Testbank

to accompany

Australian Taxation

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by
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Chapter 2: Residency and source of income

Multiple choice

1. Which one of the following statements is not true in regard to non-residents?

a. For all income levels non-residents pay a greater proportion of their income as tax than residents
*b. Only non-residents are entitled to the tax-free threshold
c. Non-residents do not pay the Medicare levy
d. Non-residents are not entitled to tax offsets

General Feedback:
Learning objective: 2.1 explain the relevance of taxpayer residency for tax purposes
Feedback: Correct answer: B. Only residents are entitled to the tax-free threshold and so the statement that only non-residents are entitled to the tax-free threshold is incorrect.

2. Which of the following is not a factor under the ordinary concepts test for determining the residency of an individual?

a. The history of residence
b. The purpose of visits
*c. The time of the year that the person arrives in Australia
d. The frequency, regularity and duration of the taxpayer's visits to Australia

General Feedback:
Learning objective: 2.2 apply the tests for determining residency of individuals
Feedback: Correct answer: C. It is not relevant the time of the year that the person visits Australia. The other factors listed are all relevant factors.

3. Which of the following is not a factor in determining whether the company has its central management and control in Australia?

*a. Where monies are invested
b. where the governing body of the company meets
c. minutes or other documents recording where high-level decisions are made
d. where the company's register of shareholders is kept

General Feedback:
Learning objective: 2.3 apply the tests for determining residency of business entities
Feedback: Correct answer: A. Where company monies are invested is not a factor used in determining where the company's central management and control are located.

4. Which of the following is true in relation the meaning of the term 'source' when used in the context of the source of income derived by a taxpayer?

a. The issue of source is not relevant to a non-resident taxpayer
b. Determining the actual source of a given income is a legal concept
c. Determining the actual source of a given income is always a question of law
*d. Determining the actual source of a given income is a practical hard matter of fact

General Feedback:
Learning objective: 2.4 explain the relevance of the source of income to determining whether it is subject to Australian tax
Feedback: Correct answer: D. The quote in the text is from the case of *Nathan v Federal Commissioner of Taxation* and the quote makes it clear that the question of the source of any given income is a practical hard matter of fact.

5. In the *FCT v* Mitchum case the source of the actor Robert Mitchum's acting income from appearing in a film shot in Australia was determined to be?

a. Australia, as that is where the acting services were performed
*b. Switzerland, as that is where the contract was made
c. The United States, as that is where the actor lived
d. France, as that is where the actor liked to visit most often

General Feedback:
Learning objective: 2.5 apply the rules for determining the source of various types of income
Feedback: Correct answer: B. In the case of an actor with unique and special skills kit is the place where those skills are obtained (not performed) that determines the source of that actor's income from appearing in a movie. As the contract to obtain his services was signed in Switzerland that is where the source of income was located for appearing in the movie.

6. Which of the following is <u>not true</u> in relation to the operation of the withholding tax rules?

a. The maximum a taxpayer can claim as a foreign tax credit offset is the Australian tax payable on that income
b. Include both the income and the withholding taxpaid in their assessable income
*c. Claim the greater of the Australian tax payable or the foreign tax paid on the foreign income
d. Claim the withholding tax paid as a foreign tax credit offset

General Feedback:
Learning objective: 2.6 describe the basic features and operation of double tax treaties
Feedback: Correct answer: C. An Australian resident taxpayer cannot claim the greater of the Australian tax payable or the foreign tax paid on the foreign income. The maximum a taxpayer can claim as a foreign tax credit offset is the Australian tax payable on that income.

7. The new Australian anti-avoidance rules in regard to multinational corporations do not apply to which one of the following options?

a. Significant global entities
*b. An entity or consolidated group of entities with an annual global income of less than $1 billion
c. An entity or consolidated group of entities with an annual global income of $1 billion or more
d. A foreign entity that has an Australian permanent establishment

General Feedback:
Learning objective: 2.7 describe how the challenges of taxing multinational corporations are addressed in the tax law
Feedback: Correct answer: B. The new rules only apply to significant global entities which are defined as entities that are part of a consolidated group of entities with an annual global income of $1 billion or more.

8. Which one of the following statements is not true in respect to overseas businesses and their Australian GST obligations?

a. Overseas businesses must levy and collect GST where they sell more than$75?000Australian dollars) of goods and services to Australian consumers
b. Overseas businesses must register for GST, charge GST on sales of imported services and digital products to Australian consumers, and pay the GST collected to the Australian Taxation Office
c. Overseas suppliers must work out if their customer is an Australian consumer by using information about the purchaser from their business systems
*d. Overseas suppliers have a choice whether to register for GST in Australia and this choice is not affected by the level of sales to Australian consumers

General Feedback:
Learning objective: 2.8 explain the implications of residency for the GST.
Feedback: Correct answer: D. Overseas suppliers do not have a choice about whether to register for Australian GST and must do so if they sell more than A$75,000 of goods and services to Australian consumers.

