

March 31, 2014
2014-037

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

New Zealand – Updated Guidance from Inland Revenue on Tax Residence

by KPMG, New Zealand (a KPMG International member firm)

Recently, New Zealand's Inland Revenue released its long-awaited Interpretation Statement ("IS") on tax residence.¹ The IS, which applies from 1 April 2014, covers the residence tests for individuals, companies, and trusts. The focus of the analysis below is on the residence tests for individuals.

The IS makes clear that determining an individual's tax residency status involves considering the totality of the person's circumstances and the level of their enduring relationships with New Zealand, rather than relying on any one factor alone (such as time spent away from New Zealand). The analysis therefore needs to be a holistic exercise.

Why This Matters

The guidance from Inland Revenue on tax residence will have an impact on New Zealand expatriates and their families (particularly those living and working in non-Double Taxation Agreement countries) and potentially their New Zealand employers as well (if overseas secondees are treated as tax resident in New Zealand).

Background

The IS updates Inland Revenue's previously published view on tax residence in the June 1989 Public Information Bulletin 180 ("PIB 180").

The approach taken in the IS to determining an individual's tax residency has been of particular interest following the recent Taxation Review Authority ("TRA") decision (TRA 43/11). The TRA decided an expatriate New Zealander was resident notwithstanding that, at the time of the decision, he had been living outside New Zealand for 10 years.

Determining Residence

A crucial part of the residence analysis for individuals is recognition that a person must either be present for more than 183 days in a 12-month period, or have a permanent place of abode ("PPOA"), to be New Zealand tax resident.

In a departure from Inland Revenue's previous guidance in PIB 180, the IS recognizes that the existence of a physical dwelling in New Zealand is a prerequisite for having a permanent place of abode. However, a dwelling, for the purposes of the PPOA test, does not need to be directly owned in order to be objectively regarded as available to an individual.

Where a dwelling exists for the purposes of the residency analysis, the IS outlines the material factors for determining an individual's permanent place of abode. The focus is on an individual's "continuity and duration of association" and "durability of association" with the dwelling. This requires consideration of factors such as the nature and use of the dwelling, the person's intentions, and his/her employment, investment/business, family

and social ties to New Zealand. The IS also provides examples where a PPOA can be maintained, gained, and lost.

In circumstances where an individual is resident in both New Zealand and a country with which New Zealand has a Double Taxation Agreement (“DTA”), then the DTA will be relevant in determining where the individual is resident for tax treaty purposes. The first DTA test is whether the individual has a permanent home available in one country, or the other. The widely followed Organisation for Economic Co-operation and Development (OECD) guidance requires that a dwelling be “continuously available” to be a permanent home. The IS concludes that a home that is let out on arm’s-length terms to a non-associated person, under either a fixed or periodic tenancy, will not be available as a permanent home. (This is an improvement on Inland Revenue’s earlier draft comments on the application of the permanent home test which suggested periodic tenancies could still qualify a property as being available to the owner.)

KPMG Note

The View on Residence – in Brief

On the whole, the KPMG International member firm in New Zealand considers that the recently published IS represents a more pragmatic guide to the issue of determining an individual’s tax residence than an earlier December 2012 draft of the Interpretation Statement. In particular, the changes to Inland Revenue’s interpretation around a key aspect of determining tax residence – the existence of a PPOA – are helpful and provide practical guidance to individuals who are looking to determine whether or not they are resident in New Zealand.

Nevertheless, determining an individual’s tax residence is not straightforward; it involves considering the totality of a person’s circumstances and the level of his/her enduring relationships with New Zealand. This can require the exercise of significant judgement. We therefore strongly recommend those affected seek advice on their tax status.

We also have concerns about how Inland Revenue will practically apply the new rules and recognize historic positions. This includes where individuals have sought Inland Revenue’s confirmation of non-residence or have relied on the examples in previously published guidance (PIB 180).

For a deeper analysis of the Inland Revenue’s IS on tax residence see, [“Tax Residence Statement – Pragmatic but Little Comfort?”](#) in *Taxmail* (issue 3, 21 March 2014), a publication of the KPMG International member firm in New Zealand.

Footnote:

1 For the IS, see: <http://www.ird.govt.nz/resources/a/1/a136c4a4-e3ba-4d3f-bdff-cca3154c3165/is1401.pdf> .

For further information or assistance, please contact your local IES professional or Rebecca Armour (at tel. +64 9 367 5926; e-mail: rarmour@kpmg.co.nz), with the KPMG International member firm in New Zealand.

Save the Date!

LINKing Global Mobility and Talent Management

Please 'Save the Date' in your calendar and join us in Chicago, Illinois, USA, at KPMG's International Executive Services: Global Mobility Forum 2014. We have a fantastic line-up and look forward to seeing you in Chicago on **6-8 October 2014**.

If you have any questions, please contact your usual KPMG professional or send an e-mail to: go-fmforum@kpmg.com.

The information contained in this newsletter was submitted by the KPMG International member firm in New Zealand. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash International Executive Alert is an IES publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our IES practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.