

## INTERPRETATION STATEMENT

# GST – Definition of a resident

Issued: 2 September 2021

IS 21/07

This interpretation statement provides guidance on how to determine whether a person is a resident for GST purposes.

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

### UPDATES AND REPLACES

This item updates and replaces:

- [“GST: Scope of the term ‘resident’”](#), *Tax Information Bulletin* Vol 1, No 9 (March 1990): 1; and
- [“GST: The definition of resident”](#), *Tax Information Bulletin* Vol 5, No 12 (May 1994): 4.

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## Summary

1. This item provides guidance on the meaning of the term “resident” for GST purposes. The GST definition of resident differs from the income tax definition:
  - By extending it to include a person who is carrying on a taxable activity or other activity in New Zealand, if that person has a “fixed or permanent” place in New Zealand and that place relates to the activity in New Zealand. In this case the residency is “to the extent” of the New Zealand activity (discussed from [14]).
  - For unincorporated bodies, it provides for a residence test based on its centre of administrative management (discussed from [39]).

- For individuals, the definition differs for the commencement and end dates of residency when applying the day-count test (discussed from [42]).
2. The importance of determining whether a person is a New Zealand resident for GST purposes is that it may affect whether GST needs to be charged on any supplies made to that person. It is also relevant to whether the person is required to charge and account for GST on supplies they make in New Zealand and whether a person can or is required to register for GST in New Zealand.
  3. While many people are familiar with the income tax rules for determining residency and know whether they are resident under the Income Tax Act 2007 (ITA 2007), they may be unsure whether the connection or presence they have in New Zealand is sufficient for them to be treated as a resident for GST purposes.
  4. The Commissioner discussed the law relating to determining whether a person is non-resident for GST purposes in "IS 21/03: GST – Registration of non-residents under section 54B" and in "[IS 18/07: Goods and services tax – zero-rating of services related to land](#)", *Tax Information Bulletin* Vol 31, No 1 (February 2019): 17. This statement is consistent with the analysis in IS 21/03 and IS 18/07.
  5. This statement updates and replaces "[GST: Scope of the term 'resident'](#)", *Tax Information Bulletin* Vol 1, No 9 (March 1990) and "[GST: The definition of resident](#)", *Tax Information Bulletin* Vol 5, No 12 (May 1994).
  6. For further information on residence for income tax purposes, see "[IS 16/03: Tax residence](#)", *Tax Information Bulletin* Vol 28, No 10 (October 2016): 2.

## Introduction

7. Whether a person is resident for GST purposes is an important consideration for several matters relating to GST. For example, it is:
  - relevant to where supplies are treated as being made under s 8;<sup>1</sup>
  - a factor in determining the applicable rate of GST that may be chargeable on certain supplies under s 11; and
  - a requirement for non-resident registration under s 54B (see in "[IS 21/03: GST – Registration of non-residents under section 54B](#)", Inland Revenue 2021).
8. Most people are familiar with the income tax test for residency and know whether they are non-resident for income tax purposes. However, the GST definition of resident is

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<sup>1</sup> Flowcharts providing an overview of the place of supply rules are in "[IS 21/03: GST – Registration of non-residents under section 54B](#)" (Inland Revenue, 2021).

wider, so some non-residents may be treated as a resident for GST purposes and may be unaware of the difference in the two definitions.

## Who is a resident for GST purposes?

### Definition of resident – GST

9. The definition of “resident” in s 2 for GST purposes is:

**resident** means resident as determined in accordance with sections YD 1 and YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007:

provided that, notwithstanding anything in those section, -

- (a) a person shall be deemed to be resident in New Zealand to the extent that that person carries on, in New Zealand, any taxable activity or any other activity, while having any fixed or permanent place in New Zealand relating to that taxable activity or other activity:
- (b) a person who is an unincorporated body is deemed to be resident in New Zealand if the body has its centre of administrative management in New Zealand:
- (c) the effect of the rules in section YD 1(4) and (6) of that Act are ignored in determining the residence or non-residence of a natural person, and residence is treated as—
  - (i) starting on the day immediately following the relevant day that triggers residence under section YD 1(3) of that Act; or
  - (ii) ending on the day immediately following the relevant day that triggers non-residence under section YD 1(5) of that Act

10. First, the definition of “resident” refers to resident as determined under ss YD 1 and YD 2 (but not YD 2(2) of the Income Tax Act 2007). Section YD 1 sets out the rules for the residence of a natural person and section YD 2 sets out the rules for the residence of companies. For GST purposes, s 2 defines a “company” to include any limited partnership registered under the [Limited Partnerships Act 2008](#).

11. Secondly, the definition of “resident” in s 2 modifies the income tax definition of resident by providing for three exceptions in paras (a) to (c):

- Paragraph (a) refers to whether a person has an activity in New Zealand and a “fixed or permanent place” in New Zealand relating to that activity (see from [14]).
- Paragraph (b) relates to unincorporated bodies (see from [39]).

- Paragraph (c) relates to the effect of the day-count tests in the income tax residency tests (see from [42]).
12. If a person is a resident under s YD 1 of the Income Tax Act 2007, they will be resident for GST purposes, even if under a relevant Double Taxation Agreement the person's tax residence for income tax purposes is found to be in another jurisdiction. This might arise, for example, where a person retains a dwelling in New Zealand which is the person's permanent place of abode.
  13. A non-resident is defined in s 2 to mean a person "to the extent that the person is not resident in New Zealand".

