

## Residency of companies and trusts

Companies and trusts must meet different criteria to be considered Australian residents.

### Companies

Where the taxpayer is a company, according to s. 6(1) of ITAA36, the definition of a company is resident in Australia if:

1. it is incorporated in Australia; OR
2. although not incorporated in Australia it carries on business in Australia AND has EITHER:

- a. its central management and control in Australia; OR,

- b. its voting power controlled by shareholders who are residents of Australia.

If the company is incorporated in Australia – this is a resident company regardless of where the central management or who the voting power is controlled.

Where the company is not incorporated in Australia, it is necessary to determine if the company carries on business in Australia AND where the central management and control is located, OR whether it has its voting power controlled by Australian residents.

### **Example:**

Malayan Shipping Co Ltd was incorporated in Singapore based on instructions of Mr Sleigh, a Melbourne businessman.

The company was owned substantially by Mr Sleigh, who had all but two of the company shares. The company was involved in the transportation of oil by way of charter tanker to Australia.

### **Outcome:**

The court held that the taxpayer was an Australian resident since the central management and control of the taxpayer company was exercised by Mr Sleigh, who resided in Melbourne. It was irrelevant whether the charter contracts were carried on in or out of Australia.

### Trusts

Generally speaking, trusts will be considered Australian residents in any given income year if:

1. a trustee of the trust estate was a resident at any time during the year, or
2. the central management and control of the trust estate was in Australia at any time during the year.