Inland Revenue
Te Tari Taake

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

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Send feedback to | Tukuna mai ngā whakahokinga kōrero ki public.consultation@ird.govt.nz

Notes | Pitopito kōrero: It is proposed that this interpretation statement have an application date of 1 April 2025.

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

Tax residence – government service rule

Issued | Tukuna: Issue date

IS XX/XX

This interpretation statement explains the government service rule and briefly touches on the articles of double tax agreements that may need to be considered if the government service rule applies.

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

REPLACES | WHAKAKAPIA

- IS 16/03: **Tax residence** (discussion of the government service rule)
- CS 21/02: **Government service rule**

Contents | Ihirangi

Summary | Whakarāpopoto

1. The concept of tax residence is a central feature of taxation. Among other matters, tax residence is relevant to whether a person is assessable for tax on worldwide income or on only New Zealand–sourced income.

2. An individual is generally a New Zealand tax resident if they:

   - have a permanent place of abode in New Zealand (the permanent place of abode test);
   - have been personally present in New Zealand for more than 183 days in total in any 12-month period (the 183-day rule); or
   - are personally absent from New Zealand in the service of the New Zealand Government (the government service rule).

3. An individual may cease to be tax resident if they are personally absent from New Zealand for more than 325 days in total in a 12-month period (the 325-day rule). However, the 325-day rule does not apply if the person is tax resident in New Zealand because they have a permanent place of abode here or because they are absent from New Zealand in the service of the New Zealand Government.

4. This means a person who is overseas in the service of the New Zealand Government cannot cease to be a New Zealand tax resident during the period of their service, irrespective of the length of time they are away from New Zealand.

5. For the government service rule to potentially apply, the person must be a New Zealand tax resident under the 183-day rule when they start service in the New Zealand Government outside New Zealand (whether or not they were previously in the service of the New Zealand Government in New Zealand).

6. The person does not have to have been in the service of the New Zealand Government before their departure from New Zealand. Nor does being in the service of the New Zealand Government need to be the reason for the person departing New Zealand.

7. This means the government service rule applies to treat a person as continuing to be tax resident in New Zealand, irrespective of the length of their absence, if they are in the service of the New Zealand Government because they:

   - go abroad to pursue duties for the New Zealand Government, whether or not they were an existing government employee; or
   - are overseas and accept a position with the New Zealand Government abroad before ceasing to be tax resident in New Zealand.

8. Being in the service of the New Zealand Government includes being an employee of a New Zealand government department or a departmental agency, a member of the New Zealand Defence Force or New Zealand Police, or an employee of another public body if that body is so closely controlled by the government that it is an agent or instrument of the New Zealand Government (this would include most public bodies listed as government agents in the Crown Entities Act 2004).

9. Employees of state-owned enterprises and contractors to the New Zealand Government are not considered to be in the service of the New Zealand Government.

10. The government service rule applies to the individual only. It does not apply to a spouse, partner or child of someone in the service of the New Zealand Government overseas.

11. If someone is tax resident in more than one country, there may be a double tax agreement (DTA) between New Zealand and the other country that needs to be considered.

12. DTAs New Zealand is a party to have a specific article that allocates taxing rights in relation to remuneration for services rendered by government servants (the government service article).

13. Under the DTA government service article, New Zealand generally has sole taxing rights for salaries, wages, and other similar remuneration paid to an individual in respect of services rendered to New Zealand. However, the other country has sole taxing rights for those amounts if the services are rendered in the other country and the individual is a tax resident of that other country under the DTA residence "tie-breaker" tests[1] and:

    - is a national of that other country; or
    - did not become a tax resident of that other country solely for the purpose of rendering the services.

14. While a person may have many reasons for taking up a role abroad, the Commissioner's position in relation to the second point above is that it will apply, giving the other country sole taxing rights, if it can be demonstrated that government service was not the primary reason for or cause of the person becoming tax resident in the other country.

15. If a person overseas in the service of the New Zealand Government has other income sources and is tax resident in both New Zealand and the other country under the domestic law of each country, a series of tie-breaker tests is applied to allocate tax residence to one of the countries for the purposes of the DTA. Based on this, the DTA then sets out the taxing rights of each country.

16. If a person is a member of a diplomatic mission or consular post for New Zealand overseas, the government service DTA article does not apply to them. A separate article covers them.