9. Thomas is a New Zealand resident who provided some accounting services to an Australian employer for 12 weeks in September 2019. For the rest of 2019/20 Thomas worked for various New Zealand employers. Does Thomas have any Australian tax liability?

*a. Yes for the 12 weeks of employment services provided in Australia as the source of that employment income is Australia
b. No, as he is a New Zealand resident and so Australia has no taxing rights against him
c. Yes, on income derived for the whole of 2019/20 from both Australian and New Zealand sources

d. No, as the source of his Australian employment income was New Zealand as that is where he signed the contract to undertake that work

General Feedback:
Learning objective: 2.5 apply the rules for determining the source of various types of income
Feedback: Correct answer: A. The source of employment services and salary and wage income is the place where the services are performed and for 12 weeks in 2019/20 there were services performed in Australia.

10. Anh is a non-resident of Australia but who sold some real estate in Australia in March 2020. Does Anh have any tax obligations in Australia in correction with the sale of this Australian real estate property?

a. Yes. As a non-resident he is subject to Australian tax on his worldwide income
b. No, as a non-resident he is not subject to any tax in Australia on any income from any source
*c. Yes. As the real estate property was located in Australia, the source of any gains or losses on that real estate property are Australia and so he is likely to have some Australian tax obligations in respect to the sale of that property
d. No, as the source of the sale of the Australian real estate property is not Australia as the source of the income from the sale of that property is where he signs the contract and if this was overseas, then he has no tax obligations in Australia

General Feedback:
Learning objective: 2.5 apply the rules for determining the source of various types of income
Feedback: Correct answer: C. The source of the sale of property is where the property is located and as the property sold by Anh was located in Australia, the sale of that property has an Australian source and so he would have Australian tax obligatgions.

11. Adelaide Software pays royalties to a US firm for the use of the software products. The contract to arrange these royalty payments was signed in Canada. According to tax law what is the source of these royalty payments?

a. The USA
*b. Australia
c. Canada
d. Some other place

General Feedback:
Learning objective: 2.5 apply the rules for determining the source of various types of income
Feedback: Correct answer: B. Where royalties are paid by an Australian firm to an overseas firm, the royalties are deemed to have an Australian source - see section 6C of the ITAA36.

12. Richard is a non-resident of Australia and he owns shares in EZY Enterprises, a company incorporated in the Philippines. EZY Enterprises carries out operations in the Philippines and other countries with 10% of its profits sourced from Australia. It is a non-resident of

Australia. If EZY Enterprises pays a $1,000 dividend in the 2020 year and if 10% of the profits, out of which that dividend was paid, were sourced in Australia, would Richard have any tax obligations in Australia?

a. No as he is anon-resident and the company is also a non-resident
b. No as 90% of the dividend relates to profits from sources outside of Australia
c. Yes on the whole dividend amount of $1,000
*d. Yes but only on 10% of the dividend amount ($100)

General Feedback:
Learning objective: 2.5 apply the rules for determining the source of various types of income
Feedback: Correct answer: D. Only 10% of the dividend relates to profits from Australian sources and so it is only this amount of the dividend ($100) that is subject to Australian tax.

13. What is the effect of Australia's Double Tax Agreements (DTAs) with other countries, such as the United States?

*a. The DTAs contain tie-breaker rules to determine the country of residency and so the country that has the taxing rights to certain income. The provisions of DTAs override domestic law to the extent of any inconsistency.
b. The DTAs allow two countries to tax the same income without any corresponding foreign tax credit or offset
c. Where the terms of a DTA conflict with provisions of Australia's domestic tax law, the provisions of Australia's domestic law prevail
d. The DTAs promote the double taxation of income

General Feedback:
Learning objective: 2.6 describe the basic features and operation of double tax treaties
Feedback: Correct answer: A. The DTAs contain tie-breaker rules to determine the country of residency and so the country that has the taxing rights to certain income.

14. Moogle Inc is incorporated in the USA and has a permanent establishment in Australia. The global income of Moogle Inc is $800 million. Do Australia's new multinational anti-avoidance rules apply to Moogle Inc?

a. Yes as Moogle Inc is a multinational firm with a permanent establishment in Australia
b. Yes as Moogle Inc is a significant global entity
*c. No as Moogle Inc is not regarded as a significant global entity as its global income is below $1 billion
d. No as Moogle Inc is incorporated in the USA

General Feedback:
Learning objective: 2.7 describe how the challenges of taxing multinational corporations are addressed in the tax law
Feedback: Correct answer:

