Revenue Law Journal

Volume 5 | Issue 1 Article 2

January 1995

In Need of Reform? A Trans-Tasman Perspective on the Definition of "Residence"

Clinton R. Alley
University of Waikato

Duncan Bentley
Bond University, Duncan_Bentley@bond.edu.au

In Need of Reform? A Trans-Tasman Perspective on the Definition of "Residence"

Abstract
The definition of "residence" for individuals differs between Australia and New Zealand. This article examines the advantages and disadvantages of the New Zealand definition and puts forward proposals for the revision of the Australian definition in the context of the Tax Law Improvement Project.

Keywords
Australia, New Zealand, tax reform, Residence, income tax

IN NEED OF REFORM? A TRANS-TASMAN PERSPECTIVE ON THE DEFINITION OF "RESIDENCE"

Clinton R Alley
Senior Lecturer
Department of Accounting
The University of Waikato

Duncan Bentley
Assistant Professor of Law
Bond University

The definition of "residence" for individuals differs between Australia and New Zealand. This article examines the advantages and disadvantages of the New Zealand definition and puts forward proposals for the revision of the Australian definition in the context of the Tax Law Improvement Project.

"Residence" is an important concept in the taxation regime of a country. This article compares the statutory definition of this concept for an individual taxpayer in New Zealand and Australia. It focuses particularly on the effect of the 1988 amendments to the New Zealand statutory definition, and concludes with recommendations on a revised Australian definition.

Why is residence for an individual of such great importance? Australia taxes "residents" on their world wide income, irrespective of the source of that income, and taxes "non-residents" only on that income which has its source in Australia.[1]

A similar basic rule is used in New Zealand. "Residents" of New Zealand are assessable for New Zealand income tax on income derived from any part of the world. This applies whether or not this income is remitted back to New Zealand. "Non-residents" are

1 Section 25(1) of the Income Tax Assessment Act 1936.

assessable for New Zealand income tax only on income derived from New Zealand.[2]

The definition of "residence" is becoming increasingly important to a wide range of taxpayers, particularly to those who either choose to spend time working overseas, or are required to as part of their employment. Taxpayers travelling overseas may wish to be considered non-residents to avoid tax in the country from which they are travelling. Other taxpayers may wish to argue that they are still residents although they live overseas, because this may allow them to take advantage of resident rebates, exemptions and lower rates of taxation.

In defining whether a taxpayer is resident the Australian Income Tax legislation uses a complex definition of "residence". "Non-resident" is not defined and implicitly includes those taxpayers who do not fall within the "resident" classification. The New Zealand legislation defines both a "resident" and a "non-resident", using a simpler definition.

In their definitions, both New Zealand and Australia rely in part on an arbitrary number of days presence in (and for New Zealand, absence from) the relevant country to determine residence status. As crucial to the definitions, but far less arbitrary and, as a result, more difficult to define, is the concept of "permanent place of abode". The complexity of the Australian definition is further increased by the use of the common law definition of residence and the concept of "domicile".

The more complex the definition, the less satisfactory it is for taxpayers who wish to determine their residence status. As overseas business secondments in particular become more common and increasingly short-term, the ease or complexity of determination of residence status starts to impact upon the cost of operating in another country. Accordingly, in addition to the problem of uncertainty, a complex and unclear definition of residence has the potential to harm both revenue collections and business investment.

"RESIDENCE" IN NEW ZEALAND

The test for determining whether a taxpayer (a taxpayer being either an individual or a company) is a resident in New Zealand is

2 Section 242 of the Income Tax Act 1976 and s BB 3 Income Tax Act 1994.

stated in s 241 of the Income Tax Act 1976. It is a twofold definition that, unlike the Australian definition, defines when a taxpayer is both resident and non-resident. Until 1988 a person was adjudged a resident in New Zealand if that person had a permanent place of abode in New Zealand, or was present in New Zealand for a continuous period of 365 days, with certain permitted absences.[3]

A person was not a resident if absent from New Zealand for a continuous period of 365 days, with certain permitted absences.[4] Permanent place of abode was not mentioned in the definition of a non-resident.