17. If someone is tax resident in New Zealand and also in a country New Zealand does not have a DTA with, they are assessable in New Zealand on their worldwide income[2] but may be entitled to a credit for foreign tax paid on foreign-sourced income or gains.

18. In some circumstances, student loan borrowers who are not physically in New Zealand may be treated as being physically in New Zealand. This is relevant to whether their loan is interest-free and what repayment obligations apply. One of these circumstances is where the principal reason the borrower is not physically in New Zealand is because they are overseas in the service of the New Zealand Government.

[1] These are explained in IS xx/xx: Tax residence.

[2] Other than exempt income and excluded income.

19. If someone is overseas in the service of the New Zealand Government they may be eligible to become a KiwiSaver member and may also be able to get the government KiwiSaver contribution.

Introduction | Whakataki

20. The concept of tax residence is a central feature of taxation. Under the Income Tax Act 2007, the main relevance of tax residence is that it determines whether a person is assessable for tax on worldwide income or only on New Zealand–sourced income. In particular (s BD 1(5)):

    - New Zealand tax residents are assessable on worldwide income[3] (though they may be entitled to a credit for foreign tax paid on foreign-sourced income or gains); and
    - non-tax residents are assessable on only New Zealand–sourced income (other than exempt income and excluded income).

21. If someone is tax resident in more than one country, there may be a DTA between New Zealand and the other country that needs to be considered. DTAs set out what taxing rights each country has in relation to matters covered by the DTA. For a list of countries that New Zealand has DTAs with see Inland Revenue's website: Tax treaties.

22. The relevance of tax residence in New Zealand is explained in more detail in IS xx/xx[link]: **Tax residence**.

23. One of the tax residence rules for individuals is the government service rule. Under this rule, a person is tax resident if they are absent from New Zealand in the service of the New Zealand Government. This interpretation statement explains the government service rule and briefly touches on the DTA articles that may need to be considered if the Government service rule applies.

Analysis | Tātari

Overview of the tax residence rules for individuals

When an individual is a New Zealand tax resident

24. An individual is a New Zealand tax resident if they:

[3] Other than exempt income and excluded income.

- have a permanent place of abode in New Zealand, even if they also have a permanent place of abode elsewhere (s YD 1(2)); or
- have been personally present in New Zealand for more than 183 days in total in any 12-month period (s YD 1(3)); and
  - have not ceased to be tax resident under the 325-day rule (see [25]); and
  - are not treated as being non-tax resident because they are employed under the Recognised Seasonal Employer Scheme; or
- are personally absent from New Zealand in the service of the New Zealand Government.

When an individual ceases to be a New Zealand tax resident

25. An individual who is tax resident in New Zealand **only** because of the 183-day rule ceases to be tax resident if they are personally absent from New Zealand for more than 325 days in total in a 12-month period (s YD 1(5)).

The Government service rule

26. If a person does not have a permanent place of abode in New Zealand, they generally cease to be a New Zealand tax resident once they have been absent from New Zealand for more than 325 days in a 12-month period. However, the 325-day rule **does not apply** if the person is absent from New Zealand in the service of the New Zealand Government.

27. This means a person who is overseas in the service of the New Zealand Government cannot cease to be a New Zealand tax resident during the period of their service, irrespective of the length of time they are away from New Zealand.

28. The government service rule is set out in s YD 1(7):

> **YD 1 Residence of natural persons**
>
> ...
>
> *Government servants*
>
> (7) Despite subsection (5), a person who is personally absent from New Zealand in the service, in any capacity, of the New Zealand Government is treated as a New Zealand resident during the absence.

Purpose of the government service rule

29. The purpose of s YD 1(7) is for New Zealand to retain the taxing rights for income of persons who start working for the New Zealand Government overseas while they are still tax resident in New Zealand (whether or not they were previously in the service of the New Zealand Government in New Zealand), because such people remain closely connected to New Zealand by virtue of being representatives and servants of the New Zealand Government abroad.

When the government service rule applies

30. Section YD 1(7) applies "despite subsection (5)" (the 325-day rule). Therefore, a person who is absent from New Zealand in the service of the government cannot cease being tax resident under the 325-day rule so long as they remain in that service, irrespective of the length of their absence from New Zealand.

