

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

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FACT SHEET | PUKA MEKA

Tax residence – individuals

Issued | Tukuna: xx

IS xx/xx FS 1

This fact sheet accompanies IS **xx/xx**: **Tax residence** and summarises the tax residence rules in the Income Tax Act 2007 relating to individuals. The interpretation statement explains the rules for individuals, companies and trusts in more detail. There are also fact sheets covering the tax residence of companies and trusts.

Key provisions | Whakaratonga tāpua

Section YD 1 of the Income Tax Act 2007 sets out the tax residence rules for individuals.

Key terms | Kīanga tau tāpua

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| 183-day rule | An individual is a tax resident in New Zealand if they have been present in New Zealand for more than 183 days in total in any 12-month period. |
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| | <p>If a person is tax resident under the 183-day rule, they are treated as resident from the first of the 183 days, unless they acquired a permanent place of abode in New Zealand earlier, in which case they are resident from that date.</p> |
| <p>325-day rule</p> | <p>If an individual no longer has a permanent place of abode in New Zealand, they may cease being a New Zealand tax resident under the 325-day rule.</p> <p>This rule requires that the person is absent from New Zealand for more than 325 days in total in a 12-month period.</p> <p>If a person ceases to be tax resident under the 325-day rule, they are treated as non-resident from the first of the 325 days or the day after the day they cease having a permanent place of abode in New Zealand, whichever is later.</p> |
| <p>Permanent place of abode test</p> | <p>An individual is tax resident in New Zealand if they have a permanent place of abode in New Zealand.</p> <p>This is the overriding residence rule for individuals. This means that even if the person would be non-resident under another rule (for example, the 325-day rule), they cannot become non-tax resident if they have a permanent place of abode in New Zealand.</p> <p>A place of abode (that is, a dwelling) is a person's permanent place of abode if it is a place they habitually reside from time to time even if they spend periods overseas.</p> <p>To be a permanent place of abode, the abode must be a place the person habitually resides on an enduring, rather than temporary, basis.</p> |

Introduction | Whakataki

1. The concept of tax residence is a central feature of the Income Tax Act 2007 and the Goods and Services Tax Act 1985.
2. The main relevance of tax residence for income tax purposes is that it determines whether a person is assessable for tax on worldwide income or on only New Zealand-sourced income. This is because:
 - New Zealand residents are assessable on worldwide income¹ (though they may be entitled to a credit for foreign tax paid on foreign-sourced income or gains); and
 - non-residents are assessable on only New Zealand-sourced income.
3. Tax residence is also relevant to:
 - a person's eligibility for Working for Families tax credits, including Best Start (which is a payment for families with a newborn baby); and
 - the filing obligations and interest treatment of student loans for borrowers who are away from New Zealand.

Overview of tax residence for individuals

Tax residence rules for individuals

4. The permanent place of abode rule is the overriding tax residence test for individuals. This means that if a person has a permanent place of abode in New Zealand they are tax resident here regardless of any of the other tax residence rules.
5. The main rules are that an individual is a New Zealand tax resident if they:
 - have a permanent place of abode in New Zealand, even if they also have a permanent place of abode elsewhere (this is called the permanent place of abode test);
 - have been present in New Zealand for more than 183 days in total in any 12-month period (this is called the 183-day rule); or
 - are absent from New Zealand in the service of the New Zealand Government (this is called the government service rule).

¹ Other than exempt income and excluded income.

6. There is an exception to the normal residence rules for people employed under the Recognised Seasonal Employer Scheme. This scheme allows businesses in the horticulture and viticulture industries to recruit workers from Pacific Island countries for seasonal work. A person employed under the Recognise Seasonal Employer Scheme is treated as non-resident during the time they are employed under the scheme, provided they do not have a permanent place of abode in New Zealand.