Defining non-residence solely on the number of days spent in New Zealand exposed the flaws in this type of definition. It lead to some interesting cases and to a situation that was exploited by many New Zealand taxpayers. For example, most universities allow a period of study leave or sabbatical leave which their tenured staff accumulate for each year of paid work. This can be accumulated to a maximum of a year. As noted, persons under the previous laws could cease to be a resident if they were outside the country for a continuous period of 365 days or more. As it was quite common for a university lecturer or professor to take his or her study leave for the longest possible period of one year, they could arrange to be out of the country for just over the year. Being no longer a New Zealand resident, such a taxpayer ceased to be liable for income tax on New Zealand income for that period. As a normal salary was still being earned while on sabbatical leave and since the period out of New Zealand could be spread over two different income tax years, a university lecturer on a salary of say $60,000 could save in excess of $18,000 in tax over these two tax years. This was obviously a strong contributing factor to the decision to remain out of the country for at least 365 days and a great help in covering the costs of an expensive study leave.

There were, however, some unfortunate cases. One of them dealt with an Auckland university lecturer who had taken the maximum leave possible so that he could be out of New Zealand for 365 days.[5] He had arranged his flight back during a weekend so he would come back just after 365 days, but strictly speaking would not have to be away from the university more than the required year stipulated.

---

3 Under the former s 241(1) a "continuous period" allowed a break of not more than 28 intervening days, as long as those intervening days did not exceed in aggregate 56 days in the income year.

4 Ibid.

5 *Case F138* (1984) 6 NZTC 60,237.

He was due to arrive back the day after the 365 day continuous period. It so happened that the actual flight coming back on that day was scheduled to arrive close to the previous day. However, the aeroplane was flying with a tail wind and actually arrived at Auckland half an hour earlier than intended. He therefore arrived in New Zealand on the 365th day of his absence from New Zealand. The Inland Revenue Department became aware of this and instead of saving the marginal tax for the two adjoining years he was forced to pay the tax attributed to his full salary for these two years. Arriving back half an hour early on his flight may well have cost him over $18,000.

The New Zealand government was concerned about the potential loss of tax and moved to change the residency rules for individuals. A definition of non-residence based solely on days leads to exploitation of the arbitrary and artificial nature of the statutory definition. It is a poor reflector of the real residence status and leads to loss of revenue. Accordingly, in 1989, a new definition on the determination of place of residence was introduced in s 241 of the Income Tax Act 1976.

THE PRESENT RULES

Just who is and who is not a New Zealand resident is covered in the following definitions of s 241:[6]

> An individual is resident in New Zealand if that person:
> (1) has a permanent place of abode in New Zealand **or**
> (2) has been present in New Zealand for at least **183** days of any 12 month period.
>
> An individual ceases to be a resident in New Zealand if:
> (1) that person is absent from New Zealand for more than **325** days of any 12 month period **and**
> (2) during that period of absence has at no time a permanent place of abode in New Zealand **and**
> (3) is not absent in the service of the Government of New Zealand.
>
> A person present for any part of a day is deemed to be in New Zealand for the whole of that day.

Under this amended legislation, the "permanent place of abode" concept has taken on greater significance to overcome the arbitrariness of a test based solely on the number of days spent in

6 Section OE 1 of the Income Tax Act 1994.

the country. Persons are New Zealand residents if they have a permanent place of abode in New Zealand **or** if they have been personally present in New Zealand for more than 183 days in a twelve month period. It is an either/or situation so that only one of those situations need apply for that person to be adjudged a resident. The reduction in the number of days from 365 to 183 days in 12 months reflects the reality of modern travel and the transitory status of many taxpayers. Conversely, to be a non-resident a person must have been out of the country for more than 325 days in any twelve month period and must not have had a permanent place of abode in New Zealand. Both criteria must apply. This introduces the permanent place of abode concept into the definition of a non-resident.

The broadening of the definition is revenue driven. It is easier to become a resident and subject to the tax laws than it is to become a non-resident and fall outside the New Zealand tax laws applicable to residents. There does not appear to be any reason for the reduction in the number of days it takes to become a non-resident from 365 to 325. However, the fact that it only takes 183 days to become a resident, as compared to the 325 days to become a non-resident, underlines the importance of double tax treaties in protecting against the potential double taxation consequences of being classified as a dual resident.