31. The effect of s YD 1(7) is to extend the tax residence of a person in circumstances where they would otherwise become non-tax resident under the 325-day rule. The 325-day rule applies where a person is tax resident under the 183-day rule. As noted at [29], the purpose of s YD 1(7) is for New Zealand to retain the taxing rights to income the New Zealand Government pays to persons who start working for the New Zealand Government overseas while they are still tax resident in New Zealand. Therefore, the Commissioner considers that for s YD 1(7) to potentially apply, the person must be a New Zealand tax resident under the 183-day rule in s YD 1(3) when they start service in the New Zealand Government outside of New Zealand (whether or not they were previously in the service of the New Zealand Government in New Zealand).

32. The Commissioner does not consider that the person must have been in the service of the New Zealand Government before their departure from New Zealand. Nor does he consider that being in the service of the New Zealand Government needs to be the reason for the person departing New Zealand.

33. This means s YD 1(7) applies to treat a person as continuing to be tax resident in New Zealand, irrespective of the length of their absence, if they are in the service of the New Zealand Government because they:

- go abroad to pursue duties for the New Zealand Government (which would include undertaking study overseas for a government department), whether or not they were an existing government employee; or
- are overseas and accept a position with the New Zealand Government abroad before ceasing to be tax resident in New Zealand under the 325-day rule.

Scope of government service

34. A person is considered to be in the service of the New Zealand Government if they are:

- an employee of a New Zealand government department or a departmental agency;
- a member of the New Zealand Defence Force or New Zealand Police; or
- an employee of another public body if that body is so closely controlled by the government that it is an agent or instrument of the New Zealand Government.

35. In determining whether a public body is so closely controlled by the government that it is an agent or instrument of the New Zealand Government, control is measured by how much independence and discretion the body can insist on, not by how much control the body actually enjoys. When the nature and degree of control the government exercises is uncertain, or a public body has a substantial measure of independent discretion, the courts have been reluctant to recognise the public body as an agent of the government.

36. Most public bodies listed as government agents in the Crown Entities Act 2004 are sufficiently controlled by the government to satisfy the common law test of control, so will therefore be agents of the government. Similarly, wholly-owned subsidiaries of those government agents are also likely to be sufficiently controlled to satisfy the test. This means employees of those bodies will likely be considered to be in the service of the New Zealand Government. However, decisions need to be made on a body-by-body basis, taking into account the particular facts and governing rules for each body.

37. Bodies such as autonomous government entities, independent government entities, school boards of trustees and tertiary education institutions will most likely be too independent and enjoy too much discretion to be agents of the government. This means employees of these bodies will likely not be in the service of the New Zealand Government.

38. Employees of state-owned enterprises and contractors to the New Zealand Government are not considered to be in the service of the New Zealand Government.

Ceasing to be in the service of the New Zealand Government

39. If a person ceases to be in the service of the New Zealand Government while overseas, they become non-tax resident from the day after the date they cease their service, provided they do not have a permanent place of abode in New Zealand and have been absent from New Zealand for more than 325-days in a 12-month period (and have not satisfied the 183-day rule since then).

The government service rule applies only to the individual, not accompanying family members

40. Section YD 1(7) does not apply to a spouse/partner or child of someone in the service of the New Zealand Government overseas. The tax residence status of any family members needs to be determined independently under s YD 1. See IS xx/xx.

If a person overseas in the service of the New Zealand Government is also tax resident in the other country

41. Someone may be tax resident in New Zealand under the government service rule and also be tax resident in the country in which they are performing the services. In this situation, the tax implications depend on whether there is a DTA between New Zealand and the other country and, if so, how that DTA allocates taxing rights to each country.

If New Zealand has a DTA with the other country

42. The following discussion explains the DTA articles that may be relevant if New Zealand has a DTA with the other country. If there is no DTA in place, see from [50].

DTA article – government service

43. DTAs New Zealand is a party to have a specific article that allocates taxing rights in relation to remuneration for services rendered by government servants (other than members of diplomatic missions and consular posts, who are covered by a separate article – see [49]). When a person who is treated as a New Zealand tax resident under s YD 1(7) is undertaking that service in a country with which New Zealand has a DTA and they are also tax resident in the other country, the provisions of the DTA need to be considered.

44. Under the DTA government service article, New Zealand generally has sole taxing rights for salaries, wages, and other similar remuneration paid to an individual in respect of services rendered to New Zealand. However, the other country has sole taxing rights for those amounts if the services are rendered in the other country and the individual is a tax resident of that other country under the DTA residence tie-breaker tests[4] and:

- is a national of that other country; or
- did not become a tax resident of that other country solely for the purpose of rendering the services.

