

CASE STUDIES

Example of a foreign resident

Lars lives in Munich and is granted a 12 month working holiday maker visa. He plans to return to Munich, and resume his career as a carpenter, after his 12 month working holiday in Australia. He takes 12 months leave from his work. He owns a home in Munich which he does not rent out. Lars arrives in August 2007 and has five different jobs whilst he travels around Australia, visiting every capital city during his 12 month stay. He stays in no place for longer than two months. Lars only works for seven of the 12 months he is in Australia as he is primarily here to see as much as he can, picking up carpentry work to supplement his funds as he travels. Lars is not an Australian resident under ordinary concepts and although he is in Australia for more than six months in the year ended 30 June 2008, Lars will not satisfy the 183 day test, as his usual place of abode is outside Australia.

Kate - a visitor, working and living in one place

Kate is from Ireland and entered Australia on a working holiday visa in July 2004. She intended to, and did in fact, stay in Sydney for most of the twelve months she was in Australia. Kate is close to her brother who has migrated to Australia and lives in Sydney.

Kate had one ten day holiday travelling up the east coast just after arriving in Sydney, and another two week holiday at Byron Bay in January 2005. She spent the last three weeks of her stay in Australia travelling around Western Australia.

Kate lived in share accommodation at one location for four weeks in Sydney and share accommodation at another location in Sydney for ten months. Kate's name was put on the lease and she made a part contribution to the bond. She also purchased her bed, other bedroom furniture and a fridge.

Kate worked in coffee shops and restaurants throughout the whole period she was in Sydney. Kate joined a library, the Irish club and a water polo club while staying in Sydney.

Outcome: why is Kate an Australian resident?

Kate's intention was to reside and live in one location. Kate's behaviour and abode for 11 out of the 12 months exhibited the attributes of a place of residence as contrasted with overnight, weekly, monthly or transitory accommodation of a traveller. By living and working in close proximity to her brother and establishing links in the community by joining the local library and membership of two local clubs, Kate demonstrated her family and social ties.

Kate's behaviour during the time spent in Australia reflects a degree of continuity, routine or habit that is consistent with residing here.

Janine - combining work and travel

Janine is a British national who has longed to spend twelve months 'down under'. After saving for years, she takes twelve months leave from her work and departs for Australia on her twenty-fourth birthday. Although she travels with considerable savings, her intention is to spend at least part of her time working. She has obtained a working holiday visa enabling her to work for no more than six months with one employer.

Through a contact in Australia, she is assured of work in Perth for the first three months. After that period, she decides to travel to the east coast via Adelaide. She spends a month in Adelaide where she works for two weeks and continues her journey to Melbourne.

Once there, she meets some friends from back home. After working for a further three months, she decides to spend the balance of her time in Melbourne and uses her savings for living expenses. To keep costs down, she leases a house with two other friends. At the end of her twelve months in Australia, she returns to the United Kingdom and resumes living in her house there, which she had been renting out while in Australia.

Outcome: why is Janine a foreign resident?

Although Janine obtains work, by travelling from place to place she has not established a pattern of habitual behaviour, even though she is physically present in Australia for twelve months and she co-leases a house. Janine's main purpose for being here is to have a holiday and she is merely supplementing her savings by working. Janine also fails to meet the 183 day test because she had a usual place of abode outside Australia and did not intend taking up residence in Australia.

Conclusion

The complexities of the Australian Taxation system places significant responsibility on the employer to ensure that the appropriate tax is withheld from the wages paid to workers, and subsequently remitted to the Australian Taxation Office through the relevant monthly or quarterly reporting mechanisms.

Employers do need to take steps to ensure that the workers employed in Australia do have the correct requirements to be gainfully employed in Australia, as is required under our Immigration legislation. Such action by an employer will enable the employer to be positioned to take all reasonable steps to comply with the various legislative obligations that all employers face within Australia.