

**DETERMINATION > COVID-19 VARIATION**

# **Variation to section YD 1(5) of the Income Tax Act 2007**

Issued: 9 March 2022

**COV 22/12**

**EFFECTIVE:** 17 March 2020 to 30 September 2022

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## Variation

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

For the purposes of determining the days that a natural person who was a New Zealand resident only under section YD 1(3) was personally absent from New Zealand under section YD 1(5) of the Income Tax Act 2007, any days that the person was personally absent from New Zealand because they were unable to, or reasonably prevented from, returning to New Zealand, due to circumstances arising either from the imposition of COVID-19 response measures or as a consequence of COVID-19, may be ignored.

This variation is subject to the following conditions:

The person applying the variation is able to demonstrate to the Commissioner's satisfaction that the absence was due the imposition of COVID-19 response measures or as a consequence of COVID-19; and

The person applying the variation returned to New Zealand as soon as practicable after it was reasonable to do so.

The person applying this variation must notify the Commissioner in writing, and provide such information as the Commissioner may request.

## Application date

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

Dated at Wellington on 9 March 2022.

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

### Summary of effect

1. When a natural person is New Zealand resident (for tax purposes) only by virtue of being personally present in New Zealand for more than 183 days in total in a 12-month period, they will become non-resident if they are subsequently personally absent from New Zealand for more than 325 days in total in a 12-month period.
2. Where a person was absent from New Zealand and had the demonstrable intention to return to New Zealand before being absent for more than 325 days, they may have become non-resident because they were unable to return to New Zealand because of the imposition of COVID-19 response measures or as a consequence of COVID-19.
3. If that has occurred, an affected person may ignore the days that they were unable to return to New Zealand in calculating the number of days they were personally absent from New Zealand.
4. The use of this variation is subject to the condition that the person returned to New Zealand as soon as practicable after it was reasonable to do so.

### Provisions affected

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

### Application of variation

6. This variation applies to taxpayers who were New Zealand resident under section YD 1(3) of the Income Tax Act 2007 and who were personally absent from New Zealand for 325 or more days in a 12-month period due only to either the imposition of COVID-19 response measures or as a consequence of COVID-19.

## References

### Legislative references

Tax Administration Act 1994: sections 6H and 6I

Income Tax Act 2007: sections 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 applies from 17 March 2020 to 30 September 2022. This variation is an exercise of that power.