[4] These are explained in IS xx/xx.

45. While a person may have many reasons for taking up a role abroad, the Commissioner's position in relation to the second point above is that it applies, giving the other country sole taxing rights, if it can be demonstrated that government service was not the primary reason for or cause of the person becoming tax resident in the other country.

46. The term "national" is defined differently in the various DTAs New Zealand is a party to. In some DTAs national is defined, in relation to individuals, as someone possessing the nationality or citizenship of a contracting state. In some DTAs it is defined by reference to only nationality or only citizenship. The definition in the particular DTA needs to be considered. If the concept of "nationality" is relevant, determining whether a person is a national of a particular state is generally within the jurisdiction of that state.[5] Nationality is usually acquired either by birth (which may include birth to a parent who is a national) or by naturalisation.

Allocation of taxing rights for other income sources

47. As noted at [44], the government service article allocates taxing rights for salaries, wages, and other similar remuneration in respect of the government services rendered. If the person has other income sources and is tax resident in both New Zealand and the other country under the domestic law of each country, a series of tie-breaker tests set out in the DTA is applied to allocate tax residence to one of the countries for the purposes of the DTA. The DTA then determines, based on this allocated tax residence, what taxing rights each country has in relation to matters covered by the DTA. See further IS xx/xx.

48. If both countries have some right to tax a particular item of income or gain that a person has, the person may be entitled to a credit for foreign tax paid on foreign-sourced income or gains. For further information, see IS 16/05: **Income tax – foreign tax credits – how to claim a foreign tax credit where the foreign tax paid is covered by a double tax agreement**.

DTA article – members of diplomatic missions and consular posts

49. New Zealand's DTAs have a separate article concerning members of diplomatic missions and consular posts. This article ensures that members of diplomatic missions and consular posts receive no less favourable treatment under the DTA than they are entitled to under international law or special international agreements.

[5] However, there are some international treaties that have provisions with respect to nationality, which may be relevant.

If New Zealand does not have a DTA with the other country

50. If someone is tax resident in New Zealand and also in a country New Zealand does not have a DTA with, they are assessable in New Zealand on their worldwide income (other than exempt income and excluded income) but may be entitled to a credit for foreign tax paid on foreign-sourced income or gains. For further information, see IS 14/02: **Income tax – foreign tax credits – what is a tax of substantially the same nature as income tax imposed under s BB 1?**

Student loans

51. In some circumstances, student loan borrowers who are not physically in New Zealand may be treated as being physically in New Zealand.

52. Being physically in New Zealand, or treated as such, is relevant to whether a borrower is "New Zealand-based" for the purposes of the Student Loan Scheme Act 2011.[6] Whether a borrower is New Zealand-based determines whether their loan is interest-free and what repayment obligations apply.

53. One circumstance in which the Commissioner may treat a borrower as being physically in New Zealand is where the principal reason the borrower is not physically in New Zealand is because they are overseas in the service of the New Zealand Government. The Commissioner must consider it fair and reasonable to apply this treatment in the circumstances.[7]

54. An application to keep a student loan interest-free while the borrower is overseas can be made through myIR. There is information about eligibility requirements and the documentation required to support an application on Inland Revenue's website: Can I keep my student loan interest-free overseas?

KiwiSaver

55. If someone is overseas in the service of the New Zealand Government, they may be eligible to become a KiwiSaver member. To do so they must be:

- an employee of the State services;[8]
- serving outside New Zealand in a jurisdiction where offers of KiwiSaver scheme membership are lawful;
- employed on New Zealand terms and conditions; and

[6] The term "New Zealand-based" is defined in s 4(1) of the Student Loan Scheme Act 2011.

[7] Section 25(1)(a) of the Student Loan Scheme Act 2011.

[8] Within the meaning of the Public Service Act 2020.

- a New Zealand citizen or entitled under the Immigration Act 2009 to be in New Zealand indefinitely.

56. Such a person would also be able to receive the government KiwiSaver contribution, provided the other eligibility requirements for that (in s MK 2) are met.

Examples illustrating the government service rule

Example | Tauira 1 – Government employee appointed to an overseas position with the department

Facts: Aroha is an employee of a New Zealand government department, living and working in Wellington. Aroha is appointed to a position with the government department in Canada for four years.

