IT 2268 - Income Tax : Residency Status Of Overseas Students Studying In Australia

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TAXATION RULING NO. IT 2268

INCOME TAX : RESIDENCY STATUS OF OVERSEAS STUDENTS STUDYING IN AUSTRALIA

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1075364	DEFINITION RESIDENT RESIDENCY OVERSEAS STUDENTS	6(1)

PREAMBLE The purpose of this Ruling is to set out guidelines for determining whether or not overseas students studying in Australia are residents of Australia for income tax purposes.

2. Representations have been received from overseas student organisations stating that students are being treated as non-residents of Australia with the consequence that they are denied the benefit of the tax-free threshold that applies to residents, i.e. they are being required to pay tax on each $1 of their taxable income.

3. The conditions under which overseas students are permitted to study in Australia provide that they work only part-time during their courses and full-time during vacation. The remuneration they receive during employment is fairly low and the inability to take advantage of the tax-free threshold further reduces the amount of income available to meet ordinary living expenses.

4. From the information supplied it would seem that secondary and tertiary students have an average length of stay of five years. Some stays are as short as three months while others, involving postgraduate and higher degrees, could extend to as much as nine years. In other cases students were fostered by an international organisation which arranges an exchange programme for young farmers in eighteen different countries. The students come to Australia for periods of between six to eight months after which time they return to their home countries.

RULING 5. Sub-section 6(1) of the Income Tax Assessment Act defines a resident primarily to be a person who resides in Australia. Sub-paragraph (a)(ii) of the definition extends the concept of a resident of Australia to include a person who has been in Australia, continuously or intermittently, during more than one-half of a year of income unless the Commissioner is satisfied that the person's usual place of abode is outside

Australia and that he or she does not intend to take up residence in Australia.

6. It is not necessary for the purposes of this Ruling to analyse decisions of Courts and Taxation Boards of Review on the meaning of the word "resides". The authorities say that it is a question of fact to be determined in the circumstances of each case. In the Shorter Oxford English Dictionary the word "reside" is defined to mean "to dwell permanently, or for a considerable time, to have one's settled or usual abode, to live in or at a particular place".

7. By any ordinary standards a person who comes to Australia for an extended period to carry out a course of study would reside in Australia during the period - there would be a necessary recognition or commitment by the person that he or she is going to live in Australia for the period of the study.

8. Sub-paragraph (a)(ii) of the definition of resident was introduced into the income tax law in 1930. The sub-paragraph, as it then existed, was not intended to classify persons as non-residents. On the contrary it was intended to characterise certain persons as residents of Australia. It was inserted into the income tax law to overcome difficulties which occasionally arose in establishing that a person was resident in any particular country. Six months presence in Australia was regarded to be sufficient to make a person a resident of Australia for income tax purposes. However, to obviate the possibility of treating as residents of Australia persons who were purely visitors to Australia, the sub-paragraph enables the Commissioner not to treat as residents of Australia persons who have been in Australia for six months during a year of income where he is satisfied that their usual place of abode is outside Australia and that they do not intend to take up residence in Australia.

9. The enabling power in sub-paragraph (a)(ii) is not considered to generally apply in these cases for the reason that, when a person comes to Australia for an extended time to carry out a course of study, it is reasonable to say that his or her usual place of abode is in Australia. Situations may arise where the Commissioner will be satisfied that a person's usual place of abode is outside Australia but, in the ordinary course of events, if a person resides in Australia it would be expected that, during the period the person resided in Australia, his or her usual place of abode would also be in Australia.

10. So that there may be as much consistency of approach in this area as is possible it has been decided that, as a general rule, an overseas student who comes to Australia to pursue a course of study extending beyond six months should be treated as a resident of Australia. It will always be open to any overseas student who is in Australia in excess of six months to establish that his or her usual place of abode is outside Australia and that he or she should not be treated as a resident of Australia. Conversely, an overseas student who is in Australia for less than six months may be able to establish that

he or she was a resident of Australia during the relevant period. Any cases which present unusual aspects may be referred to this Office for consideration.

11. In determining income tax liability for overseas students who are regarded as residents of Australia regard must be had to provisions relating to students in double taxation agreements. In the Australia/Singapore agreement, for example, Article 15 provides that a Singapore student or trainee in Australia for the purpose of education or training is not liable to Australian tax on payments which he or she receives from outside Australia for the purpose of maintenance, education or training.

COMMISSIONER OF TAXATION
14 March 1986

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