

JURISDICTION TO TAX		
<b>Australian resident</b>	6-5 (2) 6-10 (4)	All <b>ordinary income</b> and <b>statutory income</b> of a 'Australian resident' taxpayer derived directly or indirectly from all <b>sources</b> during the income year <b>and any other amounts specifically included</b> .
<b>Foreign residents</b>	6-5 (3) 6-10 (5)	All <b>ordinary income</b> and <b>statutory income</b> of a 'foreign resident' taxpayer derived directly or indirectly from all <b>Australian sources</b> during the income year <b>and any other amounts specifically included</b> .  If you're a foreign resident, you only have to pay income on Australia sources
RESIDENCE		
<b>Australian resident</b>	995-1	a person who is a resident of Australia for the purposes of ITAA 36
<b>Foreign resident</b>	995-1	a person who is not a resident of Australia for the purposes of ITAA 36
<b>RESIDENCY TESTS</b> (satisfy either one of the test) <b>STEP 1 : ____ will be a resident if he satisfies any one of the residency tests in s 6(1) ITAA 36</b> - decided on a year-by-year basis - can be a resident for only part of the year - can look at events after year-end to decide  - Always consider <b>(1) FACTORS WHY THEY ARE RESIDENT (2) FACTORS WHY THEY ARE NOT RESIDENT</b>		
<b>Ordinary resident test</b>  <b>(Bond between TP and AUS)</b>  <i>#Joachim: lack of a physical presence is not determinative and other factors have to be considered.</i>  <b>TR 98/17</b> 6 month= considerable amount of time  <b>Applegate</b> <i>confirms that it is possible to take into account events after year-end (i.e. are you going to stay here longer than the current 3 months?).</i>	<b>Step 1: Under the primary test of residency under the common law, a TP will be a resident if they 'reside' in Australia.</b>  <b>Step 2 :</b> The term resides is not stated in the definitions thus we use dictionary definition per <b>TR 98/17</b> . <b>Resides :</b> Dwell permanently or for a considerable time in a particular place The ATO's guidance in TR98/17 suggest the consideration of the following factors — <b>Physical presence</b> in Australia — actual length of stay — <b>Frequency</b> , regularity and duration of visits <span style="float: right;"><b>#Lysaught</b></span> — <b>Purpose</b> of the visits to Australia and abroad — Maintenance of a <b>place of abode</b> in Australia during absences — <b>Family, business and social ties</b> <span style="float: right;"><b>#Lysaught and Levene</b></span> — <b>Bank account/ Assets</b>  Evaluating all of the factors and circumstances, it would appear ____ does not "reside in Australia for the year ended _____.  <b>Levene :</b> Sold his house - Lived in hotels - Comes back 4/5 months <i>Conclusion : His purposes for going abroad were nothing more than temporary, due to the temporary nature abroad, the TP was a resident.</i>  <b>Lysaught:</b> Sold his house- remained director of co. - comes back one week per month to attend meetings staying in hotel ( <b>frequent visits</b> ) <i>Conclusion : His residence was casual and uncertain, thus still Ordinary resident.</i>  <b>Joachim:</b> went abroad to work - family and maintain home in AUS <i>Conclusion : maintain a home in AUS despite his absence , his intention to treat AUS as a home has not changed.</i>	

