Case Study 1

Fred has moved to Australia to build a branch of the British corporation specializing in management consultancy where he is employed. The length of his stay in Australia is not definite but would depend on the time it takes to set up the new office. He leases a residence within Melbourne for 12 months for himself and his wife. His sons continue their stay in London for education. He even rents out the family home and earns interest from his investments in France.

However, due to health issues, he returns to the UK after spending a period of 11 months in Australia.

An individual is an inhabitant for taxation purposes if they (ato.gov.au(b), 2016);

- have dependably lived within Australia
- moved to Australia and at present live here for all time
- have been in Australia persistently for 6 months or more than that and for a large portion of that time they have worked the same employment and lived within the same spot
- were within "Australia" for more than half of the fiscal year, unless
  - their regular home is abroad, and
  - they don't plan to live within Australia
- go abroad for the time being and they don't set up a perpetual home in another nation, or
- They are an abroad understudy who had come to Australia for studying and are selected in a course that is over 6 months in length.

When an individual don't fulfill the residing test, despite everything they are still be viewed as an Australian occupant in the event that they fulfill one of 3 statutory tests:

- The domicile test: A person is an Australian inhabitant if their residence (comprehensively, the spot that is their permanent house) is within Australia, unless it was fulfilled that their permanent spot of residence place is outside Australia.
- The 183-day test: If a person is actually within "Australia" for more than six months of the fiscal year, whether ceaselessly or with breaks, they might be said to have a useful living arrangement within "Australia", unless it could build up that their standard spot of home is out of "Australia" and they have no goal of carrying out with the habitation here.
- The superannuation test: This test ensures that government of Australian staffs operating at "Australian posts" overseas are coping with as "Australian" occupants.

International tax for people

Australian occupants are for the most part taxed on their overall pay from every source. Impermanent inhabitants of Australia and overseas occupants are by and large taxed just on their Australian-sourced earnings, for example, cash they are earning while working within Australia (ato.gov.au(c), 2016).

To comprehend their taxation circumstance an individual initially need to work out in the event that they are an Australian or overseas occupant for taxation purposes. This might be distinctive to their residency status for different purposes – like, an individual could be an Australian occupant for taxation purposes regardless of the fact that they are not an Australian national or permanent inhabitant.

Fred satisfies the conditions of residency test and the "183-day test", he would be considered as a occupant of "Australia" for taxation purposes

Case study 2

1. *"Californian Copper Syndicate Ltd V Harris (surveyor of Taxes) (1904) 5TC 159"*

This case held the problem of the understanding of principal resources and whether or not the proceeds from the sale of a property were to be exploited for its raw materials was measurable as normal proceeds or principal in nature (law.ato.gov.au, 2016).

Court of Exchequer (Scotland): The Lord Justice Clerk, Lord Young and Lord Trayner gave the decision that:

1. The tax payer was calculable on the proceeds taking place from the sale of the land per se earnings were of an earnings nature.

2. From its initiation, the tax payer was trying to make benefit from the sale of its property. The capital accessible towards the tax payer demonstrated that it never had enough assets to mine the area. The productive sale of its property was not the mere replacement of one speculation for another but instead a trading deals (austaxpbr.com.au(a), 2016).

3. As per the Lord Justice Clerk:

"It is a significant very much settled rule, in dealings with inquiries of Income Tax, that where the proprietor of a normal investment selects to realize it, and gets a more prominent cost for it than he initially procured it at, the upgraded cost is not benefit ... assessable to Income Tax. Yet, it is similarly entrenched that improved qualities acquired from realization or transformation of securities might be so assessable where what is done is not just an acknowledgment or alteration of investment, but rather a demonstration done in what is really the continuing, or doing, of a business. ... What is the line which isolates the two classes of cases might be hard to characterize, and every case should be considered by truths; the inquiry to be resolved being - Is the sum has been made a simple improvement of qualities by understanding a security, or is it an increase made in an operation of business in doing a plan of benefit making?"

