

PBR 61598

Edited version of private ruling

Residency - Leaving Australia

What this ruling is about:

Are you a resident of Australia for taxation purposes?

Ruling:

Are you a resident of Australia for taxation purposes?

Yes.

Year(s) of income or period(s) to which this ruling applies:

Year ended 30 June 2004

Year ended 30 June 2005

Commencement date of scheme:

1 July 2003

The scheme that is the subject of the ruling:

You are an Australian citizen and were born in Sydney.

You are single.

You left Australia in 2004 for vacation and to work on yachts.

Your intentions are to stay overseas indefinitely as you are working on charter yachts that travel around the world and that have no set port at which they are based permanently.

Since leaving Australia in 2004 you came back to Australia for the first time a short period in 2005 to see family and friends.

Your permanent address is currently aboard a yacht.

The vessel is owned and operated by a resident of a foreign country.

Your income at present is earned from working aboard the yacht is paid into a bank account in the foreign country.

You are constantly travelling through international waters as part of your position as crew on a charter yacht. You enter a country on a tourist visa. But this generally depends on the rules of the country.

You get a paid break when the vessel is in port as you work 18-20 hours per day when there are guests on the yacht. When in port and not on break you work eight hours a day.

You do not expect to return to Australia for five to six years during which time you will continue to cruise the world on charter yachts.

Your old address for over three years was in Australia.

Your postal address in Australia for any correspondence is your mother's residence.

Your assets in Australia are a car and furniture which are being utilised by your family. You also have some shares which do not bring any dividends and also have a bank account which have minimal funds to keep the account active.

You do not pay tax in any country.

Your social ties with Australia are family and friends. You have no ties in any other country.

You are not an employee of the Commonwealth Government of Australia.

Relevant provisions:

Income Tax Assessment Act 1936 Subsection 6(1).

Explanation: (This does not form part of the notice of private ruling)

The terms resident and resident of Australia, in regard to an individual, are defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). The definition provides four tests to ascertain whether a taxpayer is a resident of Australia for income tax purposes. These tests are:

The resides test

- The domicile test
- The 183 day test
- The Superannuation test

The primary test for deciding the residency status of an individual is whether the individual resides in Australia according to the ordinary meaning of the word resides. If the primary test is satisfied the remaining three tests do not need to be considered as residency for Australian tax purposes has been established.

The resides test

The ordinary meaning of the word 'reside', according to the *Macquarie Dictionary*, 2001, rev. 3rd edition, The Macquarie Library Pty Ltd, NSW, is 'to dwell permanently or for a considerable time; having one's abode for a time', and according to the *Compact Edition of the Oxford English Dictionary* (1987), is 'to dwell permanently, or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'.

As you are residing outside of Australia, you are not considered to be residing in Australia.

2. The domicile test

If a person is considered to have their domicile in Australia they will be considered an Australian resident unless the Commissioner is satisfied they have a permanent place of abode outside of Australia.

In order to show that a new domicile of choice in a country outside Australia has been adopted, **the person must be able prove an intention to make his or her home indefinitely in that country.**

In your case, you are an Australian citizen and you are working on charter yachts that travel around the world and that have no set port at which they are based. You enter a country on a tourist visa. **There is no evidence of an intention to make your home indefinitely in any country.** Therefore, you are considered to have maintained your

Australian domicile.

Permanent place of abode

The expression 'place of abode' refers to a person's residence, where they live with their family and sleep at night. In essence, a person's place of abode is that person's dwelling place or the physical surroundings in which a person lives.

A permanent place of abode does not have to be 'everlasting' or 'forever'. It does not mean an abode in which a person intends to live for the rest of his or her life. An intention to return to Australia in the foreseeable future to live does not prevent the taxpayer in the meantime setting up a permanent place of abode elsewhere.

In your case, you live on a yacht full time. You work in international waters all year round. You enter a country on a tourist visa. Your assets in Australia which are your car and furniture are being utilised by your family. Your social ties with Australia are family and friends and you have no ties in any other country.

Based on these facts, it is therefore considered that you have not established a permanent place of abode outside of Australia. As you have maintained your Australian domicile and you have not satisfied the Commissioner that you have a permanent place of abode outside of Australia, you are considered to be a resident of Australia for tax purposes under this test.

Your residency status

As you are deemed to be a resident of Australia under the domicile test of residency outlined in subsection 6(1) of the ITAA 1936 there is no need to examine the remaining tests. Therefore, you are considered to be an Australian resident for tax purposes for the period you will be in a foreign country.

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The Commissioner is required to apply the law in the way set out in the ruling only in respect of the entity/ies on whose behalf the ruling was sought.

CITATION:

PBR 61598

DATE PUBLISHED:

16 May 2006

 Similar

 References

SIMILAR DOCUMENTS ?

Residency - Leaving Australia
PBR 57204 (24 Jan 2006)

Residency - Leaving Australia
PBR 56493 (29 Nov 2005)

Residency - leaving Australia
PBR 88978 (19 May 2009)

Residency - leaving Australia
PBR 76389 (23 Oct 2007)

Residency, leaving Australia.
PBR 1011784426718 (06 Oct 2011)

Residency - leaving Australia
PBR 74628 (16 Aug 2007)

Residency - leaving Australia
PBR 91568 (02 Sep 2009)

Residency - leaving Australia
PBR 81474 (13 May 2008)

Residency - Leaving Australia
PBR 61929 (23 May 2006)

Residency - leaving Australia
PBR 1012813840170 (22 Jul 2015)
