1. Statement
The objective of this Standard is to provide information for determining the status of staff engaged from other counties, as a resident or non-resident for Australian income tax purposes.

2. Scope
Compliance with this Standard is mandatory.
This standard applies to all employees, contractors and consultants within the Department of Health divisions and commercialised business units as well as Hospital and Health Services.

3. Content

Introduction
The term “non-resident” is used in ITAA36, and “foreign resident” is used in ITAA97. Both terms are interchangeable as such this Standard will only use the term non-resident to avoid confusion.
Queensland Health engages locum doctors and other staff from foreign countries to work within Hospital and Health Services and the department (including Commercialised Business Units).
It is therefore necessary to determine the tax residency status of appointees as this is an impact on whether PAYG is withheld and at what rates.

Determining Residency Status
A non-resident is a person who is not a resident of Australia for income tax purposes. The appointees intention and purpose for visiting Australia must be more than just travelling, even if that involves casual employment to help pay for the visit.
From 1 January, 2017 all workers on either a 417 or 462 subclass visas are considered non-residents for income tax purposes. As non-residents they will be ineligible for the tax free threshold and will be taxed.
The ATO (Australian Taxation Office) have created a tool to help determine residency status in situations where it is not clear. This report can be accessed at the ATO website www.ato.gov.au/Calculators-and-tools/6.Work out your residency status for tax purposes.
There is no one size fits all determination of who is or is not a resident of Australia for income tax purposes. Rather a case by case determination based on the facts involved must be used.

Tests for residency
The ATO uses four main tests in determining residency as per the legislation:

resident or resident of Australia means:
(a) a person, other than a company, who resides in Australia and includes a person:
Meaning of Residence and Resides

ITAA36 uses the term resides as the primary test in determining if a visitor to Australia is a resident for tax purposes. The term resides is not defined in the act, therefore the general meaning must be relied upon. The dictionary definitions of the word resides are “to dwell permanently or for a considerable time”, “to have ones abode for a time”, “to have ones settled or usual abode”, “to live in or at a particular place”.

Being the primary test, it must be rigorously applied to appointees from outside Australia who may be engaged by Queensland Health.

Meaning of Domicile

The dictionary definitions of the word domicile are “a place of residence”, “a house or home”, "habitation", “dwelling”. For taxation purposes there are essentially three types of domicile:

1. Domicile of origin – the domicile of the individuals father at birth.
2. Domicile of choice – the domicile selected by the individual, as their home by actions or intentions.
3. Domicile of dependency – normally applies only to minors or individuals of unsound mind.

Applying the tests

The following examples adapted from taxation ruling TR 98/17 demonstrate the application of the residency tests to individual cases.

Jane Cierpinski is single and is a Professor of Biology at the University of Warsaw. She comes to Australia to work on a research project. She is contracted to do the research in Australia for five months.

A six month lease of a small furnished unit near her work is such an attractive proposition that she enters into the lease despite intending to leave after five months. She also buys an old car. She relaxes at the end of her long days by going to the movies, occasionally

(i) whose domicile is in Australia, unless the Commissioner is satisfied that his permanent place of abode is outside Australia;

(ii) who has actually been in Australia, continuously or intermittently, during more than one-half of the year of income, unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia; or

(iii) who is:

(A) a member of the superannuation scheme established by deed under the Superannuation Act 1990; or

(B) an eligible employee for the purposes of the Superannuation Act 1976; or

(C) the spouse, or a child under 16, of a person covered by sub-subparagraph (A) or (B); and

(b) a company which is incorporated in Australia, or which, not being incorporated in Australia, carries on business in Australia, and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia.
attending dinner parties hosted by her colleagues, reading novels or writing letters to her friends and parents.

Jane intends to return to Warsaw at the end of the project that actually lasts for seven months. She negotiates an extra month on the lease of her unit. Apart from depositing her salary into an Australian bank account to cover normal living expenses, Jane retains all assets and investments in Poland, her country of domicile.

