

DETERMINATION > COVID-19 VARIATION

Variation to s YD 1(3) and (5) of the Income Tax Act 2007: Residency of natural persons

Issued: 7 March 2022

COV 22/06

EFFECTIVE: 17 March 2020 to 30 June 2022

Variation

The Commissioner of Inland Revenue has, under the discretion provided under section 6I of the Tax Administration Act 1994, made the following statutory variations:

The time period of “183 days in total in a 12-month period” in s YD 1(3) is modified under s 6I(1)(a)(i) to exclude days where a person was personally present in New Zealand but practically restricted from leaving New Zealand between 17 March 2020 and 30 June 2022.

The time period of “325 days in total in a 12-month period” in s YD 1(5) is modified under s 6I(1)(a)(i) to include days where a person was personally present in New Zealand but practically restricted from leaving New Zealand between 17 March 2020 and 30 June 2022.

These variations are subject to the following conditions:

- A person being practically restricted from leaving New Zealand must be due to the imposition of COVID-19 response measures or as a consequence of COVID-19;
- The person must leave New Zealand within a reasonable time after they are no longer practically restricted in travelling outside of New Zealand;
- Factors that may be considered in deciding if a person is practically restricted in leaving New Zealand include:
 - 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; and/or
 - A requirement to self-isolate, or isolating in a managed isolation and quarantine (MIQ) facility, as required by the guidance of the New Zealand government, that practically prevents a person from taking pre-arranged travel out of New Zealand during that period of isolation.
- Personal considerations or preferences are not factors that impact on whether a person is practically restricted from leaving New Zealand.

Application date

This variation applies from 17 March 2020 to 30 June 2022.

Dated at Wellington on 7 March 2022.

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Background (material under this heading does not form part of the variation)

Summary of effect

1. The effect of this variation is to allow a person, for the purpose of determining whether they are a New Zealand resident under either s YD 1(3) (the 183 day rule) or YD 1(5) (the 325 day rule) of the Income Tax Act 2007, to exclude those days where they were personally present in New Zealand but practically restricted from leaving New Zealand between 17 March 2020 and 30 June 2022.

Provisions affected

2. Section YD 1(3) and (5) of the Income Tax Act 2007.

Application of variation

3. The variation to s YD 1(3) and (5) applies persons who need to determine whether they are resident in New Zealand for the purposes of the Income Tax Act 2007.
4. The variation recognises the impact COVID-19 may have on the ability of some people to leave New Zealand when intended.
5. Customers can choose not to apply the variation to their circumstances. You can make that decision by taking a tax position, such as in a tax return, or by telling us. If you've already complied with the existing legislation in taking a tax position, we will consider that you have not chosen to apply the variation.

References

Legislative references

Tax Administration Act 1994: ss 6H and 6I

Income Tax Act 2007: s YD 1(3) and (5)

About this publication

To help customers manage the impacts of COVID-19, the Commissioner now has a discretion to vary a requirement under an Inland Revenue Act (including for these purposes, the Unclaimed Money Act 1971). This discretion is found in ss 6H and 6I of the Tax Administration Act 1994 and variations are allowed until 30 September 2022. This variation is an exercise of that power.