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The IFX Legal Tax Team

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SECTION 1 – PROFESSIONAL DEVELOPMENTS

WHY OUR TAX RESIDENCY LAWS NEED UPDATING

In the latest Federal Court decision, a decision of the Tribunal was reversed. An Australian mechanical engineer who had lived and worked in Dubai managed to successfully challenge an AAT decision, which had found that he had remained a tax resident of Australia.

¶2.1 Background

The taxpayer in [Quy v FCT \(No 3\)](#), was born abroad but immigrated to Australia in the 1970s. He obtained Australian citizenship in 1978. From 1986, he worked as a mechanical engineer for an Australian company (CB&I) both in Australia and in several overseas countries – one of those countries was Dubai, where he worked from 1998 to 2009. In 2009, he returned to Perth, where he remained until 2015.

In September 2015, he returned to Dubai on an employer-sponsored UAE Residency Permit. His wife accompanied him, but their three daughters remained in Perth (two were at university and the youngest was in her final year of high school). His salary was paid into a Dubai bank account.

Apart from the first month of temporary accommodation, the taxpayer resided in the same apartment in Dubai from 2015 until February 2021, after which he moved to Thailand for work. Although the taxpayer located and paid for the apartment himself, he received an allowance under his International Assignment contract, and his employer was shown as the tenant on the lease agreement. While in Dubai, he had purchased a motor vehicle.

The taxpayer owned the family home in WA as well as two other properties in NSW. During the income years 2016 to 2020, he paid the mortgage and all costs associated with the WA property, and at least one of the daughters resided there rent free. The taxpayer also paid the mortgages and associated costs for the NSW properties, both of which were rented out. He operated a bank account in Australia, which was used both in relation to the rental properties and for providing financial assistance to his daughters. He owned three cars in WA, which were mainly for his daughters' use. The taxpayer said that he had intended to retire to Australia, most likely in NSW.

The taxpayer maintained his Australian private health insurance, which covered him, his wife and his three daughters if they required urgent medical treatment in Australia – this was despite the fact that both the taxpayer's and his wife's medical treatments were already covered by CB&I whilst on assignment in Dubai.

In the 2016 income year, the taxpayer was physically present in Australia for a total of 119 days. In the 2017 to 2020 income years, the taxpayer visited his family for periods of between 29 days in 2018 and 47 days in 2017. His wife spent most of her time in Australia, apart from 2017, when she spent 183 days in Australia and 182 days abroad. Her spouse-sponsored UAE Residency Permit elapsed in November 2019.