**Status:** resident - Jane's behaviour over the seven months in Australia is consistent with residing here. She is regarded as a resident from her arrival.

**Janine Edgerton** is a British national who has longed to spend twelve months 'down under'. After saving for years, she takes twelve months leave from her work and departs for Australia on her twenty-fourth birthday. Although she travels with considerable savings, her intention is to spend at least part of her time working. She has obtained a restricted working visa enabling her to work for no more than three months with one employer.

Through a contact in Australia she is assured of work in Perth for the first three months. After that period, she decides to travel to the east coast via Adelaide. She spends a month in Adelaide where she works for two weeks and continues her journey to Melbourne.

There, she meets some friends from back home. After working for a further three months, she decides to spend the balance of her time in Melbourne and uses her savings for living expenses.

To keep costs down, she leases a house with two other friends. At the end of her twelve months in Australia, she returns to the United Kingdom.

**Status:** non-resident - Although Janine obtains work, by travelling from place to place she has not established a pattern of habitual behaviour, even though she is physically present in Australia for twelve months and she co-leases a house. Janine’s main purpose for being here is to have a holiday and she is merely supplementing her savings by working.

**Jim Olsen**, an executive of a US corporation specialising in management consultancy, comes to Australia to set up a branch of his company. Although the length of his stay is not certain, he leases a residence in Sydney for twelve months.

His wife accompanies him on the trip but his teenage son and daughter, having just commenced college, remain in the family home. Apart from the absence of his children, Jim’s daily behaviour is relatively similar to his behaviour before entering Australia. Jim earns interest from substantial investments he has in the United States.

Satisfied with the progress of the branch, Jim and his wife return to the United States eleven months after arriving in Australia.

**Status:** resident - Jim is present in Australia for eleven months. His purpose for being in Australia, accompanied by his wife, leasing the property and establishing business ties, are all factors indicating Jim is residing in Australia.

**Steffen Magnusussen** is a medical doctor domiciled in Denmark. He signs a contract with, and is brought to Australia by, a Brisbane based hospital to work for twelve months. Steffen arrives in Australia on 1 May 2012.
Steffen is provided with an apartment by the hospital. Steffen elects to travel to Australia alone because his wife is undertaking post-graduate studies in Denmark.

Steffen is a golfing fanatic and joins the local golf club. He also becomes actively involved in local charities. During her semester break, his wife visits and they head to Noosa for a short holiday. After twelve months, he returns to Denmark.

**Status:** resident - Steffen is a resident for the duration of his stay for both the 2012 and 2013 income years. Even though he is physically present in Australia for only two months of the 2012 income year, he intends to live in Australia to fulfil his contract with the hospital.

Steffen establishes a pattern of habitual behaviour during his twelve months in Australia. His accommodation arrangements, work, social and sporting commitments demonstrate he resides in Australia during this time and these outweigh the fact that his wife, apart from her holiday with him, remains in Denmark.

**Michael Desmond** is a South African diamond corporation executive. He takes the opportunity to participate in an intensive eight month advanced management development program at an Australian university.

Michael's wife and children do not accompany him to Australia and while here he stays in basic accommodation on campus. He spends his time studying or writing reports for his company. He is in Australia solely to do the course and at the end of eight months he returns home.

**Status:** non-resident - Michael does not exhibit behaviour that is consistent with residing here. All of the facts lead to a conclusion that he is a non-resident.

4. **Related legislation and documents**

- Standard: Foreign Resident Staff – PAYG Withholding Obligations
- Income Tax Assessment Act 1936
- Income Tax Assessment Act 1997
- Taxation Ruling TR 98/17 residency status of individuals entering Australia
## 5. Definitions

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<td>Vanessa Hafemeister&lt;br&gt;New procedure extracted from the BP Foreign Resident Staff</td>
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<td>2</td>
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<td>Richard Baker&lt;br&gt;Added ATO tool. Working Holiday Makers information and other minor changes.</td>
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