How an individual ceases being tax resident in New Zealand

7. An individual remains tax resident in New Zealand as long as they have a permanent place of abode in New Zealand – even if they also have a permanent place of abode outside New Zealand.
8. But if an individual no longer has a permanent place of abode in New Zealand, they cease being a New Zealand tax resident if they are absent from New Zealand for more than 325 days in total in a 12-month period (this is called the 325-day rule).
9. However, the 325-day rule does not apply to an individual who is resident under the government service rule. They remain tax resident in New Zealand however long they are absent from New Zealand in the service of the Government.

If an individual is tax resident in more than one country

10. If an individual is tax resident in New Zealand and also in a country New Zealand has a double tax agreement (DTA) with, “tie-breaker” rules apply to allocate tax residence to one of the countries for the purposes of the DTA. The DTA then determines the taxing rights of each country in relation to matters covered by the DTA. For more information, see IS xx/xx.
11. Whether or not there is a DTA, if an individual is taxable in New Zealand and another country on some income, they may be entitled to a credit in New Zealand for foreign tax paid on foreign-sourced income or gains. For more information, see IS xx/xx.

Transitional residence – temporary tax exemptions for new migrants and returning New Zealanders

12. New migrants and returning New Zealanders who have been non-resident for at least 10 years may be eligible to be transitional residents. Transitional residents are entitled to temporary tax exemptions for certain foreign-sourced income.

13. Transitional residents cannot receive Working for Families tax credits (including Best Start) and maintain their transitional residence status. In addition, the spouse or partner of a transitional resident cannot receive Working for Families tax credits.
14. It is important to note that if a person who is eligible to be a transitional resident applies for Working for Families tax credits (including Best Start), that application is treated as an election for both the person and their spouse or partner to not be transitional residents. This election **cannot** be reversed.
15. Transitional residents may receive FamilyBoost tax credits (which provide financial assistance to caregivers with early childhood education costs). Applying for FamilyBoost is not treated as an election to no longer be a transitional resident.

A permanent place of abode in New Zealand

16. The permanent place of abode test is usually considered where someone who has lived in New Zealand leaves the country for some time. In this situation, the question is whether they can be regarded as continuing to habitually reside at their place of abode in New Zealand, despite a period or periods of absence.
17. The test can also be relevant to people who move between countries, and potentially when someone moves to New Zealand (though in that situation residence is usually triggered under the 183-day rule).
18. A place of abode (that is, a dwelling) is a person's permanent place of abode if it is a place where they habitually reside from time to time even if they spend periods overseas. To be a permanent place of abode, the abode must be a place where the person habitually resides on an enduring, rather than temporary, basis.
19. A person must have a place of abode (that is, a dwelling) in New Zealand to potentially have a permanent place of abode here. This does not mean the person needs to own the dwelling. For example, the property might be rented, held in a family trust, or owned by a family company or other family member. However, simply having a dwelling is not sufficient – the dwelling must be the person's permanent place of abode.
20. Deciding whether a dwelling is someone's permanent place of abode requires an overall assessment of the person's circumstances and the nature and quality of the use the person habitually makes of the dwelling.
21. In determining whether a place of abode is a person's permanent place of abode, it is necessary to consider the:
 - continuity and duration of the person's presence in New Zealand; and

- durability of the person's association with their place of abode here and how close their connection with it is.

Continuity and duration of presence in New Zealand

22. As a general rule, the longer a person is present in New Zealand, the more likely it is that their place of abode here is a permanent place of abode for them. Conversely, the longer a person is absent from New Zealand, the less likely it is that their place of abode here will continue to be a permanent place of abode for them. It is also relevant to consider whether the person is present in New Zealand for continuous or interrupted periods.
23. There is no specific length of presence in or absence from New Zealand that results in a person acquiring or losing a permanent place of abode here. If a person has strong connections with New Zealand and their place of abode here, a longer period of absence would be required for their place of abode to no longer be considered their permanent place of abode than if the person's connections to New Zealand and the place of abode were weaker. The circumstances as a whole must be considered.