2. *"Scottish Australian Mining Co Ltd v Fc of T (1905) 81 CLR 188"*

"In *Scottish Mining Co. Ltd v FC of T* (1949) 9 ATD 135; (1950) 81 CLR 188", the company engaged in coal mining on land it owned since 1863, however it ceased to operate as a mine sometime in 1942. Thereafter it sold off, from time to time, parcels of land formerly used for mining, for residential and other purposes, after having systematically subdivided the land, constructed roads, made sites available for schools and set aside areas for parks, etc. The subdivision was so systematic and scientific that the Commissioner argued that the company had ceased to be a coal miner, and instead was carrying out the profit-making undertaking of selling

land. This argument was rejected by the Court, where William J stated (at ATD p 140; CLR p 195). (austaxpbr.com.au, 2016)

3. *"FC of T v Whitfords Beach Pty Ltd (1982) 150 CLR"*

This case held the problem of (Wolters Kluwer(a), 2016):

(a) those exchanges outer the normal way of commerce of a tax payer continuation a commerce; and

(b) those deals went into by non-business tax payers.

Subsequent to the ruling which was given for this situation by Full High Court: Gibbs Ci, Mason, Murphy and Wilson Ji.

1. "Per Gibbs CI, Mason and Wilson J": The tax payer was quantifiable on the earnings from the sale of the area under section 25(1) as it had gone past merely realizing a principal resource and its exercises constituted the continuation of a commerce of land improvement.

2. "Per Gibbs C): It was important to decide the reason for the tax payer to figure out if it was continuation a business. As the tax payer was a corporation, its motivation was to be controlled by the reason for those controlling it, to be specific the 3 improvement corporations which turned into the tax payer's shareholders or the 2 which turned into its general supervisors (it didn't matter which). At the point when the shares in the tax payer were acquired by the progressing corporation the tax payer was 'changed from a corporation which held land for the household motivations behind its shareholders to a corporation whose reason for existing was to take part in a business wander with a perspective to benefit'."

After the alteration in the control of the corporation, the corporation existed exclusively with the end goal of continuation of the business activities on which the current shareholders had chosen to set out. For this, the extensive improvement and sub-division was more than the negligible acknowledgment of an accessible resource. It constituted work done over the span of a business project.

In case the developers had not taken controlled over the corporation during 1967, though, the ruling in Scottish Australian Mining would have been applied.

3. Per Mason: In determining whether the tax payer was continuing the business of land improvement, it was material that the advancement corporations would have been continuation such a commerce had they bought the area from the corporation and completed the advancement and sale on their individual account.

"The High Court" stated that the benefit was quantifiable in "sec 25(1) ITAA 36 (while 1 July 1997, sec 6-5)". "Gibbs CJ stated that once the developers taken control Whitfords, the association changed from one which seized land for the 'domestic purposes' of its shareholders to one that was absolutely headed to take part within a business plan to make a benefit. In his perspective it was this change turned the advancement from a 'mere realization' towards a quantifiable deal".

4. *"Statham & Anor v FC of T 89 ATC 4070"*

A loss from an inaccessible deal is deductible under "subsection 51(1) (ITAA 1936)" if:

(a) in going into the deal the tax payer planned or anticipated that would infer a benefit which will have been measurable; and

(b) the deal was gone into, and the misfortune was completed, over the span of continuation of a commerce or in completing a business actions or business deal.

From the frequently referred instances of "Casimaty v FC of T 97 ATC 5135 and Statham &Anor v. FC of T 89 ATC 4070", a rundown of components have risen that are to be checked in deciding out if the actions are the 'mere realisation' of a principal resource. Few of these main considerations are:

Whether the subdivision is being undertaken for not-profit related reasons (i.e. increasing age, health reasons, etc.);

The size and scale of the subdivision;

Whether the tax payer originally tried selling the land as one parcel;

The level of personal involvement by the taxpayer in the subdivision;

Whether borrowed funds are used to finance the subdivision; and

Whether the sub divisional works undertaken are limited to that required by the council

While each case needs to be considered on its own specific facts, where the taxpayer limits their borrowings, has little or no personal involvement in the subdivision (e.g. simply appoints the relevant contractors to complete the works and engages a real estate agent to sell the newly created lots) and the subdivision is completed in a relatively straight forward manner (e.g. one stage and less than approximately 10-20 lots), a mere understanding of a principal asset outcome is likely.

