

## Tax residence – refresh of IS 16/03

### Reference: PUB0483

#### Reading guide for public consultation

### Background

This reading guide is for the accompanying draft interpretation statement that will update and replace [IS 16/03: Tax residence](#).

IS 16/03 updated IS 14/01: Tax residence, but that update covered only changes to the discussion of the permanent place of abode test as a result of the decision in *CIR v Diamond* [2015] NZCA 613 (CA). It has been just over 10 years since the tax residence interpretation statement had a full refresh. It is one of our most downloaded tax technical publications, so because there have been numerous legislative and other changes, it is timely to fully update the statement.

After incorporating changes, the draft statement is now much longer than the previous statement (from 83 to 133 pages). However, some of the additional length is because we now use more white space to make our items easier to read.

This guide is to help readers understand the high-level similarities and differences between IS 16/03 and the new draft interpretation statement.

Accompanying the draft statement are three draft fact sheets – one each in respect of tax residence and individuals, companies and trusts.

The draft statement is structured in the same way as IS 16/01. Readers familiar with IS 16/01 will notice the two statements both have three parts (covering individuals, companies and trusts) and they largely order topics in the same way.

The following section summarises the main changes in each part of the draft statement.

### Introduction

- Subheadings have been added to the discussion about the relevance of tax residence to guide the reader.
  - New paragraphs discuss working in New Zealand during a short-term visit, Working for Families tax credits, and absentees.
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## Part 1 – Tax residence of natural persons (individuals)

- The discussion has been redrafted in plain English style and repetition removed (in particular in relation to the permanent place of abode test).
- Attention has been drawn to the fact an application for Working for Families tax credits is treated as an election to no longer be transitional resident.
- The discussion of the government service rule has been taken out of the draft statement and included in a separate publication (consultation reference: PUB00495).
- We have clarified the date at which transitional residence ends if it ends due to a person or their spouse or partner applying for Working for Families tax credits. A new example (Example | Taura 18) illustrates this point.
- In relation to the habitual abode double tax agreement (DTA) tie-breaker, we have included further guidance on how far beyond the period of dual residence it may be necessary to consider where the period of dual residence is relatively short.

## Part 2 – Tax residence of companies

- A new example (Example | Taura 29) in relation to a foreign-incorporated, sole-director personal services company has been included.
- The discussion has been updated for legislative changes in relation to imputation and loss grouping, following the Australian High Court decision in *Bywater Investments Ltd & Ors v Commissioner of Taxation; Hua Wang Bank Berhad v Commissioner of Taxation* [2016] HCA 45. The loss grouping examples have consequently been removed.
- Discussion has been added about:
  - how the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) may modify the residence article in New Zealand's DTAs;
  - Australia and New Zealand's administrative approach to art 4 of the MLI; and
  - the potential of dual residence if central management and control is exercised in Australia, and a new example (Example | Taura 30) has been included to illustrate this.

## Part 3 – Tax residence and trusts

- The discussion has been updated to reflect changes in the trust rules.
- Discussion has been added about:
  - the taxation of distributions (and a new table);
  - the new foreign exemption trust and domestic trust disclosure rules; and
  - dual resident trusts, DTAs, the MLI, and the fact Australia and New Zealand’s administrative approach to art 4 of the MLI does not apply to trusts.
- The discussion is more fulsome about the impact of changes of residence of persons connected with the trust (that is, settlors, trustees and beneficiaries).