Case Study 1 – Residence and Source

As per the "Australian Taxation Law"

Under the "Residency - the 183 day test", if some are in reality present in Australia for large portion of the salary year, whether constantly or occasionally, then that person might be said to have an useful habitation in Australia unless it could be set up that: "your usual place of abode is out of Australia and you have no aim to take up living residence here" (www.ato.gov.au(a), 2016).

The expression "usual place of abode" must not be given the same or comparable importance as the expression "permanent place of abode". The expressions "usual and abode" must be given their conventional and characteristic implications (www.ato.gov.au(a), 2016).

The "Macquarie Dictionary" gives the accompanying definitions (www.ato.gov.au(a), 2016):

- "usual implies habitual, customary"
- "abode implies a dwelling, habitation"

Therefore the presence in Australia should not be persistent for the reasons for the "183 day test". All the days you are physically in attendance within Australia amid the income year would be calculated.

AS per this rule, Kit is foreign resident in Australia (www.ato.gov.au(b), 2016). Because

"Residency - the resides test"	• though kit has a residential house in Australia and his wife and kids resides here, these reasons are not noteworthy enough • he is not physically in attendance in Australia for a substantial period of the income year, as well as • he during holidays either meets his family in Chile, or in Australia, or on holiday around South America.
"Residency - the domicile test"	• he has not decisively confirmed that his abode of choice is in Australia

	• his activities point to that his absence from Australia is indefinite, • he gets one month off from every three months from work, and his visits to Australia also adds influence to the end drawn.
"Residency - the 183 day test"	• he was in Australia for only three month which is less than 183 days of an income year. He was in Australia for only 90 days approx.

Thus this makes Kit a foreign resident in Australia.

As per "Australian Taxation Law"

In case you are a nonresident in Australian for taxation purposes, you are just taxed on your "Australian-sourced" earnings, so you for the most part don't have to announce earnings you get from out of Australia in your "Australian tax return". "Foreign residents" are taxed in Australia on earnings earned from their Australian ventures.

Tax collection of a "non-resident of Australia" is thusly limited to that salary or those expenses that have a nexus with Australia. Earnings of a "non-resident" that is not got from Australia or Australian sources won't be liable to Australian tax assessment. Earnings inferred by a nonresident comprising of capital gains (other than direct or indirect investments in real property) and organization dividends paid from profits which have been liable to taxation would by and large be exempted from tax. Interest would be taxed at concessional rates or, sometimes, not in any manner. Distributions from managed investment funds would be taxed at concessional rates under late government declarations. People holding a "temporary residence visa" (which could keep going for up to 4 years) are dealt with for tax purposes as non-residents. As a rule, overseas source earnings going to "non-residents" through Australia conduit would likewise be exempted (www.offshoreinvestment.com, 2008).

Therefore, you should lodge a tax return only on the off chance that you have Australian pay, including: "employment wage; rental wage; Australian pensions and annuities, unless exclusion is accessible under Australian tax law or a tax treaty; capital gains on Australian assets". You can overlook any pay from which "non-resident withholding tax" has been deducted, for example, "bank interest and unfranked dividends" (www.ato.gov.au(c), 2016).

But where a contract is made in Australia the income is considered to be sourced from inside Australia for tax purposes. However, there is a combination of some of the following situations which are applied to the contract executed by the nonresident: like the contract for services was signed in Australia, "rental proceeds" from Australian real estate possessed by a non-resident person is considered to have an Australian source and is thus taxable in Australia. But if the resident agent only required out customers and it was the foreign principal who discussed and carried out the contract then the contract were considered to made outside Australia and thus the tax purposes as the source of earnings would be out of Australia (www.offshoreinvestment.com, 2008).

As a limited exemption to the rule, a worker would not pay tax in Australia on his earnings if:

- His company is non-resident in Australia, and
- His company is resident in a nation which has a "double taxation treaty with Australia", and
- The worker stays in Australia for less than "183 days" in a financial year

Therefore, Kit is a foreign resident, and his earning is not earned from Australian ventures. His alary comes in the joint account he has with this wife in "Westpack Bank in Australia". He has signed the contract in Australia, but the company is a non resident in Australia it is UK Company and thus Kit is not liable to pay taxes under ATO. But his possessed real estate property shall be taxed as it was considered to have an Australian source and thus taxable.

This is how Kit's salary and investment income shall be taxed.

Case Study – 2 – Ordinary Income

Californian Copper Syndicate Ltd V Harris (surveyor of Taxes) (1904) 5TC 159

"In California Copper Syndicate Ltd case decision, the High Court developed to decide whether gains delivered from a business are of a wage nature or of a capital nature to a great extent relies on the way of the business and the relationship of the transactions producing the gain to the conduct of the business." (www.advocatekhoj.com, 2016)

Scottish Australian Mining Co Ltd v Fc of T (1905) 81 CLR 188

"This case considered the issue of business wage and regardless of whether the subdivision and sale of land that had been utilized as a mine by a mining organization was assessable as ordinary income or was just a realization of a capital resource. Held that the organization was not occupied with the business of selling land as from 1924 hut - was occupied in realizing a capital asset the benefits from which ought not to be incorporated into its assessable income." (jade.io, 2002)

FC of T v Whitfords Beach Pty Ltd (1982) 150 CLR

"High Court held net profit on sale of land assessable to organization - majority said as ordinary income".

- "Change of shares implied a change in the business of corporation (diversification)."
- "Even without the change in shareholders, the exercises were large to the point that the organization had entered new business of land development" (www.tved.net.au, 2008).