Aroha's husband and children accompany her to Canada. It is assumed Aroha ceases having a permanent place of abode in New Zealand from the time of her departure.

Aroha becomes tax resident in Canada under Canadian domestic law. She is a national of New Zealand only.

Aroha has a student loan in New Zealand.

Result: Aroha will not cease to be tax resident once she exceeds 325 days of absence from New Zealand. Once she satisfies the 325-day rule, she will nonetheless continue to be a New Zealand tax resident under s YD 1(7). She will remain tax resident in New Zealand for as long as she is absent from New Zealand in the service of the New Zealand Government.

The government service article of the DTA between New Zealand and Canada allocates taxing rights for Aroha's salary to New Zealand.

The Commissioner approves Aroha's application to keep her student loan interest-free while she is overseas in the service of the New Zealand Government.

The government service rule does not apply to Aroha's husband and children.

Explanation: Section YD 1(7) provides that despite the 325-day rule, a person who is absent from New Zealand in the service of the New Zealand Government is treated as a New Zealand tax resident during the absence.

Aroha is absent from New Zealand in the service of the New Zealand Government. She was tax resident in New Zealand under the 183-day rule in s YD 1(3) when she started the position in Canada. Therefore, even though she will be absent for more than 325-days in a 12-month period, she will continue to be treated as a New Zealand tax

resident under s YD 1(7), for as long as she is absent from New Zealand in the service of the New Zealand Government.

At the time Aroha becomes tax resident in Canada, it is necessary to consider whether the DTA between New Zealand and Canada changes the allocation of taxing rights. The government service article of the DTA allocates taxing rights for Aroha's salary to New Zealand. If Aroha's tax residence tie-breaks to Canada under the DTA, it would be necessary to consider the carve-out in the government service article. This example does not consider the residence tie-breaker tests. However, even if Aroha's tax residence does tie-break to Canada, the carve outs in the government service article would not apply to allocate taxing rights for Aroha's salary to Canada, because taking up the New Zealand Government role was the reason for Aroha becoming tax resident in Canada and she is not a national of Canada.

If Aroha has other income sources, the residence tie-breaker tests set out in the DTA would need to be applied to allocate tax residence to either New Zealand or Canada for the purposes of determining what taxing rights each country has in relation to matters covered by the DTA. See further IS xx/xx.

Aroha's application to keep her student loan interest-free while she is overseas is approved by the Commissioner, subject to the condition that Aroha remains absent from New Zealand in the service of the New Zealand Government. This is because the principal reason Aroha is not physically in New Zealand is because she is overseas in the service of the New Zealand Government, and the Commissioner considers that in the circumstances it is fair and reasonable to treat Aroha as being physically in New Zealand in the circumstances.[9]

Aroha's husband and children are not absent in the service of the New Zealand Government, so s YD 1(7) does not apply to them. Each person's tax residence needs to be determined individually. The other tax residence rules need to be considered for Aroha's husband and children (see IS xx/xx).

Example | Tauira 2 – Non-tax resident expatriate starting a New Zealand Government role overseas

Facts: Justine, a New Zealand expatriate, has been living and working in London for 5 years for an American bank. Justine is not a New Zealand tax resident. She hears that a New Zealand government department is looking for a person to work in its London office. She applies for the position and is successful.

[9] See s 25(1)(a) of the Student Loan Scheme Act 2011.

Result: Justine will not become a New Zealand tax resident merely because she has started working for the New Zealand Government in London.

Explanation: Section YD 1(7) operates to extend the tax residence of a person in circumstances where they would otherwise become non-tax resident under the 325-day rule. It does not operate to make a non-tax resident become tax resident because they take a New Zealand Government position overseas.

For s YD 1(7) to potentially apply, the person must be a New Zealand tax resident under the 183-day rule in s YD 1(3) when they start service in the New Zealand Government outside of New Zealand (whether or not they were previously in the service of the New Zealand Government in New Zealand).

Justine was not tax resident in New Zealand when she started her role for the New Zealand Government in London. Therefore, s YD 1(7) cannot apply to her.

Example | Tauira 3 – New Zealand tax resident starting a New Zealand Government role while overseas

Facts: After finishing university, Louis is travelling in Europe. While he is away, he applies for a job at the New Zealand embassy in Paris. He is offered the job before he is due to leave France, and decides to stay in France to take up the role. He intends to stay in the role for about a year to save money for further travel.