Durability of association with place of abode

24. To determine whether a person has a durable association with their place of abode, the person's overall connections with their place of abode and with New Zealand must be weighed up. It is then necessary to evaluate the extent to which those connections indicate the person has an enduring relationship with their place of abode here, such that it can be considered to be their permanent place of abode.
25. Important factors to consider when assessing whether a person has a durable association with a place of abode, such that it can be regarded as a permanent place of abode for them, are:
 - the nature and quality of the use of the dwelling and the person's connection with the dwelling;
 - the person's intentions;
 - the person's family and social ties;
 - the person's employment, business interests and economic ties;
 - the person's personal property; and
 - any other factors that shed light on whether the place of abode is a permanent place of abode for the person.

26. It does not matter how strong a person's ties to New Zealand are if those ties do not indicate the particular dwelling in question is a permanent place of abode for the person. For example, if a person has strong connections to New Zealand, but the only dwelling they have here is a property they have never lived in and never intend to live in, that property cannot be a permanent place of abode for them.
27. A person can be resident in New Zealand under the permanent place of abode test even if they also have a permanent place of abode outside New Zealand. The focus is not on determining which place the person has the strongest connections to, but on whether their place of abode in New Zealand is a permanent place of abode.

The 183-day rule

28. In addition to the permanent place of abode test, a person can become tax resident in New Zealand under the 183-day rule.
29. Under this rule, a person is tax resident in New Zealand if they have been present in New Zealand for more than 183 days in total in any 12-month period.
30. The 183-day rule does not relate to an income year, a calendar year, or any other particular 12-month period, and the days of presence do not need to be consecutive. If a person is present in New Zealand for part of a day, that part-day counts as a full day of presence.
31. If a person is tax resident under the 183-day rule, they are treated as resident from the first of the 183 days, unless they acquired a permanent place of abode in New Zealand earlier – in which case they are resident from that date.
32. Because of this back-dating rule, a person's tax residence in New Zealand could start from a date before they established a permanent place of abode here. An example of when this might happen is if the person came to New Zealand for a holiday or job interview before moving here.

The 325-day rule

33. If an individual no longer has a permanent place of abode in New Zealand, they may cease being a New Zealand tax resident under the 325-day rule.
34. This rule requires that the person is absent from New Zealand for more than 325 days in total in a 12-month period.
35. The 325-day rule does not relate to an income year, a calendar year, or any other particular 12-month period, and the days of absence do not need to be consecutive. If

- a person is present in New Zealand for part of a day, that part-day counts as a full day of presence and does not count towards days of absence.
36. The 325-day rule does not apply to an individual who is resident under the government service rule. They remain tax resident in New Zealand however long they are absent from New Zealand in the service of the government. For more information about the government service rule, see IS [xx/xx](#): **Government service rule**.
 37. If a person ceases to be tax resident under the 325-day rule, they are treated as not resident from the first of the 325 days, provided they did not have a permanent place of abode in New Zealand at any time during the 325-day period. Because the permanent place of abode rule is the overriding tax residence test for individuals, someone cannot cease being tax resident any earlier than the day after the day they cease having a permanent place of abode in New Zealand.
 38. Once a person ceases to be resident, they remain non-resident until they either acquire a permanent place of abode in New Zealand or satisfy the 183-day rule.