15. Arazon Plc is incorporated in the UK and sells various products online to consumers all around the world with some located in Australia. If, in the last financial year, Arazon Plc made sales to Australian consumers totalling $70,000, does Arazon Plc need to register for GST in Australia?

a. No as Arazon Plc is incorporated in the UK and has no place of business in Australia
*b. Not at this time as its total sales to Australian consumers are below $75,000 per annum
c. Yes as there are some sales made in Australia to Australian consumers
d. Yes as a foreign business must register for Australian GST if its annual sales exceed $50,000

General Feedback:
Learning objective: 2.8 explain the implications of residency for the GST.
Feedback: Correct answer: B. The relevant threshold for a foreign business to register for Australian GST is $75,000 and based on last year's sales results this sales figure has not as yet been met and so currently Arazon Plc does not have to register for the Australian GST and so does not need to charge GST on its sales to Australian consumers.

16. Des is an Australian engineer was seconded to his employer's UK office for a period of 2 years or "such longer period as mutually agreed upon". After arriving in London, Des and his wife bought an apartment and lived there for two years whilst for the same time renting out his Australian home. After two years, Des did not accept the offer to stay on with the firm after his initial period of employment largely due to the fact that his wife wished to return to Australia. Des continued to stay in the UK after this two year period and has not as yet returned to Australia. Is Des a resident of Australia or not?

a. Yes, Des continues to have an Australian domicile and has not as yet acquired a permanent place of abode outside of Australia
b. Yes, as he is still regarded as 'ordinarily' residing in Australia
c. No, as Des has not been in Australia for at least 183 days in the last income year
*d. No, as Des has acquired a permanent place of abode outside of Australia

General Feedback:
Learning objective: 2.2 apply the tests for determining residency of individuals
Feedback: Correct answer: D. The facts indicate that Des has acquired a permanent place of abode outside Australia. Whilst he has not been in Australia for at least 183 days in the last financial year this would not be the reason why he is not a resident of Australia. The facts come from example 36 in IT 2650.

17. Michael Desmond is a South African diamond corporation executive. He takes the opportunity to participate in an intensive eight month advanced management development program at an Australian university. Michael's wife and children do not accompany him to Australia and while here he stays in basic accommodation on campus. He spends his time studying or writing reports for his company. He is in Australia solely to do the course and at the end of eight months he returns home. Is Michael a resident of Australia?

*a. Michael would be a non-resident of Australia as he does not 'ordinarily' reside in Australia

b. Michael would be a non-resident of Australia as he does not have an Australian domicile
c. Michael would be a resident of Australia as he passes the 183 day test
d. Michael would be a resident of Australia as he does 'ordinarily' reside in Australia

General Feedback:
Learning objective: 2.2 apply the tests for determining residency of individuals
Feedback: Correct answer: A. Michael would be a non-resident as has no intention to remain in Australia and so would not be seen to have 'ordinarily' resided in Australia. The 183 day test is not satisfied as even though he has been in Australia for more than 183 days in the particular income year, his usual place of abode is still outside of Australia and he has no intention to take up Australian residency. The facts come from example 2 in Tax Ruling TR 98/17.

18. Ian Ruven is an executive of a US corporation specialising in management consultancy and he comes to Australia to set up a branch of his company. Although the length of his stay is not certain, he leases a residence in Sydney for twelve months. His wife accompanies him on the trip but his teenage son and daughter, having just commenced college, remain in the family home. Apart from the absence of his children, Ian's daily behaviour is relatively similar to his behaviour before entering Australia. Ian earns interest from substantial investments he has in the United States. Satisfied with the progress of the branch, Ian and his wife return to the United States eleven months after arriving in Australia. Are Ian and his wife residents of Australia for the period of time he is in Australia?

a. Yes, as Ian and his wife would pass the 183 day test
*b. Yes, as Ian and his wife would satisfy the 'ordinarily' residing in Australia test
c. No, as Ian has no intention to 'reside' in Australia
d. No, as Ian does not have an Australian domicile

General Feedback:
Learning objective: 2.2 apply the tests for determining residency of individuals
Feedback: Correct answer: B. Yes. Ian is present in Australia for eleven months. His purpose for being in Australia, accompanied by his wife, leasing the property and establishing business ties, are all factors indicating Ian is residing in Australia. The facts come from example 8 in Tax Ruling TR 98/17. Whilst the first part of the 183 day test would be passed, Ian has maintained his usual place of abode outside of Australia and so the 183 day test is not passed.