Statham & Anor v FC of T 89 ATC 4070

"Court held not income as exercise were not sufficient to demonstrate any more than realizing an asset in the most excellent way as the taxpayers relied on 3rd parties; negligible works executed

to subdivide the land; no site office or commerce organization; little personal participation in the sale –utilized estate agents & solicitors" (epublications.bond.edu.au, 2016).

Casimaty v FC of T 97 ATC 5135

"For this situation, the taxpayer obtained a farming property from his father and carried on an essential production business for the following 20 years. Nonetheless, because of growing debt and ill health,, the taxpayer along these lines chose to subdivide and sell an extensive part of the property. There were eight subdivisions over a time of 18 years and the taxpayer constructed roads, water and sewerage facilities and fences as part of these subdivisions. The Commissioner contended that the benefits from the sale of the individual blocks were ordinary income and in this way assessable on the premise that the taxpayer was carrying on a business of land subdivision. Be that as it may, , on appeal, the court held that the profits from the subdivision were the negligible realization of a capital asset and the taxpayer was not carrying on a business of land subdivision. The taxpayer had initially gained the land for the purpose of farming and for use as a private home and there was no proof that this reason had changed" (www.iknow.cch.com.au, 2016).

Moana Sand Pty Ltd v FC of T 88 ATC 4897

"The Federal Court held the consequent profit was taxable under both s 25(1 and the second limb of s 26(a), regardless of subdivision and resale not being the dominant reason basic the purchase. This rejection of the requirement for a sole or dominant profit-making object was not, notwithstanding, reasoned. Whilst the Court alluded to the requirement for a dominant purpose of profit-making by resale for the operation of the first limb of s 26(a), no reason for excluding such a requirement from s 25(1) was proffered. The Court apparently simply accepted it not essential". (epublications.bond.edu.au, 2016)

Crow v FC of T 88 ATC 4620

"The Federal Court held that the taxpayer was assessable on the benefit as he was carrying on a business of land development. In spite of the fact that the court recognized that there was some time toward the starting where the land was used as a farm, it was found that there was proof the taxpayer knew at the beginning, due to the size of the debts entered into, that a land would need to be sold. 'For this situation the purchase of the different properties and the resulting subdivision and sale of parcels of land involved transactions which were tedious and deliberate and had the qualities of a continuing business of land development" (www.tved.net.au, 2009).

McCurry & Anor v FC of T 98 ATC 4487

"McCurry and Anor v FC of T 98 ATC 4487 demonstrates that if a taxpayer purchases land with the aim of developing it, however winds up living in the development for a period, they may at present be assessable on the possible benefit when they sell – as the goal was profit-making" (epublications.bond.edu.au, 2016).

References

epublications.bond.edu.au, 2016. *Revenue Journal Law*. [Online] Available at: http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1044&context=rlj [Accessed 19 May 2016].

jade.io, 2002. *Judgement*. [Online] Available at: https://jade.io/article/64663 [Accessed 19 May 2016].

www.advocatekhoj.com, 2016. *Supreme Court Judgments*. [Online] Available at: http://www.advocatekhoj.com/library/judgments/index.php?go=1961/august/30.php [Accessed 19 May 2016].

www.ato.gov.au(a), 2016. *Residency - the 183 day test*. [Online] Available at: https://www.ato.gov.au/Individuals/International-tax-for-individuals/In-detail/Residency/Residency---the-183-day-test/ [Accessed 19 May 2016].

www.ato.gov.au(b), 2016. *Some examples of Australian residents and foreign residents*. [Online] Available at: https://www.ato.gov.au/Individuals/International-tax-for-individuals/In-detail/Residency/Examples-of-residents-and-foreign-residents/ [Accessed 19 May 2016].

www.ato.gov.au(c), 2016. *Foreign income*. [Online] Available at: https://www.ato.gov.au/Individuals/Income-and-deductions/Income-you-must-declare/Foreign-income/ [Accessed 19 May 2016].

www.iknow.cch.com.au, 2016. *CASIMATY v FC of T, Federal Court of Australia, 10 December 1997*. [Online] Available at: http://www.iknow.cch.com.au/#!/document/atagUio539843sl16716249/casimaty-v-fc-of-t-federal-court-of-australia-10-december-1997 [Accessed 19 May 2016].

www.offshoreinvestment.com, 2008. *Australian Taxation of Non-Residents and Foreign Source Income of Residents*. [Online] Available at: http://www.offshoreinvestment.com/media/uploads/Australian%20Taxation%20of%20Non-Residents%20and%20Foreign%20Source%20Income%20of%20Residents.pdf [Accessed 19 May 2016].

www.tved.net.au, 2008. *Tax Basics - Program 29: Taxation & CGT Aspects of Real Property Development*. [Online] Available at: http://www.tved.net.au/index.cfm?SimpleDisplay=PaperDisplay.cfm&PaperDisplay=http://www.tved.net.au/PublicPapers/September_2008,_Tax_Basics,_Tax_Basics___Program_29___Taxation___CGT_Aspects_of_Real_Property_Development.html [Accessed 19 May 2016].

www.tved.net.au, 2009. *Tax Tips & Traps for Property Investors*. [Online] Available at: http://www.tved.net.au/index.cfm?SimpleDisplay=PaperDisplay.cfm&PaperDisplay=http://www.tved.net.au/PublicPapers/October_2009,_Sound_Education_in_Taxation,_Tax_Tips___Traps_for_Property_Investors.html [Accessed 19 May 2016].