

# TAX FOR MIGRANTS AND RETURNING KIWIS

*... an overview of the key tax considerations.*

## **Are you coming to, working in, or leaving, New Zealand? Do you spend time across multiple jurisdictions?**

Often people migrate to New Zealand to join family members, pursue career opportunities or simply enjoy a change in lifestyle.

With all the obvious things that require your attention while moving, tax is often the forgotten element.

Overseas financial assets and investments are often retained, so it is vital to understand how New Zealand tax laws apply to these, and how you might utilise New Zealand tax laws to best structure your affairs after your move to mitigate taxes.

## **WHY IS TAX RESIDENCY RELEVANT?**

New Zealand tax residents pay tax in New Zealand on their world-wide income. This means you are required to return all of your income in your New Zealand income tax return, regardless of where that money was earned, or where it is kept.

If you do not earn money in New Zealand, you are still liable to return your overseas income in New Zealand subject to the temporary tax residency exemption and any relief provided by the double tax agreement (both discussed below).

## **WHAT IS A NEW ZEALAND TAX RESIDENT?**

You do not need to be a resident, have a New Zealand visa, or even have an IRD number to be tax resident in New Zealand. If you have a place to stay in New Zealand which has some level of permanence, whether rented or owned, you may have a permanent place of abode which will make you New Zealand tax resident. This is a very complex area of law, and careful analysis is required to determine whether or not you have a permanent place of abode. There is no list of do's and don'ts.

To give an idea of the complexity of determining tax residency, Inland Revenue's interpretation statement is 83 pages long. It is possible to have more than one permanent place of abode, so you could have a permanent place of abode in multiple countries and careful analysis and professional judgment is required to determine whether or not you have a permanent place of abode.

Even if you do not have a permanent place of abode in New Zealand, you will be a New Zealand tax resident if you spend more than 183 days in New Zealand in any rolling 12-month period.



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## DOUBLE TAX AGREEMENTS

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If you are New Zealand tax resident and tax resident in another country, or you earn income or have assets in another country, it is necessary to see if a double tax agreement (DTA) applies. A DTA can provide relief against double tax in certain circumstances, but does not always alleviate double tax. New Zealand has DTAs with over 40 of our main trading and investment partners.

Where there is no DTA, there is no relief from New Zealand tax on the overseas income. This is particularly concerning in the case of low or no tax jurisdictions such as Saudi Arabia, as full tax will be paid in New Zealand on your world-wide income with a foreign tax credit (where applicable).

Even where a DTA applies to provide relief, it is common that tax returns are required in both jurisdictions and certain forms of income may be reported in both countries. It is often the case that double tax is still paid for certain types of income/investments.

## TEMPORARY TAX EXEMPTION

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A new migrant or returning kiwi can benefit from a temporary tax exemption called transitional tax residency. This is highly beneficial as transitional tax residents are relieved from paying tax in New Zealand on foreign-sourced passive income for a period of up to five years.

The correct calculation of the transitional tax residency period is vital and is something that we repeatedly see miscalculated. The temporary tax exemption **does not apply** to income earned from personal services such as working for an employer or as a contractor, regardless of where that income has been earned or paid.

## WORKING FOR A FOREIGN EMPLOYER

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If you are working for a foreign employer while situated in New Zealand (remote working), then it is highly likely that tax will need to be returned on that income in New Zealand, regardless of whether you are paid in New Zealand and regardless of whether you repatriate the funds to New Zealand. A DTA can assist and provide clarity in this situation, but double tax can still apply, and cash flow issues can arise.

Such an arrangement can also create tax implications for the foreign employer in certain circumstances, so tax advice should be sought to ensure all structuring opportunities are explored to mitigate double taxes wherever possible.

## FOREIGN ASSETS

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Foreign assets and investments are generally taxed differently to New Zealand based investments and the international tax regime can create a tax obligation when there is no cash income. Common investments with New Zealand tax implications include foreign pension schemes, foreign shares, foreign denominated bank accounts and loans, and rental properties.

Tax advice should be sought to understand how your offshore investments will be taxed if they are retained after the transitional tax residency period expires.

