

## Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

### APPENDIX D- Summary of examples in TR 2008/9

\*\* = Problematic conclusion; WHAT = do activities constitute exercise of CM&C; WHERE = where is the CM&C exercised; WHO = who exercised CM&C; N / S = Not specified; N/A = Not applicable.

Ex	WHAT WHERE WHO	Trustee Individual or Corporate	Delegation by the trustee	Residence of Trustee	Intention in relation to residence	Activities	Location of meetings	CM&C exercised by Trustee(s)	Consider ordinarily	ATO conclusion as to location at which CM&C is exercised
2	WHAT	Individual (Tim & Toni)	NO	N / S	N / A	Trustees formulated investment policy after advice	N / S	YES		N / S
3	WHERE & WHO	Corporate (E&A Pty Ltd)	NO	2.5 years in USA	N / S	Review & update investments & monitor performance of fund.  Accountant lodged tax returns etc	USA	YES – accountant's activities irrelevant	YES	<b>**Provided trustees overseas on a temporary basis CM&amp;C will ordinarily be in Australia</b>
4	WHAT	Individual (John & Jacqueline))	NO	N / S	N / A	Set investment strategy after seeking advice from adviser	N / S	YES	YES	N / S
5(a)	WHO	Individual (Harry & Eleanor)	YES to accountant	France	Will return but no expected return date	Accountant monitors & reviewing performance, rebalancing investment portfolio and altering strategy WITHOUT reference to Trustee	Presumably in Australia	NO		Australia (Without reference to Trustee)
5(b)	WHO	Individual (Harry & Eleanor)	YES to accountant	France	Will return but no expected return date	Accountant monitors & reviewing performance, rebalancing investment portfolio and altering strategy WITH reference to Trustee	Presumably in Australia	YES		France (Trustee approval from France)
6	WHERE	Individual Simon and Donna	NO	1 home in Australia & 1 home overseas	Half year at each home	Strategic and high level decisions	Majority in Australia	YES	YES	Regularly, usually or customarily exercised in Australia, casually or intermittently exercised overseas
7(a)	WHERE	Individual Joseph & Marian	NO	2 year secondmen t to London	To return at end of 2 years	Strategic and high level decisions	Trustees home in London	YES	YES	CM&C remains in Australia as trustee's absence was temporary evidence by non abandonment of initial intention and no home established outside Australia and maintained home in Australia

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7(b)	WHERE	Individuals (Joseph & Marian)	NO	2 year secondment to London	Initially to return at end of 2 years abandoned at the end of the two years and 3 months later reversed	Strategic and high level decisions	Trustees home in London	YES	YES	<i>**As above for first two years then on change of intention it could not be said that the CM&amp;C remained in Australia as trustee's absence was not temporary</i>
8(a)	WHERE	Individuals (Luke & Olivia)	NO	Overseas for 3 years	Will return but not expected return date	N / S	Overseas	YES	YES	<i>**Not ordinarily in Australia. CM&amp;C will remain ordinarily in Australia if absence was temporary with test to be applied at the time trustee moves overseas.</i>
8(b)	WHERE	Individuals (Luke & Olivia)	NO	Overseas for 18 months	Will return but no expected return date	N / S	Overseas	YES		<i>**Not ordinarily in Australia. Absence not temporary even though it was less than two years and 295-95 does not apply because on leaving Australia could not establish absence was temporary.</i>