<p><b>Domicile test</b> <i>(Bond between TP and the other country)</i></p> <p><b>Place of abode :</b> <i>home or presence outside Australia</i></p> <p><b>Permanent :</b> <i>Not forever (Applegate) has to take meaning from the context.</i></p>	<p>6(1)(a)(i)</p>	<p>Australian resident includes a person whose <b>domicile(PR status)</b> is in Australia <b>unless</b> the Commissioner is satisfied that the <b>TP has a permanent place of abode overseas.</b></p> <p><b>Guidance in IT2650 suggest these factors Factors to be taken into account</b></p> <ul style="list-style-type: none"> <li>— <b>The intended and actual stay</b> in the foreign country</li> <li>— <b>Duration &amp; continuity</b> of TP’s presence in overseas country</li> <li>— Establishment of a <b>home outside Australia</b> (more than temp accom)</li> <li>— Residence or <b>place of abode</b> in Australia</li> <li>— The durability of the association with Australia ( e.g. <b>education of children - maintenance of bank accounts - family ties - notifying government departments</b>) IT 2650 — 2 year rule of thumb :)</li> </ul> <p><b>Applegate confirms that it is possible to take into account events after year-end (i.e. are you going to stay here longer than the current 3 months?).</b></p> <p><b>Looking at the guidance in IT 2650, _____ has not maintained a POA in Australia, has cut most of his Australian ties and established ties in London, suggesting that his London apartment is a Permanent Place of Abode Overseas.</b></p>
		<p><b>Applegate :</b> <i>left AUS to VAN, planned to go there for a substantial number of years — had a home in VAN—but TP became ill and came back to AUS</i> <b>Conclusion :</b> <i>The place in VAN is permanent because permanent means not temporary. As a permanent place of home overseas, the TP was not a resident under Domicile test.</i></p> <p><b>Jenkins:</b> <i>He’s gone for a fixed 3 year period, establishing a home for 3 years in VAN would be considered a permanent home.</i></p>
		<pre> graph TD     Q1[Is their domicile Australia??] --&gt; A1[If the domicile is not Australia, it doesn't apply.]     Q1 --&gt; YES[YES]     YES --&gt; DO[Domicile of origin: You're born here, Your parents are Aus Citizens]     YES --&gt; DC[Domicile of choice: If you migrate to Australia (Permanent Migration) Student visa/Business visa doesn't apply]     DO --&gt; Q2[Do they have a permanent place abode overseas?]     DC --&gt; Q2     Q2 --&gt; A2[YES , Income tax doesn't apply]     Q2 --&gt; A3[NO, income tax applies]   </pre>

<b>183 day test</b>	6(1)(a)(ii)	<p>TP = resident if TP has been here for <b>183 days or more</b> <b>unless</b> the Commissioner is satisfied that :</p> <ul style="list-style-type: none"> <li>- The person's usual <b>place of abode is outside Australia</b> ; and</li> <li>- The person <b>does not intend to take up residence in Australia</b></li> </ul> <p>For a <b>working holiday visa holder</b> maintains a home overseas, she was just travelling in Australia, her usual place of abode was outside Australia and she doesn't intend to be a Australian resident.</p> <ul style="list-style-type: none"> <li>- Not a Australian Tax Resident</li> </ul>
<b>Superannuation test</b>	6(1)(a)(iii)	A person who is a member of superannuation funds(Commonwealth funds), they are automatically a Australian Resident for Tax

<b>COMPANIES RESIDENCY TEST</b>		
<b>Place of incorporation test</b>		Company that is <b>incorporated in Australia</b> will be a resident of Australia for tax purposes
<b>Place of central management &amp; control test</b>		<p>This test is <b>relevant for companies not incorporated in Australia</b></p> <p>Company must be</p> <ol style="list-style-type: none"> <li>(1) <b>carrying on business</b> in Australia</li> <li>(2) have its <b>central mgmt and control</b> in Australia</li> </ol> <p>to be an Australian resident for tax purposes</p> <p>Question of fact : <i>Malayan Shipping argued as authority for the principle that if a company has its central management and control in Australia, it can be inferred that it is carrying on a business in AUS on the basis that the acts of control and management equate to carrying a business. It can be argued that this is not necessarily the case and Malayan Shipping should be limited to its facts.</i></p> <p><b>Location of activities : Operational may differ from managerial (i.e. Intel)</b>  <i>TR 2004/15 takes on operational actives , this that may be passive in dealings/ managerial.</i></p> <p><i>Location of central mgmt and control determined by facts and circumstances of the case : location of the actual decision making.</i></p>
<b>Voting control test</b>		<p>Company is</p> <ol style="list-style-type: none"> <li>(1) <b>carrying on business</b> in Australia and</li> <li>(2) its <b>voting power is controlled by Australian Shareholders</b> <ul style="list-style-type: none"> <li>- Majority of votes in a general meeting : <i>Kolotex</i></li> <li>- Limited to registered S/H (not beneficial owners) : <i>Pat corp</i></li> </ul> </li> </ol>