## PENSIONS

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If you have a pension in another country, you should seek advice on how that will be treated under New Zealand tax rules. A pension can be taxed in multiple ways in New Zealand depending on the nature of the pension and how it is withdrawn/transferred.

There is a period of time in which you can transfer foreign pensions to New Zealand without incurring additional tax. Tax advice can provide you with the opportunity to plan for tax efficiency, in order to retain more of your pension and mitigate taxes across both jurisdictions.

## FOREIGN INVESTMENTS

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The foreign investment fund (FIF) rules apply to shares in overseas companies, certain interests in foreign superannuation schemes and some types of foreign unit trusts. The FIF rules can apply to deem an income each year, regardless of whether any actual income has been distributed. This can lead to a cashflow issue, and there is generally a mismatch for foreign tax purposes.

## FOREIGN BANK ACCOUNTS AND LOANS

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Foreign denominated bank accounts and foreign loans are classified as financial arrangements. The financial arrangement rules can deem an income via a spreading method and also apply to account for foreign exchange gains and losses. This can lead to tax when there has not been an actual financial cash gain.

## OVERSEAS PROPERTY AND MORTGAGES

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Foreign rental properties will be subject to tax in New Zealand, even if they are also taxed overseas. Foreign mortgages are not only considered a financial arrangement, but also lead to the requirement to pay the bank's New Zealand tax obligation on the interest payment. Therefore, you will be required to file and pay additional tax on the interest paid, either under an Approved Issuer Levy (AIL), or Non-Resident Withholding Tax (NRWT).

## TRUSTS

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Trusts do not have tax residency status themselves, so the tax status of a trust is determined by the tax residency status of those connected with the trust.

Due to the differences in the way trusts are treated by each country this is a hugely complex area of tax law. Overseas trusts should be thoroughly considered at the earliest possible time to determine if the trust is still fit for purpose, and how it might be taxed in New Zealand even if the assets are outside of New Zealand.

The trust may require additional disclosures, and not making such disclosures can lead to adverse tax implications in the future.

## OVERSEAS BUSINESSES

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If you own or are director of an overseas business, you should immediately seek tax advice to ensure you understand how your presence in New Zealand might affect the company's tax residency status.

It is possible for overseas companies to become New Zealand tax resident themselves due to the actions of their directors and key employees. There are usually several ways to structure your affairs which can mitigate double taxation if you seek advice in advance.

## WHEN TO SEEK ADVICE

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It is always best to seek advice as early as possible. Some issues require more time to review and resolve, so acting sooner can save you time and money.

The transitional tax residency period provides a valuable opportunity for you to evaluate your investments and learn how they will be treated after your transitional tax residency expires, and provides time to consider any potential restructuring.

Addressing matters correctly from the start is usually more cost-effective than making corrections later. Despite this, it is never too late to get guidance and structuring for tax efficiency can often be completed later if necessary. If you have misunderstood your New Zealand tax obligations, we can help you get back on track and mitigate penalties that might be imposed.

We can guide you through what is required and fix any issues. Our goal is to ensure that you have a clear path forward, with all potential problems resolved, so you can move ahead with complete confidence and peace of mind.

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## WHY USE JOHNSTON LAW?

Navigating international tax issues can be incredibly complex, especially if you have investments elsewhere in the world, or earn income from other jurisdictions. Seeking advice from a specialist tax lawyer generally saves significant time, effort and money.

As dedicated expat tax specialists, we handle these complexities daily and collaborate with a team of experts to ensure the best outcomes. Whether you want to work with your current accountant or financial advisor, or need a referral, we've got you covered.

While navigating international tax issues is common for us, it is not something most people deal with on a daily basis. Many accountants and advisors seek our expertise, so you can trust that you're in capable hands.

Julia, our award-winning expert, was named the New Zealand Taxation Advisor of the Year in the 2022 and 2023 Tax Awards by Finance Monthly. This recognition highlights Julia's exceptional expertise and dedication in the field of taxation. You can have full confidence that you will be working with a true migrant tax specialist.

