

MIGRANT TAX TRAPS



Are you moving to, or working in New Zealand? People often migrate to New Zealand to join family members or simply to enjoy a change in lifestyle. What is often overlooked are the financial and tax aspects of such a move.

Migrants moving to New Zealand will usually retain overseas financial assets and investments and should seek advice regarding how New Zealand tax laws apply to these, and how they might utilise New Zealand tax laws to best structure their affairs after their move. Companies looking to expand into New Zealand or offshore will need to understand how best to structure any new venture in order to remain fully compliant and to maximise any tax (or other) benefits available to them under the applicable laws. Below is a summary of the key tax considerations for new migrants.

WHAT IS A NZ TAX RESIDENT?

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.

BECOMING A NZ TAX RESIDENT

You do not need to be a resident, have a New Zealand visa, or even have an IRD number to be a 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 what is known as 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. Even if you do not have a permanent place of abode in New Zealand, you will be New Zealand tax resident if you spend at least 183 days in New Zealand in any rolling 12-month period.

DOUBLE TAX AGREEMENTS (DTA)

If you are also a tax resident in another country, or you earn income or have assets in another country, it is necessary to see if a DTA applies. A DTA can provide relief against double tax in certain circumstances. New Zealand has DTAs with 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 no relief granted at all, other than the recognition of a foreign tax credit where applicable.

TRANSITIONAL RESIDENCY

A new migrant or returning Kiwi can benefit from transitional tax residency status. 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 four and a half years. Therefore, the correct calculation of the transitional tax residency period is vital. Note that income earned from work you do while New Zealand tax resident will be subject to tax in New Zealand, regardless of where the income has been earned.

WORKING FOR SHORT PERIODS IN NEW ZEALAND

If you are working in New Zealand for a short period of time it is possible that you may not need to pay tax in New Zealand on that New Zealand sourced income. However, if you are working for an entity which is considered to have a 'permanent establishment' in New Zealand, then that income is subject to tax in New Zealand. Whether or not a company has a permanent establishment in New Zealand is a complex area of tax law which leads to many obligations for the company, and advice on this should be sought.

WORKING FOR A FOREIGN EMPLOYER

If you are working for a foreign employer while situated in New Zealand, it is highly likely that tax will need to be returned on that income in New Zealand, regardless of whether it is paid in 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 specific tax advice should be sought to ensure all structuring opportunities are explored.

TRUSTS

While trusts do not have tax residency status themselves, the tax status of a trust is determined by the tax residency status of those connected with the trust. If you have a trust before you become New Zealand tax resident, you should seek tax advice as early as possible in order to ensure the trust is able to receive the best tax treatment in New Zealand.

PENSIONS

If you have a pension in another country, you should seek advice on how that will be treated under New Zealand tax rules. This will enable you to determine whether it might be more cost effective to transfer the funds to New Zealand if possible. There is a period of time in which you can transfer foreign pensions to New Zealand without incurring additional tax.

FOREIGN ASSETS

Foreign assets and investments are generally taxed differently to New Zealand based investments. The tax implications of all investments should be considered as the international tax regime can create a tax obligation when there is no cash income. Common investments which are often forgotten include foreign denominated bank accounts, foreign shares, foreign pension schemes, real property situated overseas.

FOREIGN BUSINESS INTEREST

If you own an overseas business, or are involved with one after you become a tax resident in New Zealand, you should immediately seek tax advice to ensure you understand how your new tax residency status might affect that company. It is possible for overseas companies to become New Zealand tax resident companies due to the actions of their directors and key employees. There are usually several ways to structure your affairs which can alleviate any double taxation if you seek advice in advance.

WHY IS IT IMPORTANT TO INVOLVE SAUNDERS & CO?

With all of the obvious things that require your attention while moving, tax seems to be the forgotten element. International tax issues are highly complex and specialist advice should always be sought, especially when you have investments elsewhere in the world, or are earning income from other jurisdictions. Involving a specialist tax lawyer

may save you a lot of time, effort, and in the end, money. Where you already have an accountant or advisor, we can work with them to ensure you achieve the best possible result. We are often contacted by accountants and advisors looking for our specific experience. While this is common for us, it is not something most people deal with on a daily basis.

OTHER LEGAL OR IMMIGRATION NEEDS?

Saunders & Co also offers a dedicated immigration team, as well as a full range of standard and specialist legal services, meaning that in addition to advising you on your tax position and immigration pathway, we can also advise and represent on property and business sale and purchase, commercial and insurance matters, asset management and estate planning, employment, intellectual property, family law and litigation.

WHEN TO SEEK ADVICE

You should always seek advice as early as possible. Some issues will take more time to review and resolve than others. If there are business interests overseas it is vital to seek advice prior to becoming New Zealand tax resident in order to take advantage of all available opportunities for restructuring. The transitional residency period also provides a valuable opportunity for individuals to consider their investments and how they will be treated after their transitional residency expires. This period can be used to restructure your tax affairs to ensure you minimise any tax inefficiencies. However, it is never too late to seek advice to confirm that you are meeting your tax obligations. If you are not, you can consider making a voluntary disclosure which provides you the opportunity to advise Inland Revenue that there have been mistakes made. If you make a voluntary disclosure to Inland Revenue prior to them notifying you of an audit of your tax affairs, you can receive a 100% reduction in any low-end shortfall penalties that the Commissioner might seek to impose.

CONTACT

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