4991
SYDNEY NSW 2001

Or

Fax to (02) 9374 8999 or (02) 9374 2811.

How long will it take?

It will take a maximum of 28 days to process your request.

➤ More information

For more information on tax relief forms or on certificates of residency or status

Phone us on (02) 9374 2030

Or

write to us at:

Attn: Certificate of residency/status
Australian Taxation Office
CAS Income Tax Product Delivery
GPO Box 4991
SYDNEY NSW 2001

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

If you are calling from overseas and are experiencing difficulties getting through on these numbers you can contact the Tax Office by phoning Directory Assistance on **+61 13 2869** or **+61 2 6216 1111** between the hours of 8.00 am to 5.00 pm (Australian Eastern Standard Time or daylight-saving time) and request for your call to be transferred to the appropriate area within the Tax Office, alternatively you can fax us on **+61 2 6216 2830**.

➤ Information available online

- Countries that have a tax treaty with Australia
- PAYG withholding from interest, dividends and royalties to non-residents

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