19. Rovers Co is a company that was incorporated in the USA but has its head office located in Singapore. The company does carry on business in Australia but has no offices here. The directors of the company regularly (six or more times a year) meet in hired offices in Brisbane. At these director meetings high-level decisions are made that set the company's general policies, and determine the direction of its operations and the type of transactions it will enter. The directors also meet in other locations but the majority of the director meetings each year are held in Australia. Is Rovers Co an Australian resident company?

a. No, as the company was incorporated in the USA
b. No, as the company has its head office in Singapore
*c. Yes as it has its central management and control located in Australia

d. Yes as it carries on business in Australia and this is the only factor required to establish residency for a company

General Feedback:
Learning objective: 2.3 apply the tests for determining residency of business entities
Feedback: Correct answer: C. Rovers Co is an Australian resident company as it does carry on business in Australia and it does have its central management and control in Australia given that the majority of its high-level directors' meetings are held in Australian each year. Rovers Co is also likely to be a resident of other countries such as the USA and Singapore.

20. Dexta Ltd is a company that was incorporated in Mexico and which has its head office in Canada. It carries on business in Australia and in a number of other countries. 55% of the shareholders of the company reside in Australia with the remaining 45% of shareholders spread across a number of countries. Is Dexta Ltd regarded as an Australian resident company?

a. No as although the company carries on business in Australia, the company does not have its central management and control in Australia
b. No, as although the company carries on business in Australia as the company does not have its voting power controlled by Australian resident shareholders
c. Yes as the company carries on business in Australia and has its central management and control in Australia
*d. Yes as the company carries on business in Australia and has its voting power controlled by Australian resident shareholders

General Feedback:
Learning objective: 2.3 apply the tests for determining residency of business entities
Feedback: Correct answer: D. The voting power test requires that Australian shareholders will have control of the voting power of a company if the Australian shareholders have ownership of more than 50 per cent of the shares in the company.

Short Response

21. Imran is an Australian resident. During the 2019-20 financial year he earned$60?000assessable income from Australian sources and$50?000income from investments in the United Kingdom. He has already paid$17?000UK tax on the$50?000income. The same investments were only liable to$12?000tax if taxed in Australia. What is his Australian income tax liability?

Correct Answer:
Imran's assessable income and taxable income (if no deductions) will be $110 000. His tax payable (before any offsets) will be $28 197. His foreign tax offset is $12 000 (this is the maximum he can claim equal to the Australian tax that would have been payable on his UK investment income. Therefore, his tax payable would be $16 197.

22. Sanjit is an Australian resident, but only resided in Australia for 5 months of the 2019-20 financial year. What will Sanjit's tax-free threshold be for the year ended 20 June 2020?

Correct Answer:
$13,464($4736 × 5/12) =$15, 437. Sanjit will pay no tax on the first$15,437his income in the 2019/20 tax year.

23. Reggie is a bank officer who was posted from Australia to Fiji for 2 years only and never intended to stay any longer. During his overseas posting he maintained bank accounts in Australia and he rented out his Australian home. He was accompanied by his wife and children and they stayed in a rental property supplied by the bank. Reggie and his family returned to Australia after he had spent 2 years exactly working in Fiji. Does Reggie remain an Australian resident for the period of his absence from Australia?

Correct Answer:
Yes. Reggie's absence is temporary and fixed and he has no intention to remain away from Australia than the 2 years and then he returns exactly 2 years later. His relationship with Fiji can be described as "lacking an enduring relationship" and so he cannot be said to have established a permanent place of abode outside of Australia. Having maintained a property and bank account in Australia he remains an Australian resident for the duration of his absence from Australia.

24. Jan Zielinski is single and is a lecturer in economics at the University of Warsaw. He comes to Australia to work on a research project in August 2019. He is contracted to do the research in Australia for seven months. Jan finds a small furnished unit near his work and takes lease of the unit for seven months. He also buys an old car. Jan intends to return to Warsaw at the end of the project that actually lasts for nine months. He negotiates an extra two months on the lease of his unit. Apart from depositing his salary into an Australian bank account to cover normal living expenses, Jan retains all assets and investments in Poland, his country of domicile. Jan returns to Poland in May 2020. Is Jan a resident of Australia in the 2020 tax year?

Correct Answer:
Yes. Jan's behaviour over the nine months in Australia is consistent with residing here. He is regarded as a resident from his arrival. Facts have been taken from example 3 in Tax Ruling TR 98/17.

25. Rhonda is a non-resident of Australia but a resident of the United States. During the 2020 tax year Rhonda received some dividend income from a US Company paid from the US. Rhonda also received some bank interest paid into her Australian bank account. Which countries have any taxing rights to the dividend and interest income Rhonda has received?

Correct Answer:
Australia and the United States have a Double Tax Agreement which provides that the country of the taxpayer's residence has the taxing right to interest and dividends unless they are paid in the other country. Therefore, in the case of the dividend income, since it was paid by a US company and as Rhonda is resident in the US, then only the US has the taxing right on that dividend income. In the case of the interest, since it was paid into an Australian bank account, then Australia does have the taxing right on that interest. Interest paid to a non-resident from an Australian source will be subject to withholding tax.