Permanent place of abode

The increased significance of a "permanent place of abode" in the definition of "residence" means that it is important to consider what is meant by this concept. The only case under the old definition that throws any light on this is *Geothermal Energy New Zealand Ltd v CIR*.[7] The judgment concluded that "home" was a place around which the taxpayer's domestic life revolved. That is, in the case of a married man, where his wife and children resided at that particular time and, in the case of single people, the place which is the centre of their interests and affairs.

It follows that an individual's "home" is not determined by the ownership of any interest in the residence or property, a view previously held by the Commissioner of Inland Revenue. Although it is not defined in the Act, the Commissioner has indicated factors

---

7 (1979) 4 NZTC 61,478.

that will be considered in determining an individual's permanent place of abode. These include:

- the presence of the person in New Zealand, whether continuous or interrupted;
- accommodation, whether owned or not;
- social ties, family membership of clubs etc;
- economic ties, bank accounts, credit cards, investment, superannuation funds etc;
- employment or business in New Zealand, whether permanent or transient and casual;
- personal property, whether furniture, clothing, car etc have been maintained in New Zealand;
- welfare benefits received in New Zealand;
- intentions, whether the intention is to live in New Zealand or return overseas after a period of time.

You can maintain similar ties or even a residence, or physical home, in other countries but still be a New Zealand resident for tax purposes. If you have an enduring relationship in New Zealand that is a "permanent place of abode" you will always be a resident of New Zealand. This test overrides the rules relating to the number of days you are in New Zealand.

In late 1993, *Case Q55*[8] concerned the residency for tax purposes of a university professor on study leave in Europe. The issue in contention was whether the professor had a permanent place of abode in New Zealand while he was overseas for a period in excess of one year. While overseas the professor received a salary from a New Zealand university and his Auckland home was rented out under a fixed term lease. The professor was absent from New Zealand for 368 days.

This case was decided under the present law. Therefore the professor was subject to the overriding permanent place of abode test that, as a resident who was absent in excess of 325 days over a twelve month period, he was deemed not to be a New Zealand tax resident unless he had a permanent place of abode in New Zealand. If it were found that the professor did not have a permanent place of abode in New Zealand, he would not have been liable for tax on any income which was not derived in New Zealand for that period. As the professor was working and therefore earning his salary outside

8 (1993) 15 NZTC 5,313.

New Zealand, it could be held that although paid by a New Zealand university this salary was derived outside New Zealand.

Permanent place of abode has evolved to mean a place where a person normally or habitually lives and a place with which the person has an enduring relationship. These factors were evidenced in this case by the professor's connections to New Zealand through his employment, club memberships, bank accounts, investments, properties he owned and his home.

Having a permanent place of abode in another country does not affect whether this person also has a permanent home in New Zealand. While in Europe the professor maintained foreign bank accounts and owned a car, but he admitted to the Taxation Review Authority that he did not establish another home and did not have a permanent place of abode overseas.

The contentious issue in this case was the importance that the New Zealand home should be given in determining the existence of a permanent place of abode when the home was unavailable for the period the professor was away. The Inland Revenue Department have stated, along with the list they issued as a guide, that the permanent place of abode test does not focus solely on the ownership or availability for use of a dwelling.

The Taxation Review Authority found that the paramount factor in assessing residency was a person's ties with New Zealand. Despite the professor being unable to return to his home during the time he was overseas, he still had a permanent place of abode in New Zealand. The short-term unavailability of the home for the professor's use was outweighed by his intention to occupy it, and its eventual availability upon his return to New Zealand. Time is obviously important in deciding residency and, as the professor was absent from New Zealand for only one year, the connections with New Zealand were given more importance. It was found that he remained a resident of New Zealand and was therefore liable to pay tax on all his world wide income, whether derived in New Zealand or elsewhere.

"RESIDENCE" IN AUSTRALIA

In Australia individuals are resident if they are:[9]

- Australian residents under common law (the common law or ordinary meaning test); **or**
- domiciled in Australia, unless the Commissioner is satisfied that their permanent place of abode is outside Australia (the domicile test); **or**
- in Australia, continuously or intermittently, for more than one half of the year of income, unless the Commissioner is satisfied that their usual place of abode is outside Australia and they do not intend to take up residence in Australia (the 183 day test); **or**
- a member of certain Commonwealth superannuation schemes (or the spouse or child under 16 of such a member).