At the time he takes up the role, Louis is a New Zealand tax resident under the 183-day test, as he has not yet been away from New Zealand for more than 325-days. He does not have a permanent place of abode in New Zealand from the time he left on his travels.

Louis becomes tax resident in France under French domestic law. He is a national of New Zealand only.

Louis has a student loan in New Zealand.

Result: Louis will not cease to be tax resident once he exceeds 325-days of absence from New Zealand. Once he satisfies the 325-day rule, he will nonetheless continue to be a New Zealand tax resident under s YD 1(7). He will remain tax resident for as long as he is absent from New Zealand in the service of the New Zealand Government.

The government service article of the DTA between New Zealand and France allocates taxing rights for Louis' salary to New Zealand.

Louis' student loan will be interest-bearing while he is overseas.

Explanation: Louis is absent from New Zealand in the service of the New Zealand Government. He was a tax resident in New Zealand under the 183-day rule in s YD 1(3) when he started the government job overseas. Therefore, even once he has been absent for more than 325-days in a 12-month period, he will continue to be treated as a New Zealand tax resident under s YD 1(7) for as long as he is absent from New Zealand in the service of the New Zealand Government.

At the time Louis becomes tax resident in France, it is necessary to consider whether the DTA between New Zealand and France changes the allocation of taxing rights. The government service article of the DTA allocates taxing rights for Louis' salary to New Zealand. If Louis' tax residence tie-breaks to France under the DTA, it would be necessary to consider the carve-out in the government service article. This example does not consider the residence tie-breaker tests. However, even if Louis' tax residence does tie-break to France under the DTA, the carve outs in the government service article would not apply to allocate taxing rights for his salary to France, because taking up the New Zealand Government role was the reason for him becoming tax resident in France and he is not a national of France.

If Louis has other income sources, the residence tie-breaker tests set out in the DTA would need to be applied to allocate tax residence to either New Zealand or France for the purposes of determining what taxing rights each country has in relation to matters covered by the DTA. See further IS xx/xx.

If Louis applied to keep his student loan interest-free while he is overseas in the service of the New Zealand Government, this would not be approved by the Commissioner. This is because being overseas in the service of the New Zealand Government is not the principal reason Louis is not physically in New Zealand.

Example | Tauira 4 – New Zealand tax resident starting a New Zealand Government role while overseas in a country of which he is a national

Facts: The facts are the same as in Example | Tauira 3, except that:

- Louis is a national of both New Zealand and France; and
- it is assumed that at the time Louis becomes tax resident in France his tax residence tie-breaks to France under the DTA between New Zealand and France.

Result: The result is the same as in Example | Tauira 3, except that once Louis becomes tax resident in France, the government service article of the DTA between New Zealand and France allocates taxing rights for Louis' salary to France.

Explanation: Louis is absent from New Zealand in the service of the government. He was a tax resident in New Zealand under the 183-day rule in s YD 1(3) when he started the New Zealand Government job overseas. Therefore, even once he has been absent for more than 325-days in a 12-month period, he will continue to be treated as a New Zealand tax resident under s YD 1(7), for as long as he is absent from New Zealand in the service of the New Zealand Government.

At the time Louis becomes tax resident in France, it is necessary to consider whether the DTA between New Zealand and France changes the allocation of taxing rights. From this time, the government service article of the DTA allocates taxing rights for Louis' salary to France. Because Louis' tax residence tie-breaks to France under the DTA (as noted above this is assumed to be the case for this example), it is necessary to consider the carve-out in the government service article. The first carve out in the government service article would apply, because Louis is a national of France. Therefore, the Government service article of the DTA allocates taxing rights for Louis' salary to France.

If Louis has other income sources, his tax residence tie-breaking to France under the DTA will determine what taxing rights each country has in relation to matters covered by the DTA. See further IS xx/xx.

Example | Tauira 5 – New Zealand tax resident starting a New Zealand Government role overseas and subsequently starting a different New Zealand Government role overseas

Facts: Jack is living in New Zealand when he applies for and is appointed to a position for the New Zealand Government in Japan.

Jack leaves New Zealand to start the role in Japan. It is assumed he ceases having a permanent place of abode in New Zealand from the time of his departure.

Jack becomes tax resident in Japan under Japan's domestic law. He is a national of New Zealand only.

After being in Japan for 5 years, Jack applies for and is appointed to a different role for the New Zealand Government in Japan. Jack resigns from his previous role and starts the new role.