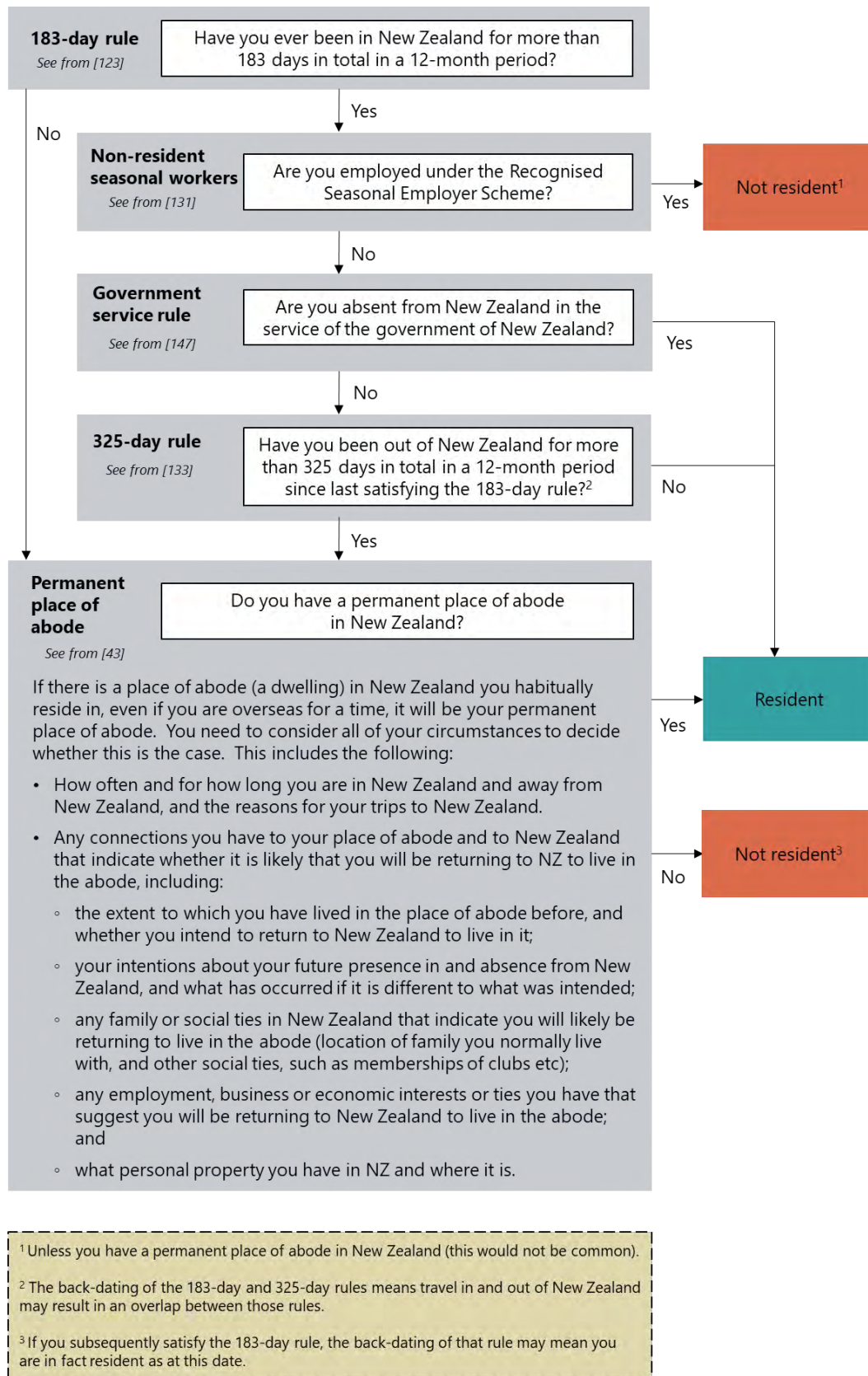
Changes in tax residence

39. If a person's tax residence or transitional residence status changes during an income year, the income tax implications need to be considered. The more significant potential implications are discussed in IS [xx/xx](#).
40. If a person's circumstances change during an income year and this may affect their tax residence, they should get in touch with Inland Revenue to let us know. This can be done by filling in [IR886](#): **New Zealand tax residence questionnaire** and sending it to us (through myIR or by post).
41. If a person has derived income in the year their tax residence changes, they need to file a tax return in New Zealand.
42. A taxpayer may wish to consult a tax professional if they are in doubt about their situation.

Flowchart – how to determine whether an individual is tax resident in New Zealand

43. The following flowchart sets out what needs to be considered to determine whether an individual is tax resident in New Zealand. Paragraph cross-references are to paragraphs in IS [xx/xx](#).

Figure | Hoahoa 1: Flowchart – How to determine if an individual is tax resident in NZ



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