The Australian definition is more complex and less clear than the New Zealand definition. This reflects a less modern drafting style and a tendency to complexity for which the Australian statute has become infamous. The last statutory test is fact specific and limited in operation and is not considered in this article.

Common law residence test

This test is not used in New Zealand. There is substantial relevant case law both in Australia and the United Kingdom which attempts to determine the ordinary meaning of residence at common law and it is this ordinary meaning that forms the starting point in determining whether or not a taxpayer is resident.[10] The underlying theme is that a taxpayer resides in the place where he or she has a "home". This is a question of fact, and if a taxpayer is found to have a "home" in Australia, there is no need to proceed further.

The word "reside" was defined by Viscount Cave LC in *Levene v IRC*:[11]

> and is defined in the *Oxford English Dictionary* as meaning "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place." ... In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is

9 Section 6(1) Income Tax Assessment Act 1936.

10 *Applegate v FCT* 79 ATC 4307; (1979) 9 ATR 899.

11 (1928) AC 217 at 222.

> ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure.

His Honour also cited *Cesena Sulphur Co Ltd v Nicholson*:[12] "there is not much difficulty in defining the residence of an individual; it is where he sleeps and lives."

There may not have been much difficulty in applying such a definition in 1876. It is often less clear today, so that where the application of the ordinary meaning of residence is uncertain, the specific statutory definitions that extend the common law definition become more important. In practice it is often simpler to start with the specific statutory definitions for, if they apply to make a taxpayer resident, there is no need to proceed with the more detailed factual analysis necessary using the common law definition.

In an attempt to provide clarification as to his interpretation of the ordinary meaning of "resident" for visitors to Australia, the Commissioner issued Income Tax Ruling IT 2607. The ruling lists relevant factors to be considered in determining whether a visitor is resident under the ordinary meaning. They include the location of the person's family, whether a place of abode is maintained outside Australia, whether the person has assets, bank accounts and other family, business and social ties in Australia, the existence of a contract of employment in the person's home country and the expected length of the visit.

Interestingly, in order to provide more certainty, the Commissioner states in IT 2607 that he would not usually regard a person who intends to visit Australia for less than six months as resident, but that he would usually regard as resident a person who intends to stay in Australia for more than two years.[13] These tests would, of course, only apply to visitors who could show that they had a permanent place of abode outside Australia, in order to avoid the application of the specific statutory tests. However, the fact that they are used by the Australian Taxation Office ("ATO") shows that, from a practical necessity standpoint, arbitrary time tests, as at least one limb of a definition, do provide the certainty that both taxpayers and the ATO want from the law.

---

12 (1876) LR 1 Ex D 428.

13 IT 2607 at para 12.

A similar ruling IT 2681 has been issued for business migrants. That ruling has a further list of indicators of residence specific to such migrants. The list takes account of the fact that business persons migrating to Australia to establish a business may have to spend some time travelling frequently between their country of origin and Australia until the business is established. The ruling attempts to give some guidance to individuals who may find it difficult to ascertain their residence status under the provisions.

The common law residence rule both duplicates in part and also detracts from the certainty of the application of the specific statutory tests. For example, it is argued[14] that where a person is a resident according to ordinary concepts, the 183 day rule would not operate. Therefore, intending migrants would be treated as commencing to reside in Australia from the date of their first arrival rather than for the whole of the year of income, which would be the case under the 183 day rule.

Domicile test

There are essentially three types of domicile in Australian tax law: domicile of origin, which is generally the domicile of the father at the date of birth (with special rules for an illegitimate child); domicile of choice, which is established by the Domicile Act 1982 (Cth) and the intention to select a new permanent place of abode; and domicile by operation of law, which applies when, for example, a child's domicile changes as a result of its parents changing their domicile.

Although Australian domicile may be established, the individual will still not be treated as a resident if that individual's permanent place of abode is outside Australia.

Permanent place of abode

The leading Australian authority on the words "permanent place of abode" is *Applegate v FCT*.[15] It is also frequently quoted in New Zealand residency case law where the definition of a permanent

14 See Woellner, Vella and Burns, *Australian Taxation Law* (5th ed 1994 CCH); Deutsch, Gates, Gibson, Hanley and Payne, *Butterworths Australian Tax Handbook 1995* (1995 Butterworths) 20.

