

Residency

Is Client is a resident of Australia for the year ended 30 June 2012 and ongoing?

Facts

Client has lived in Australia from birth until 2011. From that date Client has resided in Saudi Arabia due to obtaining a contract position in that country as a nurse. The contract was for 12 months with rights of renewal which is to be communicated within 90 days of the contract expiry. In 2012 Client confirmed her intention to complete a further year of service until 2013. Client loses her bonuses if Client breaks the contract at any time. She is entitled to one paid flight to Australia per year. When Client left Australia Client intended to remain in Saudi Arabia for at least 2 years possibly longer if the job was suitable. Client has returned to Australia once during the first year for a holiday to visit family and to do charity work in Papua New Guinea. Client's previous history of living arrangements has included 4 years in Sydney where Client was renting and working. Client sold her vehicle and moved her excess belongings not required overseas, to storage at her parent's home. Client is no longer on the Australian electoral role. Client owns a motel room in Adelaide as an investment. Client has maintained her Medicare card.

Reasonably Arguable Position

It is concluded that Client is not a resident of Australia. Client has left Australia on an indefinite basis. The residency tests prescribe that a person born in Australia is domiciled in Australia and therefore a resident of Australia unless their permanent place of abode is overseas. Permanent does not mean everlasting. Client is living permanently overseas as Client is working in a contract position that is difficult to break, Client is enjoying the position and intends to remain in the position for another 2 years. The general rule of thumb is 2 years and it is intended at this point in time to be away for 2-3 years. Ruling IT 2650 lists the intended and actual length of stay as an important factor to consider, as well as the continuity of the stay. In addition whether the individual intends to return to Australia at a definite point in time and whether a home has been established overseas. Client has lived continuously overseas for 12 months and visited only once and will remain overseas for the next 12 months with a possible trip to Australia again in 12 months. Client's home is now overseas and the majority of Client belongings are overseas. Client does not have a home in Australia as Client left her rental property in Sydney when Client decided to live overseas. Client is not returning to Australia at a definite point in time but it is likely to be at the end of 3 years of contracts.

In terms of durability with Australia factors indicating Client is no longer an Australia residence are

- Client has taken herself off the electoral role
- Client sold her car
- Client terminated her rental property
- Client belongings are in storage
- Client has to pay for her own flights to visit Australia

Conclusion

Taking all of these factors and some others into account it is concluded that on balance Client is not a resident of Australia for the 30 June 2012 year.