Tax Tonic Feb 2021

Carl Brandt & Julie Segedin

NZders returning home

Q: NZ tax residency, can that be affected by person living overseas and puts in a IR3 yearly to keep loses alive

> *A: If the person is actually a non resident they should actually be filing an IR3NR and carrying the losses forward that way. If they have made a mistake and used an IR3 that wont make them resident.*

Q: IRD have informed me that a client, who has been overseas for 10 years, is still a tax resident , as they didn't get his IR886 notice that he left the country. no property owned during this time. he has a bank account but only to use when he visited his family for short trips. can they rely on this?

> *A: Hmmm….that isnt correct. A person is either resident or not under the legislation. They can't demand the questionnaire but if they want to check the self-assessment of the status is correct you will have to provide all the information – we would normally advise a letter detailing all the factors rather than the questionnaire.*

Q: Have a client who returned on 23 March 2020. Do they need to include all their foreign income in an NZ resident tax return for the 2020 year?

> *A: Good question. You only have to return the portion of worldwide income "earned" after the date residency starts ie in this case 7 days. (Assuming the person isnt a transitional resident.*

Q: What happens if the permanent NZ home is burnt down while overseas?

> *A: Wow that's an interesting one and the answer is quite grey. I think it would be a case of looking at this with hindsight. If they sold what remained you could arguably say the moment it burnt down the remaining property was no longer going to be a home they could return to. If they rebuilt I think there would be an argument they maintained a connection with that property. In this case the other factors would also be quite relevant.*

Q: What happens when you have two homes, one mostly lived in by one partner and the other house is mostly occupied by the other partner?

> *A: In terms of NZ domestic rules the partners home would still be considered part of a the PPA. In terms of the permanent home test in the DTA it would be a tie and you would have to go to the next test being in which country are the personal and economic interests closest.*

Q: With regard to today's webinar, could you please add this to the questions. Client (in his 20's) works on superyacht (lives on the yacht) and the yacht travels around the world. Been out of NZ for 3-4 years. We have assumed he is a not a tax resident of NZ as has no permanent place of abode and his partner (an Australian citizen) also works on same yacht. Only got a bank account in NZ. Is this treatment correct?

Cayman Islands is where the boat is registered. He has no tax residency anywhere else in the world. They have come to NZ to do maintenance on the boat and are intending to go back to Tahiti to complete this maintenance. Tahiti has since closed due to Covid. If he exceeds the 183day test due to not being able to go back to Tahiti for this maintenance, what would be the tax implications?

A: I assume there is no property connection in NZ so there is no PPA in NZ. We are only concerned with the count-test. The following is a more detailed summary of the Covid concession:

Individuals

*Ordinarily an individual will become tax **resident** in New Zealand if they are personally present in New Zealand for more than 183 days in total in a 12-month period.*

*The **COVID-19** pandemic could cause individuals to have to stay in New Zealand longer than 183 days despite their plans to leave. An individual will not become tax **resident** in New Zealand under the day-count test just because they are stranded in New Zealand.*

*Conversely, an individual will become not tax **resident** in New Zealand if they:*

- *are personally absent from New Zealand for more than 325 days in total in a 12-month period, and*
- *do not have a permanent place of abode here.*

*For individuals that are **resident** in New Zealand, the **COVID-19** pandemic could prevent them from leaving New Zealand. This would delay their ability to meet the 325 day threshold required to be non-**resident**, despite their plans to leave and become non-**resident**. In this situation, the days where an individual is stranded in New Zealand will count towards meeting the 325 day threshold for becoming non-**resident**.*

If a person leaves New Zealand within a reasonable time after they are no longer practically restricted in travelling, then extra days, when the person was unable to leave, will be disregarded for the 183 day test or included for the 325 day test (as relevant). The day-count test is based on normal circumstances when people are free to move.

Factors that may be considered in deciding if a person is practically restricted in travelling include both:

- *Border controls or entry restrictions. A person is unable to practically leave New Zealand if they cannot enter a country of which they are a citizen or permanent **resident** or visa holder.*
- *The availability of commercial flights.*

*Personal considerations or preferences are not factors that impact on whether a person is practically restricted in travelling. Once there is no practical restriction on travel, then deciding to remain in New Zealand does not prevent days from being counted for the **residence** day tests. It does not matter whether they decide to stay in New Zealand because of the level of **COVID-19** infection in their home country, or for other reasons. This includes wanting to go to a different country where entry restrictions still exist. Choosing to stay in New Zealand results in the person becoming tax **resident** under the ordinary application of the day tests.*

In my view it comes down to where the boat could have gone before it came to NZ unless it was on route here before the lockdown and couldn't turn around. If it actually came to NZ after that, in my view it might be an issue unless there was no where else the boat could go. I.e was a "choice" made to stay here or was the only place they could come.

Finance and operating leases

Q: So given the standard tax rate on computer equipment is 40% straight line then all computer leases for 2 or 3 years are finance are going to be finance leases?

A: Correct. These lease terms are more than 75% of the EUL, therefore deemed to be finance leases. The compute equipment should be capitalised and depreciated.

As mentioned in the webinar the difference between this and an operating lease is timing.

Q: "Motor vehicles - class NA (for transporting light goods, gross vehicle mass up to 3.5 tonnes) 10 years, 20% DV". I am assuming you are putting the Ute into this category from the depreciation rates. Is this something we would usually know about a Ute?

A: It should be fairly common knowledge, or if not easy to find out. Utes are made for the purposes of transporting goods as they have a separate tray (which is why they qualify as Work related Vehicles for FBT). The two options are up to 3.5 tonnes (20% DV), or over 3.5 tonnes but not over 12 tonnes (16% DV).

In either case, 75% of the EUL will usually be a lot longer than most leases, typically up to 45-48 months.

Beneficiary loan accounts and settlors

Q: For beneficiary current account interest - can you use less than the FBT rate? If say the child took a security over trust assets.

A: Unfortunately no, the legislation actually requires the FBT prescribed rate to be used.

Company wind-up and o/d current accounts

Q: What about wind up of companies with negative current accounts and negative equity, ie. the retained earning not enough to cover a dividend?

A: In this case the shareholder is writing off the debt owed to them. Generally speaking the new rules in 2017 treat the debt as having been paid by the company where the loan accounts are in proportion with their shareholding – therefore no debt remission income is triggered for the company. This is usually more of a problem when it is an LTC or QC.

Q: Also, wind up of companies with inter-entity loans where those other entities are struck off or the loans are unpayable or receivable - then definitely deemed income?

A: There is an inter-company debt remission exemption in s EW 46C for debts between 100% wholly owned companies. For other types of entities you need to tread more carefully and get advice, but can be exempt if they fit into the rules discussed above.

Bright-line and holding costs

Q: They won't want to allow interest deduction as it would open up holiday homes etc?

A: No doubt that is part of their reasoning however in that case there really is dual use and arguably the predominate use is the holiday home (assuming it isnt airbnb). Bare land is not being "used" for anything except sitting there and changing in value. It is a very difficult one. Given that ideally there should be a change to the legislation allowing the interest and other holding costs to be carried forward as part of the cost of the bare land to be offset if it was ever taxable under the bright-line.

Julie Segedin (07) 282 0723 julie@jstax.co.nz

Carl Brandt (07) 282 0722 carl@carlbrandttax.co.nz