cutting through complexity

TAX

New Zealand tax residence

Understanding how tax residence affects your tax obligations

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Tax impact of being a New Zealand tax resident

If you are a New Zealand tax resident, you will generally be subject to tax in New Zealand on your worldwide income. Non-residents are subject to tax in New Zealand on income only if it has a New Zealand source.

Many people are not aware of the specific requirements for triggering or losing their New Zealand tax residence status. Equally, those aware of the general tests often do not realise that short holidays or business trips to New Zealand can have the effect of inadvertently triggering New Zealand tax residence or preventing them from becoming non-resident.

If you become New Zealand tax resident, relief may be available from New Zealand tax obligations under the transitional resident rules.

Becoming a New Zealand tax resident

To become a New Zealand tax resident, you need to meet either the 'days count test' or the 'permanent place of abode test'. You will be considered a New Zealand tax resident from the first day on which you meet either of these tests.

Days count test (183 days)

Under the days count test, you will be resident for New Zealand tax purposes if you are physically present in New Zealand for more than 183 days in any 12 month period. The 12 month period is not based on an income year – it is based on any rolling twelve month period beginning on any day on which you are physically present in New Zealand. For the purposes of the days count test, any part day spent in New Zealand (for example, the day of departure or arrival) will be counted as a full day spent in New Zealand.

Permanent Place of Abode (PPOA) test

Under the PPOA test, you will be a New Zealand tax resident if you have a 'permanent place of abode' in New Zealand.

Unlike the days count test, the term PPOA is not a black-and-white test defined in legislation. Instead, it is defined by case law.

Broadly speaking, a PPOA is interpreted as having a dwelling available for your use in New Zealand as well as considering other factors such as the continuity and duration of your presence in New Zealand and the extent of your connections with the dwelling. Factors which should be considered in determining your connection include:

- Nature and use of dwelling
- Your intention regarding length of stay in New Zealand
- Your family and social ties to New Zealand
- Your employment, business and economic ties to New Zealand
- Personal property you hold in New Zealand
- Any other factors which are relevant to determining whether a dwelling is a permanant abode

Impact of inadvertently triggering tax residence status

If you trigger your New Zealand tax residence earlier than anticipated, the tax consequences can be significant. This is because New Zealand tax residents are subject to tax on their worldwide income.

While foreign tax credits can potentially be claimed to reduce the impact of any "double taxation", the administrative consequences of being required to disclose worldwide income in New Zealand during an unexpected period can be onerous.

Transitional Residence

Application of the regime

The transitional residence regime was introduced in order to encourage international assignees to work in New Zealand. It applies from 1 April 2006.

Under this regime, if you become a New Zealand tax resident on or after 1 April 2006 (either by virtue of the days count test or PPOA test), you may qualify for transitional resident status if:

- You have not been a New Zealand tax resident in the 10 years preceding the date on which you meet one of the tests for New Zealand tax residence; and
- You have not previously been a transitional resident.

The period of transitional residence begins on the day you are considered a resident for tax purposes, and ends on the last day of the 48th month after you have satisfied the residence tests.

Impact of the regime

Transitional residents are only subject to tax in New Zealand on income from employment or personal services, and New Zealand sourced investment income.

Specifically, the types of income which are therefore excluded from tax in New Zealand during the transitional residence period include:

- Foreign dividends
- Foreign interest
- Controlled Foreign Company (CFC) income
- Foreign Investment Fund (FIF) income
- Exchange rate gains and losses from foreign financial arrangements (such as foreign bank accounts)
- Distributions and withdrawals from foreign superannuation schemes
- Distributions from offshore trusts
- Rental income (or losses) derived offshore
- Offshore business income other than performance of services by the individual

This four-year exemption provides an opportunity to understand the tax implications for your overseas investments. It also allows time to manage any changes to your investments without New Zealand tax implications.

Application of the 'days count test'

Scenario

An employee is deciding whether to accept an international assignment to New Zealand with his/her employer, beginning on 1 October 2015. The employee visits New Zealand from 11 May 2015 to 13 May 2015 in order to gain an idea of life in New Zealand, accommodation, schooling and other implications of the assignment. As a result of the "look-see" visit, the employee decides to accept the assignment and subsequently moves to New Zealand on 1 October 2015. The employee returns home for Christmas, leaving on 20 December 2015 and returning on 3 January 2016. The employee then remains continuously in New Zealand for the next five months.

The common misconception

Many individuals on assignment in New Zealand will assume that (if they are to become New Zealand tax residents) this will be from the date on which they moved to New Zealand. In the above scenario, this would be 1 October 2015.

However, the days count test looks at every rolling 12 month period beginning on a day on which an individual was present in New Zealand. It counts whether that individual was physically present in New Zealand for more than 183 days from that date.

Application to the facts

In this particular scenario, the employee will be resident from 11 May 2015. This is because the employee will spend a total of 212 days in New Zealand in a 12 month period from this date, made up as follows:

11 May - 13 May 2015 **= 3 days**

1 Oct. - 20 Dec. 2015 **= 81 days**

3 Jan. 2016 - 10 May 2016 **= 128 days**

Total = 212 days

Opting out of the regime

The transitional residence regime is not compulsory and it is possible to 'opt out'. This may be desirable if you have significant foreign investment losses, such as rental losses, that you would like to be able to claim in New Zealand.

