



White Paper - N^o 1

Tax Free Sunshine: A guide for Kiwis to tax-free living in Australia

Covisory

You've worked hard, you've paid your taxes, and you've done well. Thanks to all that hard work, you've managed to put together the ingredients for a comfortable retirement. So what is keeping you here? It can't be the pleasure of living through another cold damp winter, surely.

If you've ever had a passing thought about heading off to a warmer, sunnier climate, then you are not the only one. Successful New Zealanders much like you have not only thought about it but have made it a reality. They've sold the business and skipped off to live in the sunshine. And they have left their tax burden behind them along with their winter wardrobe.

Paying tax in New Zealand on your personal and trust income is just one of those things you have to do - or is it? For some people, after a lifetime of paying tax, the thought of paying any more is pretty unattractive. For others, their tax burden may be the difference between living a comfortable life - or having to weigh up their financial priorities carefully. Either way, your tax bill constrains your choices.

But it needn't be that way. There is a great tax haven right on your doorstep. It's not some remote backwater thousands of miles away, where your family will never visit you. In fact, it's pretty civilised - and only three hours' away.

It's called Australia

Yes, the good news is that for many New Zealanders, Australia can be their personal, individual tax haven. Unlimited sunshine and golf thrown in.

It's worth thinking about. It's close enough to get back quickly if you need to, the culture is similar to ours, the opportunities are much more attractive, and if you do it right you can avoid having to pay tax in New Zealand. Sounds tempting?

So how does it work?

Australia's tax rules are a bit different to our own. Australia taxes people who are 'income tax resident' on both their worldwide income and their capital gains. But there is a special concession for people who are regarded as temporary residents.

A temporary resident for Australian tax purposes is an individual who holds a temporary visa granted under the Migration Act 1958. Specifically excluded is any individual (or their spouse) who is an Australian resident, as defined by the Social Security Act 1991. An Australian resident is defined as 'a person who resides in Australia and is an Australian citizen, the holder of a permanent visa or a protected special category visa (SCV)'.

The SCV is tied to the eligibility for social security payments in Australia. Back in 2001, Australia tight-ened up the rules regarding the eligibility of New Zealand residents and citizens for social security payments in Australia. Since 26 February 2001, New Zealanders can only get access to social security in Australia if they become permanent residents or Australian citizens.

Now we have to delve into the definitions in the Migration Act 1958, which gives concessional tax treatment to New Zealand residents or citizens. Under Section 30(2) of the Migration Act 1958, New Zealand residents or citizens are granted a temporary visa as 'a visa to remain in Australia'. In effect, when entering Australia, New Zealand residents or citizens automatically receive a temporary visa, without having to select any visa status.

Are you an SCV holder?

The only Kiwis entering Australia who don't receive a temporary visa are those who already hold an SCV. This category includes a New Zealand citizen or permanent resident who:

- (i) Was in Australia on 26 February 2001 and were a SCV holder on that day; or
- (ii) Who had been in Australia for a period of, or periods totalling 12 months or more during the two years immediately prior to 26 February 2001 and returned to Australia after that date; or
- (iii) Was residing in Australia on 26 February 2001 and
 - a) Was temporarily absent from Australia on that date, and
 - b) Was an SCV holder immediately before the temporary absence; and
 - c) Was receiving a social security payment on 26 February 2001; and
 - d) Returned to Australia within 6 months of 21 February 2001 or an extended period where one is granted.
- (iv) The person commenced, or recommenced, residing in Australia during the three month period commencing 26 February 2001 or received an extension of this period through a determination of the Secretary of Immigration or received social security benefits on the basis that they are a protected SCV holder.

The advantages of being a temporary resident

Once a person is classified as a Temporary Resident for Australian Income Tax Purposes, they are subject to concessional tax provisions under the various Australian tax statutes, as follows:

- Temporary Residents are not subject to Australian tax on foreign-sourced income other than employment income. Some events relating to employee share acquisitions schemes may be taxable in Australia where some or all of the employment was in Australia. Apart from this, even if funds derived from foreign sourced income are remitted to Australia, these amounts are not taxable. (To this extent the rules are more concessional than the previous United Kingdom Resident Non Domicile rules.)
- Temporary Residents are relieved of record-keeping obligations in relation to foreign companies and investment funds for Australian tax purposes.
- Temporary Residents are able to ignore capital gains **except** in relation to taxable Australian property, which is a generally direct or indirect holding of real estate (see below for more detail).
- Temporary Residents are relieved of the capital gains tax provisions deeming the sale of their assets in Australia on ceasing to be a Temporary Resident of Australia.

