

## Tax Sting - Living/Moving Overseas

Date : November 4, 2019

If you are living and conducting a business outside of Australia, you may still be liable to pay tax to the Australian Government if you are considered to be a “resident” for tax purposes.

### Who is a Resident?

Essentially a “resident of Australia” or “resident” for the purposes of the Income Tax Assessment Act 1936 (1936 Act) is a person whose domicile is in Australia unless the Commissioner is satisfied that the person’s permanent place of abode is outside Australia.

### What is a Permanent Place of Abode?

In the recent Federal Court of Australia decision of *Harding v Commissioner of Taxation* the concept of “permanent place of abode” was discussed at length.

The key features of that case were:

- ? the appellant was an Australian citizen who had lived outside of Australia for 17 years of the previous 20 years (specifically in Bahrain to commute to his work in Saudi Arabia)
- ? in the prior court decision, the primary judge:
  - a) accepted the appellant’s intention was to leave Australia permanently when he left the country in 2009, however, it was also clear that he did not intend to stay in his then-current accommodation in Bahrain permanently and was looking to acquire a bigger house or apartment
  - b) was not satisfied that the “permanent place of abode” requirement had been met due to the temporary nature of his arrangement in Bahrain
  - c) ruled that the appellant did not have a permanent place of abode outside of Australia and was therefore a “resident of Australia”
- ? on appeal the court held that the word “place” in “place of abode” refers to a town or country (rather than to a specific permanent dwelling) and that given the facts the appellant did have a “permanent place of abode” outside of Australia
- ? specifically the court on appeal said:

*so long as the taxpayer has “definitively abandoned” his or her residence in Australia, it does not serve the function or purpose of the exception to subpara (i) [under section 6(a) of the 1936 Act] to require that the taxpayer be permanently located at a particular house or flat in a particular town within a foreign country*

- ? there was though a cautionary note expressed in the appeal decision about whether moving between foreign countries would satisfy the “permanent place” aspect of the phrase “permanent place of abode” as the Commissioner must be able to identify the country where the taxpayer is living permanently



## Next Steps

This decision is important for both Australians working overseas with current financial or family ties to Australia and also those who intend to work or conduct business outside of Australia.

If you would like to know more about how this decision may affect you or you require any other legal assistance, please contact the Commercial Law Team at Matthews Folbigg Lawyers on 9635 7966.