15 (1978) 8 ATR 372; (1979) 9 ATR 899.

place of abode has become even more important following the change in the legislative definition of residence. In *Applegate v FCT* it was held that "permanent" does not mean "everlasting" and that if a taxpayer has an intention to make a home outside Australia for the time being, then that will be an important element in characterising the home as a permanent place of abode. This allows for taxpayers to become non-residents, even though they may have the intention to return to Australia at some point in the future. The principle has been applied in subsequent cases.

In *Applegate v FCT* Fisher J stated:[16]

> To my mind the proper construction to place upon the phase "permanent place of abode" is that it is the taxpayer's fixed and habitual place of abode. It is his home, but not his permanent home. It connotes a more enduring relationship with the particular place of abode than that of a person who is ordinarily resident there or who has there his usual place of abode. Material factors for consideration will be the continuity or otherwise of the taxpayer's presence, the duration of his presence and the durability of his association with the particular place.

Permanent place of abode is not defined by the legislation in either Australia or New Zealand, so case law is very important. As the New Zealand Inland Revenue have produced a set of guidelines for taxpayers, so has the ATO issued similar guidelines in Income Tax Ruling IT 2650 on residency. The ruling (at paragraph 23) offers a useful check list of criteria for establishing "permanent place of abode":

- the intended and actual length of an overseas stay;
- whether there is any intention to return to Australia or to travel on to another country;
- whether the taxpayer has established a home outside Australia;
- whether the taxpayer has abandoned a home in Australia to go overseas;
- the duration and continuity of the taxpayer's presence in the overseas country; and
- the durability of association with a place in Australia, as evidenced by bank accounts, notifications to relevant authorities, and family, social and business ties.

16 79 ATC 4307 at 4317.

The criteria mentioned in the New Zealand and Australian guidelines are very similar, although none of the factors is decisive. However, it is important to note that the Australian definition focuses on a permanent place of abode outside Australia in contrast with the New Zealand requirement of a permanent place of abode inside New Zealand. From an evidentiary perspective this makes the New Zealand definition easier to administer and control.

Consistent with *FCT v Jenkins*,[17] IT 2650 recognises that the existence of a permanent place of abode is a question of fact in each case and that the duration of an individual's stay or intended stay out of Australia is not, of itself, conclusive and must be considered along with all other relevant factors. This is in contrast to the specific time element in the New Zealand legislation. However, given the practical advantages of setting down a broad time limit, the Commissioner exercises his discretion in IT 2650, as he does in IT 2607, and states that as a general rule he will accept that a taxpayer becomes a non-resident after two years spent abroad.

As a result, in order to help them qualify under the ruling for non-resident status, taxpayers seconded overseas have tended to negotiate contracts for periods longer than two years, or open-ended or renewable contracts with a two year minimum period. This is somewhat arbitrary, as is the New Zealand legislation, but the certainty it gives to taxpayers compensates for this. The downside is that the ATO requires compelling reasons to treat someone as non-resident who has been overseas for less than two years. It should be noted that in both *FCT v Applegate* and *FCT v Jenkins* the individuals were treated as non-resident, although in both cases they were actually absent from Australia for less than two years.

A significant practical consequence of the difference between the New Zealand and Australian definitions of residence arises from the New Zealand focus on an individual having a permanent place of abode in New Zealand as compared with the Australian focus on an individual having a permanent place of abode overseas. Under the New Zealand definition, provided any time requirements are satisfied, residence would only appear to apply to individuals while they are actually in New Zealand. So they would become resident on arrival and cease to be resident on departure.

In Australia, on the other hand, residence continues until a permanent place of abode is established overseas. Non-residence

17 (1982) 12 ATR 745.

ceases when an individual relinquishes a permanent place of abode overseas. This can lead to complications. For example, expatriates working overseas can be detrimentally affected in that payments made to them in respect of services performed as non-residents or income earned from any source while overseas could in fact be derived by them as Australian residents, once they have given up their permanent place of abode overseas, even though they have not physically returned to Australia. It is fairly common for expatriates to take leave overseas after a secondment and prior to returning to Australia. If the domicile test applies, they will no longer have a permanent place of abode outside Australia and, consequently, any income derived while on leave will be taxed in Australia on the basis that they are resident. This again leads to uncertainty and the need for taxpayers to have high-level professional help to navigate a safe passage through the complexities of the Tax Act.