5. *"Casimaty v FC of T 97 ATC 5135"*

In "*Casimaty v FC of T* 97 ATC 5135" case the tax payer sold a large part of his land through eight separate subdivisions. He had purchased the property in two separate land acquisitions in the 1950's. The subdivisions were undertaken over 20 years later and motivated by his growing debt and ill health. "The Federal Court" stated that the tax payer was not continuation commerce of sub-dividing and selling land (Wolters Kluwer(b), 2016).

There are a number of other points which must be considered. They are:

1. like the taxpayer in "Casimaty's Case", the Rulee's first attempt to sell land did not involve a coherent subdivision plan. The original lots received no offers in the initial period they were listed.

2. like the taxpayers in "Casimaty's Case", the Rulee did not take on any works on, or expansion of the land beyond what was essential towards securing the support by the local authority town planning scheme. In particular, the zoning of the land remained unchanged and no additional dwellings were constructed on the land.

3. the Rulee was not involved in the marketing and sale of the properties. When the properties were listed, only one real estate agent was used

6. *"Moana Sand Pty Ltd v FC of T 88 ATC 4897"*

Full Federal Court Sheppard, Wilcox and Lee Ji gave the ruling (Revenue Law Journal, 1994):

1. For the year of earnings ending "30 June 1980", both "section 25(1) and 26(a)" applied to include in the tax payer's measurable earnings the amount received by the tax payer in that year ($370,000) less relevant costs as a profit arising from the sale of the land.

2. Although the amount received by the taxpayer was acknowledged as a consequence of a single as well as, in a sense, inaccessible deal, and the relevant profit was earnings in accordance with normal conceptions in accordance with the High Court ruling in "IC of T y The Myer Emporium Ltd 87 ATC 4363" and consequently constituted measurable earnings under "section 25(1)".

3. In this case the tax payer obtained the land towards working and selling the sand on the land and also to subsequently sell it at a profit. The profit arising from the resumption of the land by the Coast Protection Board was still an assessable profit notwithstanding that the taxpayer had not originally intended to dispose of the land in this particular way but rather to sell the land when it became "ripe for subdivision". The sale of the land by the taxpayer was the completion of the taxpayer's final purpose in relation to the land which was to make a profit, as opposed to what brought the plan to an end.

4. The profit was also assessable in the second clause of section 26(a) as it arose as a result of the continuation or carrying out of a benefit-making task or plan. It is not necessary that profit making be the taxpayer's leading point for the second clause of section 26(a) to apply.

7. *"Crow v FC of T 88 ATC 4620"*

"In Crow v FC of T 88 ATC 4620; 19 ATR 1565", it was stated that the acquisition of the different properties and the following sub-division and "sale of parcels of land" included deals which were monotonous and orderly and had the attributes of an ongoing commerce of land improvement. The court was fulfilled that the tax payer purchased and sold the land with the end goal of building a benefit. The tax payer's actions legitimately answered the portrayal of the continuation of the commerce of land improvement and the benefits thereof constitutes salary for the reasons for subsection 25(1) (ITAA 1936) (ato.gov.au(a), 2016).

It was viewed as that there are 2 sorts of benefits or gains which would comprises in that explanation:

a) a benefit or gain emerging from a deal which is itself a component of the customary commerce of a tax payer; or

b) a benefit or gain emerging from a deal which is a conventional episode of the commerce actions of the tax payer, despite the fact that not a deal went into specifically in its primary business action

8. *"McCurry & Anor v FC of T 98 ATC 4487"*

A case where the activities went beyond the mere realization of a capital asset was "McCurry & Anor v FC of T 98 ATC 4487" where 2 brothers obtained land, demolished an old house and constructed 3 townhouses. After being unsuccessful in their bid to sell the units prior to their completion, they lived in two of the units with various family members before successfully selling the units a year and a half later.

Relevant factors in the conclusion that the activities went beyond the mere understanding of a principal resources were that the taxpayers put the properties on the market shortly prior to their completion, took no steps to acquire tenants, and it was likely that they would need to sell the properties at some stage to repay the substantial bank loan. In the words of the Court: "Profit-making by the sale of the units always remained an option for the brothers, notwithstanding that, for some period, when it was convenient to do so, the units were used for another purpose". (Wolters Kluwer(c), 2016)

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