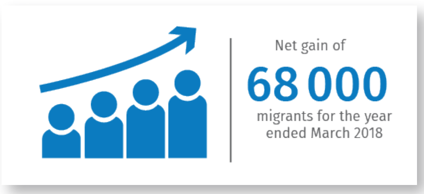
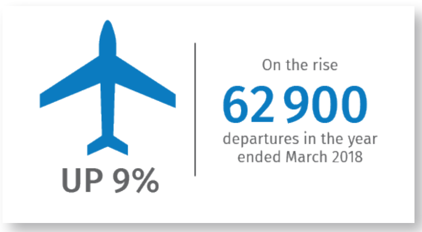
Questions and answers on taxing migrants and employees working offshore

Migrant levels remain high

It's no secret that New Zealand is continuing to experience high levels of migration. Migrant arrivals continue steadily as more and more people are wanting to live and work in New Zealand, whether it be permanently or on a short-term basis.



Statistics New Zealand reports a slight decrease in annual net migration in the year ended March 2018, but levels remain high by historical standards.



Permanent and long-term departures are also on the rise, with 62,900 departures in the year ended March 2018, up 9% from the previous year.

A number of tax issues arise when an individual leaves or comes to New Zealand to live or work. The following questions and answers are based on common scenarios that migrant taxpayers and employees who work off shore may face.

Non-residents and the bright-line test

Ming owns her own home and a rental property in Auckland. Ming's elderly mother suddenly falls sick in China, and Ming decides to return to China indefinitely. Ming has owned her house for a long time but the rental property was purchased on 1 June 2017. At the time of purchasing the rental, Ming's intention was to keep it as a long-term investment. Ming is not a land dealer, developer or builder and is not associated to one. No work or improvements have been carried out to the rental property.

Ming decides to sell her house but to keep the rental property for the time being. She leaves New Zealand on 1 January 2018 and becomes non-resident for tax purposes.

While in China, Ming is presented with a business opportunity she wishes to invest in, but she needs to sell her New Zealand rental property to free up cash.

Q: Ming has heard about the "bright-line test" where properties are taxed if bought and sold within a short period of time. However, she is not worried about a potential tax liability because she is no longer a New Zealand tax resident. Is Ming correct?

A: Ming will have a tax liability if she sells her rental property within the two-year bright-line period. Broadly, this means that if she sells her Auckland rental property within two years of acquiring it, the sale proceeds will be subject to tax in New Zealand. It's important to note that the bright-line test will apply to Ming even if she is no longer a New Zealand tax resident. The land disposal rules do not distinguish between residents and non-residents who dispose of New Zealand land.

Ming will also have to complete a tax statement as part of the conveyancing process and provide her foreign tax information number if she is an "offshore person". In addition, she should also think about the potential application of residential land withholding tax (RLWT) if she is an "offshore RLWT person".

Note that the bright-line test has been extended from two to five years for land acquired on or after 29 March 2018.

More information on outbound New Zealanders who hold New Zealand land can be found in chapter 2 of *New Zealand Tax Handbook for Inbound and Outbound Migrants*.

New Zealand employer sending employee overseas for short-term contract

Sally, a New Zealand tax resident, is going to work in France for five months to oversee a contract that her employer has secured. Her employer does not have an office in France or any other ties with France. Sally will continue to be on the New Zealand payroll and paid by her New Zealand employer.

Q: Should Sally's employer continue to deduct PAYE from her wages?

A: Sally's employer must continue to deduct PAYE from the salary paid to Sally while she is in France, unless Sally holds a special tax code certificate. In practice, a special tax code certificate is only likely to be granted if Sally does not have a New Zealand tax liability in respect of the salary.

If Sally's salary is also taxable in France under France's domestic tax laws, the next step is to look at the New Zealand/France double tax agreement (DTA). Sally's salary will not be subject to tax in France under the DTA because Sally is in France for less than 183 days in the fiscal year concerned, Sally's salary is being paid by an employer who is a non-resident of France, and her employer does not have a permanent establishment or a fixed base in France. This relief from double tax is provided for under article 15(2) of the DTA.

If it turns out that Sally's time in France exceeds 183 days in the income year, Sally will be subject to tax in both New Zealand and France. In this case, Sally may be able to claim a tax credit in New Zealand for any tax she pays in France in relation to the salary.