However, once the decision has been made to opt out of the transitional resident regime, this decision is irrevocable.

Once you opt out of being a transitional resident, you are taxable in New Zealand on your worldwide income.

The end of transitional residence

New Zealand has some complex tax rules relating to foreign equity investments and financial arrangements. This means it is vital that you get independent tax advice if you intend to remain in New Zealand after the end of your transitional residence period. This advice should determine and manage the impact this may have on your New Zealand tax obligations.

Losing New Zealand tax residence

To become a non-resident for New Zealand tax purposes, we apply the same two tests, i.e. the days count test and the PPOA.

However there is one important difference, in that both of these tests must be met.

If the two tests are met, but from differing dates, the later of the two dates will be the date on which your non-residence begins.

Days count test (325 days)

Under the days count test for non-residence, you will be non-resident for New Zealand tax purposes if you are physically absent from New Zealand for more than 325 days in any 12 month period.

Similar to the days count test for residence:

- The twelve month period is not based on an income year – it is based on any rolling 12 month period beginning on a day the person was physically absent from New Zealand.
- For the purposes of the days count test, any part day spent in New Zealand (for example the day of departure or arrival) will be counted as a full day spent in New Zealand.
- This test applies retrospectively in that Inland Revenue will be able to look with hindsight at the days a person spent in New Zealand. In contrast, you might be required to determine, at the time of departure from New Zealand, whether you will actually be absent from New Zealand for 325 days in the 12 months following the day after departure.

It is important to note that in order to meet this test and become non-resident, you can only spend a maximum of 39 days (including part days) in New Zealand in the twelve months following departure. This means business trips and holidays back to New Zealand after your departure must be tracked carefully.

Permanent Place of Abode (PPOA)

Under the PPOA test, you will be non-resident for New Zealand purposes if you do not have a PPOA in New Zealand.

As with the PPOA test for residence, in order to determine whether you no longer have a PPOA in New Zealand, whether you have a dwelling available for your use will be a primary factor. If you have a dwelling available to you, the following factors will also be considered holistically in respect of your connection to New Zealand:

- Your intention regarding length of stay in New Zealand
- Your family and social ties to New Zealand
- Your employment, business and economic ties to New Zealand
- Personal property you hold in New Zealand

Impact of losing New Zealand tax residence

As a non-resident for New Zealand tax purposes, you are only subject to tax in New Zealand on any New Zealand-sourced income. This includes interest paid by a New Zealand borrower, dividends paid by New Zealand companies, and rental income/losses from New Zealand property.

Interest and dividends may be taxed at a lower rate (non-resident withholding tax or approved issuer levy). To take advantage of this, you will need to inform your bank or share registry that you are non-resident.

The need to file returns

A person who is non-resident for part of an income year must file a tax return. A person who is non-resident for the entire income year should only need to file a return if they derive New Zealand sourced income, have losses to carry forward or other specific circumstances that require them to file a tax return.

Transitional residence: Do you qualify?

To determine whether you qualify as a transitional resident, work through the questions below:

- Did you arrive on or after 1 April 2006?
- Are you a New Zealand tax resident (either by virtue of meeting the days count test or having a PPOA in New Zealand)?
- Is this the first time you have been a New Zealand tax resident? (Or, if you have previously been a New Zealand tax resident, has it been more than 10 years since you were last a New Zealand tax resident)?

If you answered 'yes' to all of the above questions and you have not previously been a transitional resident, you should qualify as a transitional resident. As a transitional resident, your New Zealand income tax returns will only need to include your New Zealand-sourced income and worldwide employment income.

Transitional residence: Do you want to opt out?

Whether or not you opt out of being a transitional resident is likely to depend on whether you are making losses on your foreign investments AND whether you reasonably expect to make a profit on these investments in the following four years.

Opting out will also make you subject to New Zealand's FIF and financial arrangement rules. The tax liability arising under these rules might outweigh the benefit of any anticipated losses. Before electing to opt out of the transitional residence rules, you should consider modelling the tax effect of your decision.

Other relevant information

New Zealand tax year

The New Zealand tax year is from 1 April to 31 March. As this may differ from tax years in other countries, different information will need to be captured to calculate income earned and taxes paid that may need to be included in a New Zealand income tax return.

New Zealand's marginal tax rates

The current marginal tax rates in New Zealand are set out in the following table:

Income	Tax Rate[1]
nil to $14,000	10.5%
$14,001 to $48,000	17.5%
$48,001 to $70,000	30.0%
$70,000 +	33.0%

Note 1: Rates for income year to 31 March 2016

While the rates themselves are not exceptionally high in comparison with other countries, the highest marginal tax rate comes into effect from $70,000. This means the effective tax rate could be relatively high.

Capital gains

New Zealand does not have a comprehensive capital gains tax. However, if an asset is purchased with the intention of resale, any gain on sale of the asset may be subject to income tax in New Zealand.

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