183 day test

The half year or 183 day rule is calculated by days and hours in Australia as in New Zealand. The hard luck story recounted from *Case F 138* above[18] was replicated in *Wilkie v Inland Revenue Commissioners*[19] where a taxpayer present in the UK for 182 days and 20 hours in an income year of 366 days, was held not resident for a period equal to six months.

In Australia if this test applies a person is treated as resident for the entire income year. This is not the case in New Zealand where the residency applies as from the first day of arrival in New Zealand counted in the 183 days.

The fact that the Australian legislation refers to more than one half of "a year of income" means that a person could be in Australia for just under half of two years of income, that is for a total of just under a full year, and not become a resident under this test. The New Zealand legislation appears to get around this problem by referring, in both tests, to a number of days in "any twelve month period".

In New Zealand the 183 day test stands on its own: if you satisfy this test you are a resident. In Australia you must also satisfy the

---

18 *Case F138* (1984) 6 NZTC 60,237, above n 5.

19 [1952] 1 All ER 92.

requirements that your usual place of abode is not outside Australia and that you do not intend to take up residence in Australia. This test helps to determine when a person takes up residence in Australia but does not help in determining when a person has ceased to be a resident. The term "usual" is used for this test rather than "permanent" place of abode, but how these terms differ is unclear. Accordingly, the factors applicable to the definition of a permanent place of abode under the domicile test would also apply in Australia.

CONCLUSION

Australia's tax legislation is currently being rewritten under the auspices of a Tax Law Improvement Project.[20] Its stated aim is "to rewrite the law with a better structure, and make it easier to understand".[21] This does not specifically go to the substance, although substantive change is not precluded in order to achieve the stated aim.[22] The definition of residence is one area where simplification of the definition should include substantive change. This is necessary to overcome the shortcomings of the existing legislation and to give statutory effect to the approach taken in practice by the Commissioner.

If the rules for residence can be postulated in a brief, clear and concise manner yet still cover all the necessary circumstances, as it appears the New Zealand legislation comes close to achieving, this must be a desirable feature. The New Zealand legislation overcomes several problems identified in the Australian legislation:

- Many of the Australian cases that have eventuated from the Australian s 6(1) residence rules relate to an attempt to define, from this legislation and case law on the definition of a resident, a definition of a non-resident, there being no definition of a non-resident in the Australian tax legislation. Those dealing with New Zealand residence rules have been saved this difficult and often fruitless activity by the inclusion of a definition of a non-resident in the legislation, albeit more restrictive than that of a

---

20 Announced by the Australian Government on 17 December 1993, to run over three years.

21 *Information Paper No 2 - Building the new tax law*, Tax Law Improvement Project Team, May 1995.

22 Ibid.

resident. The New Zealand government was predictably more interested in an individual being a resident than a non-resident when the legislation was drafted. A taxpayer is a resident if present for at least 183 days and a non-resident if absent for more than 325 days in any 12 month period. It would be more equitable to make the time periods equal. However, a similar general approach in Australia would be much more effective than the current legislation.

- The New Zealand legislation overcomes the arbitrariness of a test based solely on the number of days present or absent from the country by using the permanent place of abode test as an alternative. However, it manages to avoid the complexity of the Australian definition of residence. A similar approach in Australia would give effect to the way the Commissioner has in practice attempted to exercise his discretion.

- Focusing on the existence of a permanent place of abode in Australia rather than outside Australia, in the way the New Zealand legislation is drafted, eliminates many unnecessary evidentiary and control problems for both the ATO and the taxpayer. It also helps to make the law more certain and less likely to be unwittingly contravened.

- It will always be necessary to clarify the law with court decisions. However it would be preferable not to have multiple definitions for the same essential phrases and not to rely on a changing common law rule when a statutory rule could be clearly stated.

As "permanent place of abode" has become a crucial concept in both Australia and New Zealand it should be defined, or at least the guidelines should be given, in the respective statutes.

There is always room for improvement in tax legislation. There are problems with the New Zealand statutory definitions - for example, the difference between the 183 day rule for residency and the 325 day rule for an individual to cease to be a resident can lead to some interesting scenarios - but different countries can learn from each other and improvement and correction to the legislation should be a continuing process. The time must be right for a revision of the Australian residency legislation.