

# Tax Check<sup>TM</sup>

**Ref:** Tax Check 1054

21<sup>st</sup> September 2015

*Jane Doe*

By email – jane\_doe@hotmail.com

## **RESIDENCY ADVICE**

Following recent discussions via email & through our tax check, I provide my advice below in relation to your residency for tax purposes.

### **Scope of advice**

You have requested that Marine Accounts advise on your residency status for tax purposes and the tax consequences arising from your residency status.

### **Relevant facts**

The relevant facts upon which this advice is based are as follows:

- You were born in Australia and are an Australian citizen;
- You have been working overseas on yachts since 2010
- You do not own property that is rented in Australia
- The yacht you work on spends time in the Mediterranean and the U.S.;
- You live on the yacht and do not have any onshore base;
- You are a member of an Australian government superannuation scheme
- All of your possessions are held on the yacht;

- Your bank account held in Australia contains only a minimal balance and your salary is not banked into it;
- You are not listed on any Australian electoral roll and are not registered for Medicare;
- You return to Australia for approximately 1 month a year

## **Issues**

The issues that arise from your circumstances are whether you are an Australian tax resident for the 2010 income year onwards and whether you should take any action in relation to your tax affairs at the present time.

## **Tax Residency**

If you are an Australian tax resident, you will be assessable on income from all sources, whether Australian or foreign. If you are a non-resident, you will only be assessable on income from Australian sources.

There are four different tests for determining whether you are an Australian resident for tax purposes. You will be an Australian tax resident if you satisfy any one of the tests. The tests are as follows:

- The resides test;
- The domicile test;
- The 183 day test;
- The superannuation test;

The 183 day and superannuation tests will not be relevant to your circumstances, as you are not present in Australia for more than 183 days in a year, nor are you a member of a public sector superannuation scheme.

## **The Resides Test**

The Resides Test will deem you to be a resident if you are a resident according to ordinary concepts. This test will generally be satisfied if you are considered to 'live' in Australia or if you treat Australia as your home, for example, by maintaining a dwelling in Australia. Given that you have been away from

Australia for an extended period and do not have any day-to-day social, familial or business connections with Australia, it is unlikely that you would satisfy this test.

## **The Domicile Test**

The domicile test could give rise to potential residency issues in your case. The test will deem you to be a resident if your domicile is Australia, unless you have established a permanent place of abode overseas. Your country of domicile is acquired from your father and remains until you evidence a clear intention to change it. As you were born and grew up in Australia, your domicile would be Australia. We do not consider that you have evidenced an intention to change your domicile.

Given that you have Australian domicile, you will be deemed to be an Australian tax resident unless it can be shown that you have established a permanent place of abode overseas. A permanent place of abode is generally a residence that is more than temporary or transitory, although there is no fixed number of years that you need to reside at that residence. All of your circumstances need to be considered to determine whether you have established a permanent place of abode overseas.

In your circumstances, we consider that the length of time which you have lived and worked on the yacht has a sufficient degree of permanence. The fact that all of your possessions are on the yacht and you do not have an onshore base supports the position that the yacht is your permanent place of abode.

The issue that may cause some uncertainty is whether a yacht or other ship, contrasted with a fixed dwelling, can constitute a permanent place of abode. There have been legal authorities which support the position that a yacht or a ship can constitute a permanent place of abode in the right circumstances (*Koitaki Para Rubber Estates Limited v FC of T* (1941) 64 CLR 241).

Based on the above factors, we consider that your circumstances would be sufficient to claim that the yacht was your permanent place of abode for the relevant years.

However, the ATO has published a taxation ruling (IT 2650) which notes that 'individuals or a family group who "make do" in temporary accommodation with limited resources and facilities such as in barracks, singles' quarters, aboard ships, oil rigs, or mining towns, will be less likely to be considered to have established a permanent place of abode overseas'. We consider your circumstances to be quite unique and that the ATO's usual position in relation to individuals living on aboard ships should not apply to your situation. Having said this, we recognise that there is an element of uncertainty in relation to the yacht being your permanent place of abode.

You are able to apply to the ATO for a private ruling to determine your residency status. In this case an ATO Officer will assess your application (including documentary evidence) and advise whether you are an Australian tax resident

and the ruling would be binding on both you and the ATO. There is an objection process should you receive an unfavourable ruling and you are able to take the matter to court if desired, but this can be a costly exercise.

The benefit of a private ruling is that provided that you follow the ruling, you cannot be penalised for making an incorrect claim.

### **Conclusion**

Our opinion is that you are not an Australian resident for tax purposes at the present time. However the fact that you are part of a superannuation scheme certainly weakens your position. We would advise that you address this problem and make changes where possible.

Please contact me should have any questions in relation to the above.

Yours faithfully,

Marine Accounts

Patrick Maflin