SOURCE OF INCOME		
Nathan (1918) :		“ What a practical man would regard as a real source of income” and the ascertainment of the real source of income is a “practical, hard matter of fact.”
General Source Rules		
<b>Income from Business</b>		<p><b>Sale of inventory</b> Based on where the business activities are carried out i.e. Kirk (1900) ; Murray (1929) Can be apportioned over different jurisdictions (countries) e.g. transfer pricing : how much does each country get?</p> <p><b>Income from sale of land</b> : source is where the land is located Income overseas: <i>Rhodesia Metals</i> Income Australia: <i>Thorpe Nominees</i></p>
<b>Income from services</b>		Place of the performance of service/contract is made : Cliffs International (1985)
<b>Income from personal service</b>		<p>Source is where(which country) the services are performed Source of payment NZ: <i>French</i> (service performed in NZ) Source of payment AUS : <i>Efstathakis</i> (service performed in AUS) Exception : <i>Mitchum</i> — because his service can be performed in any location, the placed of contract or place of payment may be relevant.</p>
<b>Income from property</b>	s44(1936)	<p><b>Interest income</b> : where loan contract made &amp; where funds advanced <i>Spotless services (1993) ; Phillips Gloeilampenfabrieken(1955)</i></p> <p><b>Dividends</b> : source of profits from which the dividend is paid - If dividend flows through a chain of companies, source is the previous company in the chain</p> <p><i>Esquire Nominees</i> Q: Where did the co. make the profits which it used to pay div? If AU makes profit in SG, then it uses profits made in SG to pay div, then the income is foreign sourced</p> <p><b>Royalties</b> : Location of property but note s6C ITAA36</p>
<b>Sale of property</b>		<p><b>Capital gains tax</b> : Australian sourced if Taxable Australian Property - Sale of share/ property - Taxable Australian Property ( s 855-15)</p> <p>If you sell property in AU, have to pay CGT CGT is only Australian sourced if its <b>taxable Australian Property</b> Australian land and buildings or shares in co. where the main assets in the Australian companies are land and buildings.</p>

DOUBLE TAXATION		
<b>Concurrent exercise of taxing rights</b>		Australian resident <b>taxed on worldwide income</b> but foreign sourced income likely to be <b>also taxed in overseas jurisdiction</b> Foreign residents taxed in Australia on Australian sourced income but jurisdiction where they are resident may tax worldwide income.
<b>Dual residents</b>		Ordinary resident of another country but in Australia for more than 183 days
<b>Income sourced in more than 1 country</b>		Contract made in one country but activities carried out in another
RELIEF FROM DOUBLE TAXATION		
<b>Tax treaties</b>		Bilateral agreements Allocate taxing rights between countries Includes tiebreaker provisions for residence & source
<b>Exemption Relief</b>	s 23AG	<b>Foreign source employment income</b> - that individual has been engaged in foreign service for at least 91 days (continuously) <b>and</b> - the income is not exempt from tax in the foreign jurisdiction
	S23AG	<b>Since 1 July 2009, limited to certain types of foreign services</b> (s 23AG(1AA) e.g. doing charitable activities)
	S 23AH S 786-5	<b>Foreign branch income and capital gains</b> <b>Non portfolio 'participation interests'</b> e.g. dividends in co.'s that you own more than 10%
<b>Foreign Income Tax Offset (FITO)</b>		-Provides taxpayers with a <b>'tax offset' for any foreign income tax paid on amounts that are also assessable in Australia</b>  - Maximum offset available = \$1000 OR - Difference between <b>Australian tax payable on taxable income</b> and <b>Australian tax payable on taxable income excluding any foreign source income and related deductions</b>  e.g. you earn \$1000 in SG, tax is 20% you pay 200 That 1000 is taxable in AUS, tax is 30% , you have to pay 300 You ask for an offset, you pay only 100 to Australia
TAXATION OF FOREIGN RESIDENTS		
<b>Rate of tax</b>		Foreign residents are generally subject to the progressive rate structure, but are denied the tax-free threshold
<b>Collection of tax</b>		No obligation on a country to collect tax on behalf of another country, which leads to difficulties where the income has left the jurisdiction - <b>Active income</b> (e.g. business profits & services income) -> assessed foreign resident - <b>Passive income</b> (e.g. interest, dividends & royalties) -> taxed through withholding tax system No Medicare Levy, but 2% temporary budget repair levy for taxable income above 180,000 No CGT discount