Thinking of buying a home in Australia? No problem. Whilst the sale of land that gives rise to a capital gain is taxable, there is an exemption from capital gains tax for a person's main

residence, if it is located in Australia. Note that the separate main residence exemption is not available to each spouse, so you can't split the exemption and have one home each. Moreover, the exemption only applies to individuals, so the residence cannot be owned by a trust.

The exemption from capital gains tax in Australia applies at a practical level to everything other than direct ownership of land, or indirect land holdings through shares in certain companies that by their very nature are land rich (with 50% of their assets being land). This means that a temporary resident can acquire shares in a private company or an Australian publicly listed company and not be subject to capital gains tax in Australia when the shares are disposed of. Clearly this is an advantage. Such income is not considered to be Australian sourced, although naturally any dividends would be subject to income tax in Australia. This position continues indefinitely, provided Australian permanent residence or citizenship is not taken out.

What does this mean for you?

Providing they can terminate their New Zealand income tax residency (see box below), a New Zealand couple could move to Australia, leaving their money in a bank in New Zealand - even denominated in Australian dollars - and only be subject to 2% tax. Their income would not be subject to tax in Australia even if it were remitted into Australia.

The position is broadly similar with rental properties in New Zealand, although that type of income is subject to annual assessment in New Zealand at individual tax rates.

The key to taking advantage of your Australian tax haven is to ensure that you end your New Zealand income tax residency.

Breaking your NZ tax residency

There are two parts to this. To cease being a resident in New Zealand for tax purposes, a person must both:

- Be out of New Zealand for 325 days in any 365 day period, and
- Cease to have a permanent place of abode in New Zealand.

The 325 days spent out of New Zealand need not be continuous.

'Permanent place of abode' is a rather nebulous term that takes into account both the nature and strength of a persons connections with New Zealand. It covers more than having a home available in New Zealand, and looks also at where a person intends to reside and have their financial investments.

What else do you need to know?

Of course, each person's situation has to be individually assessed. But we typically find it is not problematic to ensure that a person ceases to be income tax resident in New Zealand so that we can minimise the tax they pay in New Zealand. Naturally investments can also be placed in third-party countries, rather than just in New Zealand and Australia, and Australia will not tax such income even if it is remitted into Australia.

The second issue relates to family trusts. Whilst individuals may be temporary residents in Australia, their family trusts are not. In most circumstances, family trusts will be subject to tax in Australia on their worldwide income and capital gains. This is a complicated area, beyond the scope of this paper to go through any great depth. However, there are various ways to minimise the impact. The key points are:

- to transfer the assets from a trust into your individual names prior to becoming Australian temporary resident, and
- to ensure that the centre of management of control of the trust remains in New Zealand.

Finally, there is the issue of eligibility for superannuation in New Zealand. Many people who have retired in Australia blithely say that you have to come back to New Zealand every six months to ensure that WINZ in New Zealand considers you to be still residing in New Zealand. Naturally you also have to be able to provide them with an address in New Zealand - though many of these people often use a family friend or child back in New Zealand as a mail box.

The truth is that you can't have it both ways. If a person has moved out of New Zealand and intends to reside overseas for more than six months, in this case Australia, they cease to be eligible for New Zealand national superannuation. Instead, it is necessary to apply for the Australian superannuation and to determine both their eligibility and quantum entitlement - and in doing so, of course, they will lose their Temporary Resident status.

Given that the amount involved is small when compared to the tax savings that many people can make, giving up your NZ super is a small price to pay for tax-free sunshine.

In Summary

Australia is indeed the lucky country, at least for New Zealanders wanting to escape to a tax-free and benign environment. Australia may have a high tax system, but it does not apply to New Zealanders who are able to enter Australia as temporary residents.

The temporary resident status is indefinite. Unlike the comparable provisions in New Zealand for foreigners moving to New Zealand or expatriates who have been out of New Zealand for more than ten years and who return to New Zealand, the Australian provisions do not have an arbitrary time limit.

Each person needs to obtain advice on their own particular situation, but there are certainly some attractive options for those who wish to look further into the matter. If you'd like to talk it over and see what it could mean for you, don't hesitate to call.

Nigel Smith

About Covisory

The Covisory Group specialise in International and Domestic Tax Services, Trust Management, Succession Planning, Strategic and Business Planning, Accounting Services and Business Valuations.

Established in 2007, The Covisory Group has grown from one business to four with a diversity of clients. Covisory clients are owners of family businesses, operating both in New Zealand and globally. Our team of specialists work either one-on-one or alongside our clients' team of professional advisers to develop appropriate short- and long-term solutions.

We build strong relationships with our clients based around trust, accessibility, and responsiveness. There is no 'one size fits all' about our services. Our solutions are bespoke to each client, drawing on our up-to-date specialist knowledge and our years of experience. providing one-on-one expert advice.

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