Jack has a student loan in New Zealand.

Result: Jack will not cease to be tax resident once he exceeds 325-days of absence from New Zealand, during the period he is employed in each of his two roles for the

New Zealand Government in Japan. Once he satisfies the 325-day rule during his employment in his first role for the New Zealand Government, he will nonetheless continue to be a New Zealand tax resident under s YD 1(7). As Jack moved from one New Zealand Government role to another, there is no break in him being in the service of the New Zealand Government. Therefore, the government service rule in s YD 1(7) continues to apply when Jack moves from one role to the next. Jack will remain tax resident in New Zealand for as long as he is absent from New Zealand in the service of the New Zealand Government.

The government service article of the DTA between New Zealand and Japan allocates taxing rights for Jack's salary for each of the two roles he has in Japan to New Zealand.

The Commissioner approves Jack's application to keep his student loan interest-free while he is overseas in the service of the New Zealand Government.

Explanation: Section YD 1(7) provides that despite the 325-day rule, a person who is absent from New Zealand in the service of the New Zealand Government is treated as a New Zealand tax resident during the absence.

During the 5 years Jack is employed in the first role in Japan, he is absent from New Zealand in the service of the government. He was tax resident in New Zealand under the 183-day rule in s YD 1(3) when he started the position in Japan. Therefore, even though he is absent for more than 325-days in a 12-month period, he continues to be treated as a New Zealand tax resident under s YD 1(7) for the period he was absent from New Zealand in that role.

Jack continues to be a New Zealand tax resident under the government service rule in s YD 1(7) in the period he is employed in the second role he has for the New Zealand Government in Japan. As Jack moved from one New Zealand Government role to the next, there is no break in him being in the service of the New Zealand Government. Therefore, the government service rule in s YD 1(7) continues to apply to prevent Jack from ceasing to be resident under the 325-day rule.

At the time Jack becomes tax resident in Japan, it is necessary to consider whether the DTA between New Zealand and Japan changes the allocation of taxing rights. The government service article of the DTA allocates taxing rights for Jack's salary for each of the two roles to New Zealand. Even if, during the period of his employment in each of the roles he had in Japan, Jack's tax residence had tie-broken to Japan under the DTA, the carve outs in the government service article would not have applied to allocate taxing rights for Jack's salary to Japan. This is because taking up the first New Zealand Government role was the reason for Jack becoming tax resident in Japan and he is not a national of Japan.

If Jack has other income sources during the period of his employment by the New Zealand Government agencies in Japan, the residence tie-breaker tests set out in the DTA would need to be applied to allocate tax residence to either New Zealand or Japan for the purposes of determining what taxing rights each country has in relation to matters covered by the DTA. See further IS xx/xx.

Jack's application to keep his student loan interest-free while he is overseas is approved by the Commissioner, subject to the condition that Jack remains absent from New Zealand in the service of the New Zealand Government. This is because the principal reason Jack is not physically in New Zealand is because he is overseas in the service of the New Zealand Government, and the Commissioner considers that in the circumstances it is fair and reasonable to treat Jack as being physically in New Zealand.[10]

References | Tohutoro

Legislative references | Tohutoro whakatureture

Crown Entities Act 2004

Immigration Act 2009

Income Tax Act 2007

Sections BD 1, MK 2 and YD 1

Public Service Act 2020

Student Loan Scheme Act 2011

[10] See s 25(1)(a) of the Student Loan Scheme Act 2011.

Sections 4(1) ("New Zealand-based") and 25(1)(a)

Other references | Tohutoro anō

Can I keep my student loan interest-free overseas? (webpage, Inland Revenue, 22 March 2024)
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Tax treaties (webpage, Inland Revenue, no date)
taxpolicy.ird.govt.nz/tax-treaties

About this document | Mō tēnei tuhinga

Interpretation statements are issued by the Tax Counsel Office. They set out the Commissioner's views and guidance on how New Zealand's tax laws apply. They may address specific situations we have been asked to provide guidance on, or they may be about how legislative provisions apply more generally. While they set out the Commissioner's considered views, interpretation statements are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further Status of Commissioner's advice (Commissioner's statement, Inland Revenue, December 2012). It is important to note that a general similarity between a taxpayer's circumstances and an example in an interpretation statement will not necessarily lead to the same tax result. Each case must be considered on its own facts.