

WEEK 1: OVERVIEW

Income Tax Equations

Income Tax = Taxable Income x Tax Rate – Tax Offsets

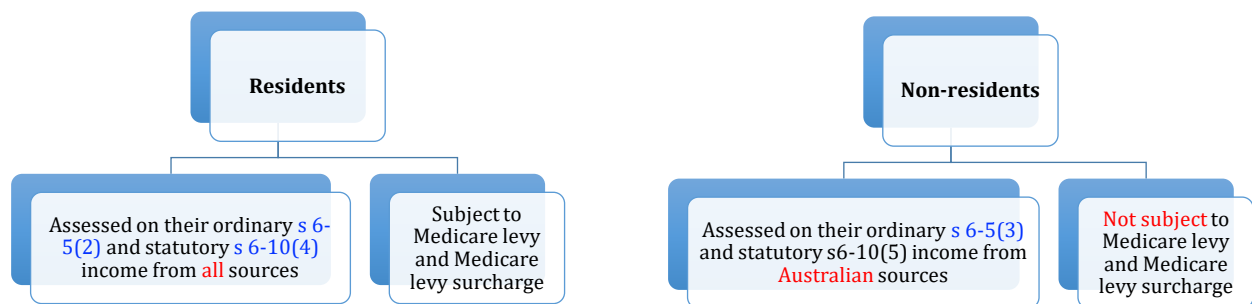
Taxable Income = Assessable Income – Deductions

Assessable Income = Ordinary Income + Statutory Income

Medicare levy: Levied at **2% of taxable income**, in addition to income tax payable

Medicare levy surcharge: Paid by certain taxpayers **without** private health cover.

WEEK 2: RESIDENCE & SOURCE



4 tests for residents – Individual

- [1] Resides test – if satisfied, then don't need to consider anything further
- [2] Domicile test – only applies to residents ➔ non-resident
- [3] 183-day test – only applies to non-resident ➔ resident
- [4] Superannuation test

Need to **satisfy only 1** to be a resident. If don't satisfy any ➔ foreign resident. Decided on **year-to-year basis**. Can be **resident** for only **part** of the **year**. Can **look at events after year-end** to decide whether taxpayer is resident: Applegate (1979)

Resides Test

Taxpayer (TP) is a resident if he/she is a person “who **resides** in Australia”: **s 6(1) ITAA 1036**

Question of fact – don't reconcile cases because different people decide differently based on facts.

Levene (1929): to “reside is to **dwell permanently** or for a **considerable period of time** in a particular place. Court held that 4 or 5 months in a year qualifies as a considerable period of time. TP “resided” in the UK until leased Monte Carlo flat.

Joachim (2002): TP and family migrated to Australia but TP worked for 316 days of the year outside Australia. Held to be resident, because TP had ties to Australia (**maintained a home** for family in Australia) and he showed an intention to call Australia home.

Lysaght (1928): TP “resided” in UK because “in the **ordinary course of life**” he returned to the UK for one week every month throughout the tax year (**frequency & regularity** of visits, **ties** to UK ➔ resident).

Some of the main factors:

- Physical presence in Australia
- Frequency, regularity and duration of visits
- Maintenance of a home in Australia during absences
- Family and business ties in a particular country; (Court puts lots of emphasis on family ties)
- Present habits and way of life
- Maintenance of bank accounts
- Acquire a 'spouse' under s995-1 ITAA97

TR 98/7 suggests a number of factors to consider:

- **Physical presence** in Australia (if yes ➡ **more likely** resident). *Covered by 183 day test
- **Frequency, regularity** and **duration** of visits (if more regular, frequent &/or longer duration ➡ **more likely** resident)
- **Purpose** of the **visits** to Australia and abroad (if family ➡ **more likely** resident, if work ➡ not determinative)
- Maintenance of a **place of abode in Australia** during absences (if yes ➡ **more likely** resident): Joachim (2002)
 - *NOTE: if furnish a house/apartment in Australia to TP's tastes ➡ **more likely place of abode**
- Family, business and social ties (if to Australia ➡ **more likely** resident)
 - *NOTE: this can include maintenance of assets in Australia (e.g. bank account)
- **Nationality** (not determinative, but if Australian citizen ➡ **more likely** resident)

A person whose intended visit to Australia is less than 6 months **would not** be regarded as "residing" in Australia during that visit.

Domicile Test

Australian resident includes a person whose **domicile** is in Australia **unless** the Commissioner is satisfied the TP has a '**permanent place of abode overseas**': s 6(1)(a)(i)

2 types of domicile:

[1] Domicile of origin: born in Australia, Australian citizen

[2] Domicile of choice: migrate to Australia, permanent resident or naturalised citizen

*NOTE: use test for Australian **residents** who are **leaving** for **another country**. Test is irrelevant if domicile is not Australia.

Permanent place of abode:

Applegate (1979): TP went to Vanuatu for 1.5 years, then returned to Sydney. TP had a '**permanent**' home/presence/place of abode outside of Australia and is not a resident. **Permanent** is **not forever**, takes its mean from **context** – may be transitory/temporary.

Jenkins (1982): A **fixed 3 year period overseas** with a house there is enough to have a permanent place of abode outside of Australia and for TP to not be a resident.

IT 2650 - factors to consider when determining "permanent" place of abode:

- **Intended** and **actual PURPOSE** of **stay** in foreign country
- **Duration** & **continuity** of TP's **presence** in overseas country. > 2 years is enough for TP to not be a resident
- **Establishment** of a **home outside** Australia (not just temporary accommodation)
 - *NOTE: doesn't matter if this home is provided by the employer
- **Residence** or **place of abode** Australia
- **Duration** of **association** with Australia (maintenance of bank accounts, education of children, family ties, notifying government departments of intention to leave Australia)