

COMMISSIONER'S STATEMENT

# Government Service Rule

Issued: 01 April 2021

CS 21/02

This Statement clarifies the interpretation of the Government Service Rule as set out in the Interpretation Statement on Tax Residence – IS 16/03, and sets out the Commissioner's position in relation to whether a person is "absent" for the purposes of section YD 1(7) of the Income Tax Act 2007.

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

## Summary

1. This Statement clarifies the Commissioner's position in relation to the Government Service Rule and how it applies to Government employees.
2. A New Zealand tax resident who leaves New Zealand to be in the service of the New Zealand Government overseas, remains a New Zealand tax resident for so long as they are in the service of the New Zealand Government. The usual 325-day rule in s YD 1(5) which stops a person from being a New Zealand tax resident once they have been away from New Zealand for more than 325 days in total in a 12-month period does not apply to Government employees.
3. For the Government Service Rule to apply a person must be a New Zealand tax resident and their primary reason for leaving New Zealand must be to take up a Government position overseas. They do not need to have been in the service of the New Zealand Government before they accepted a position overseas, and it is also irrelevant whether the person is taking on a completely new role with new terms and conditions.

## Background

4. The Interpretation Statement IS 16/03 on Tax residence has been reviewed with regards to the part relating to the Government Service Rule (see paragraphs [184]-[205]).
5. In particular, the issue reviewed was whether a person who is not in the service of the New Zealand Government before their departure from New Zealand, but who is a New Zealand tax resident (as defined under s YD 1) and who leaves New Zealand to take up a position with a New Zealand Government office outside New Zealand, is considered to be "absent from New Zealand in the service of the New Zealand Government" under s YD 1(7).
6. Part of IS 16/03 concluded that a person can only be absent for the purposes of s YD 1(7) if they are already in the service of the New Zealand Government before taking up a position overseas in the service of the New Zealand Government.
7. The Commissioner has reviewed this position and now confirms that a person leaving New Zealand to take up a position in the service of the New Zealand Government overseas, does not need to have been in the service of the New Zealand Government before taking up that position for the Government service rule to apply.

## Explanation

8. The purpose of s YD 1(7) is for New Zealand to retain the taxing rights to the income of people absent from New Zealand but who remain closely connected to New Zealand because they are representatives and servants of the New Zealand Government overseas.
9. Section YD 1(7) of the Act provides:

Despite subsection (5), a natural person who is personally absent from New Zealand in the service, in any capacity, of the New Zealand Government is treated as a New Zealand resident during the absence.
10. The key requirements for section YD 1(7) to apply were discussed in IS 16/03 as follows:
  - The person must be a New Zealand tax resident (as defined in YD 1);
  - The person must be present in New Zealand prior to their departure;
  - The person's primary purpose for departing New Zealand is to take up a role with the New Zealand government overseas.
11. This Statement now clarifies that a person does not need to be in the service of the New Zealand Government before their departure from New Zealand or, if the person is already a Government employee in New Zealand, does not need to be continuing in the same role or position they are currently working in for the Government, before their departure, to meet the above requirements.

### Example

Tom has lived and worked in Queenstown for the past four years. Keen for a new challenge he applies for a new job working for a New Zealand Government agency in Tokyo. Tom is successful and he leaves New Zealand to take up his new role in Tokyo. Tom will be absent from New Zealand in the service of the Government. The primary reason for his absence from New Zealand is to carry out his duties for the Government. Tom will continue to be treated as a New Zealand resident under s YD 1(7) for as long as he is absent from New Zealand in the service of the New Zealand Government. When Tom's Government service ends, the Government Service Rule ceases to apply, and the ordinary tax residence rules will then apply.

12. This Statement also clarifies the position for a New Zealand resident (as defined under s YD 1) who is living overseas (other than for the reason of being in the service of the New Zealand Government) and who accepts a role working for the New Zealand Government overseas.

13. The Government Service Rule does not apply to such a person because their main reason for leaving New Zealand was not to take up a role in the New Zealand Government.
14. Such a person is considered to be a “locally recruited” employee, employed by the New Zealand Government. Please note, the term “locally recruited” is used here to describe the circumstances of the employees as stated in paragraph [12]. The term “locally recruited” can sometimes have a different meaning in other contexts. For example, when it is used to describe a New Zealand resident who is posted overseas from the place where they usually work ie, from their “local” office, or who is recruited through a process run by the “local” office. The terminology used does not change the tax consequences; it is the actual arrangements of the particular person that are looked at rather than what they are called.

#### Example

Theresa, a New Zealand expatriate, has been living and working in London for five years. Theresa is non-resident for New Zealand tax purposes – she has no permanent place of abode in New Zealand. She hears that a New Zealand Government department is looking for a person to work in its London office. She applies for the position and is successful. Theresa does not regain her New Zealand tax residency merely because she starts working for the New Zealand Government in London. Theresa did not leave New Zealand to carry out her duties for the New Zealand Government. She has been living away from New Zealand prior to being recruited for the position; this was not the reason for her absence from New Zealand.

15. There could be situations where a person is already working overseas for the New Zealand Government and the Government Service Rule applies to them, who either takes leave without pay or goes on secondment for the New Zealand Government.
16. The Government Service Rule will apply to the situations mentioned in paragraph [15] because:
  - The person was a tax resident in New Zealand before their departure; and
  - The person left New Zealand for the primary purpose of taking up a role in the New Zealand Government overseas; and
  - The person has not severed their close connection to New Zealand as they are still servants and representatives of the New Zealand Government.
17. This would also apply to persons who are in New Zealand and take up a secondment with the New Zealand Government overseas. The Government Service Rule will apply if they meet the requirements as outlined in this Statement.

## Application

18. This Statement applies from the date of issue. The Commissioner will not be applying resources to examine positions taken prior to that date. If you have any concerns about compliance with the tax obligations discussed in this Statement, you should discuss the matter with a tax professional or Inland Revenue.

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## About this document

The purpose of a Commissioner's Statement is to inform taxpayers of the Commissioner's position and the operational approach being adopted on a particular tax matter.