More information on the tax treatment of Outbound New Zealanders can be found in chapter 2 of *New Zealand Tax Handbook for Inbound and Outbound Migrants.*

Tax returns in year of departure

Miriam is a retired New Zealand tax resident. She left New Zealand on 1 October 2017 to live permanently in Australia so that she could be closer to her son and grandchildren. Miriam sold the apartment she was living in prior to leaving and has no other New Zealand assets or income. However, Miriam does have an Australian rental property. She has returned the Australian rental income in her past New Zealand tax returns.

Q: In the year of departure, how should the Australian rental income be treated assuming that Miriam lost her New Zealand tax residency on 1 October 2017?

A: In the year of departure, the IR 3 (resident return) should be filed instead of the IR 3NR even if a person will lose their New Zealand tax residency in that income year.

For the 2018 income year (year of departure), Miriam should file an IR 3 and only include the Australian rental income derived prior to 1 October 2017. Any Australian rental income derived from 1 October 2017 will not be taxable in New Zealand on the basis that Miriam is no longer tax resident here.

Note that when completing the IR 3 in the year of departure, there is a specific question in the IR 3 (Question 37 of the 2018 IR 3) that requires details from people who are leaving permanently:

37 Is this return for a part-year?

37 No ☐ Go to Question 38 Yes ☐ See page 48 in the guide. If "Yes", tick the situation below that applie to you.

37A
- ☐ You arrived in (or returned to) New Zealand and you're now a tax resident
- ☐ You left New Zealand permanently (for more than 325 days)
- ☐ You're a student loan borrower and you've left New Zealand for 184 days or more
- ☐ You were declared bankrupt
- ☐ This return is for a deceased person to the date of their death
- ☐ Your balance date changed during the year.

Print the start and end dates for the return is for in the spaces provided. 37B From ☐☐ ☐☐ ☐☐☐☐ (Day Month Year) to 37C ☐☐ ☐☐ ☐☐☐☐ (Day Month Year)

More information on the tax treatment of Outbound New Zealanders can be found in chapter 2 of *New Zealand Tax Handbook for Inbound and Outbound Migrants.*

FIF interests on becoming New Zealand tax resident

Moira left New Zealand to live and work overseas on 1 November 2013. She became a non-resident when she left. While she is away she acquires some shares in a foreign company that is a foreign investment fund (FIF). She returns permanently to New Zealand on 1 May 2017 and becomes New Zealand tax resident again from the date of her arrival. She does not qualify as a transitional resident as she has not been away for at least ten years.

Q: How should her shares be treated for tax purposes?

A: Moira is deemed to have acquired her shares in the FIF for market value immediately after she becomes New Zealand tax resident on 1 May 2017. If the market value of the shares is more than NZ$50,000 at that time, Moira will have to return income under the FIF rules, unless another FIF exemption applies.

More information on the tax treatment of returning residents can be found in chapter 3 of *New Zealand Tax Handbook for Inbound and Outbound Migrants.*

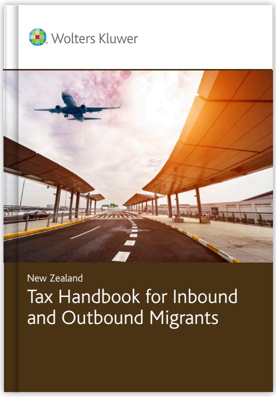
New Zealand
Tax Handbook for Inbound and Outbound Migrants

This book takes the mystery out of tax issues that migrants commonly face - whether they are leaving, arriving or returning to New Zealand. It also deals with non-residents with investments in New Zealand or working here temporarily.

Written in a clear and accessible style, this handbook provides an everyday guide on migrant tax issues, complete with examples, tables, flowcharts and rulings to help users grasp important concepts.

This book is an invaluable resource to help navigate your way through cross-border tax issues for migrants.

FIND OUT MORE



Book code 1659Z | **eBook code** 1659ZEB

Written by Rizwana Saheed

Published November 2017

Price **$80.00** (plus GST and delivery)

Order Now

books.wolterskluwer.co.nz | 0800 500 224 | nz-cchbooks@wolterskluwer.com