## **Resident "to the extent of" activity in New Zealand - para (a) of the definition of resident**

14. Paragraph (a) of the definition of resident deems a person to be resident to the extent that the person carries on their taxable or other activity in New Zealand from a fixed or permanent place in New Zealand that is related to that activity.
15. Therefore, the main considerations to determine whether a person is deemed to be a resident for GST purposes relate to the meaning of:
  - "taxable activity or other activity";
  - "fixed or permanent place";
  - "relating to that activity or other activity"; and
  - "to the extent that" and whether a person can be both resident and non-resident for GST purposes.

### **Taxable activity or other activity**

16. For the purposes of the resident definition, the focus of para (a) is on the activity being carried on by the person in New Zealand. The activity may be a taxable activity or any other activity, but in either case, the person will only be resident to the extent of the activity in New Zealand. In addition, while carrying on the activity the person must have a fixed or permanent place in New Zealand relating to that activity.

### **Taxable activity**

17. A broad definition for this term is given in s 6(1)(a) with certain activities being specifically excluded in s 6(3):

## 6 Meaning of term taxable activity

- (1) For the purposes of this Act, the term taxable activity means—
- (a) any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:
- ...
- (3) Notwithstanding anything in subsections (1) and (2), for the purposes of this Act the term taxable activity shall not include, in relation to any person,—
- (a) being a natural person, any activity carried on essentially as a private recreational pursuit or hobby; or
  - (aa) not being a natural person, any activity which, if it were carried on by a natural person, would be carried on essentially as a private recreational pursuit or hobby; or
  - (b) any engagement, occupation, or employment under any contract of service or as a director of a company, subject to subsection (4); or
  - (c) any engagement, occupation, or employment—
    - (i) pursuant to the Members of Parliament (Remuneration and Services) Act 2013 or the Governor-General Act 2010:
    - (ii) as a Judge, Solicitor-General, Controller and Auditor-General, or Ombudsman:
    - (iia) pursuant to an appointment made by the Governor-General or the Governor-General in Council and evidenced by a warrant or by an Order in Council or by a notice published in the Gazette in accordance with section 2(2) of the Official Appointments and Documents Act 1919:
    - (iii) as a Chairman or member of any local authority or any statutory board, council, committee, or other body, subject to subsection (4); or
  - (d) any activity to the extent to which the activity involves the making of exempt supplies.

18. The main requirements of a taxable activity are:

- there must be an activity;
- that activity must be carried on continuously or regularly by a person; and
- that activity must involve the making of taxable supplies.

19. Notably, however, s 6(3) excludes certain activities from being taxable activities. Examples of excluded activities are:
  - the making of exempt supplies (such as the supply of financial services and the supply of accommodation in a dwelling); and
  - private recreational pursuits or hobbies.
20. Determining whether a taxable activity is being carried on is always a question of fact. It involves examining all the circumstances of the particular case. The concept of a taxable activity is not considered further in this statement as it is covered in publications such as "[IS 20/04](#): Goods and services tax – GST treatment of short-stay accommodation", *Tax Information Bulletin* Vol 32, No 6 (July 2020): 69.

### Other activity

21. Paragraph (a) in the definition of "resident" also includes "other" activities in its scope. The terms "activity" and "other activity" are not defined in the Act.
22. The word "activity" has a broad meaning. It may refer to "a course of conduct or series of acts which a person has chosen to undertake or become engaged in": *Newman v CIR* (1994) 16 NZTC 11,229 (HC). Similarly, the Court of Appeal in *CIR v Bayly* (1998) 18 NZTC 14,073 said, at 14,078:

In its standard dictionary usage, "activity" is "the state of being active; the exertion of energy, action" (Oxford English Dictionary). In the context of ss 6 and 8 [of the Goods and Services Tax Act 1985] it points to the combination of tasks undertaken, or course of conduct pursued by the registered person and whether or not it amounted to a business, trade or profession in the ordinary sense.
23. Both *Newman* and *Bayly* discuss the meaning of an "activity" in their discussion of a "taxable activity". The Commissioner's view is that "activity" in "other activity" bears the same meaning.
24. The reference to "other activities" expands the range of activities, so that not only "taxable activities" can result in residency under the Act. The word "other" implies that Parliament intended a wide variety of activities to be covered by para (a), which will include the activity of making exempt supplies.

### Fixed or permanent place

25. For para (a) to apply, a person must also have a "fixed or permanent place" in New Zealand relating to the taxable or other activity in New Zealand. The term "fixed or permanent place" is not defined in the Act.

26. The word “place” indicates a physical location or a link to a particular geographical point. The place must be “fixed” or “permanent”. The ordinary meanings of the words “fixed” and “permanent” indicate that the physical location must be lasting and unchanging and not temporary.
27. The Commissioner notes that a similar concept of “fixed establishment” is used in the Income Tax Act 2007 and the phrase “permanent establishment” is used in New Zealand’s double tax treaties. Case law discusses the meanings of these phrases, and the concepts overlap with the concept of a “fixed or permanent place”.
28. The Commissioner’s view is that the “fixed establishment” and “permanent establishment” concepts are not equivalent to “fixed or permanent place” under the Goods and Services Tax Act. This is because, for income tax purposes, the linkage required between a “permanent establishment” or a “fixed establishment” and a business is stronger than the linkage required, for GST purposes, between a fixed or permanent place and the New Zealand activity.
29. For income tax purposes, the fixed establishment is *“a fixed place of business in which substantial business is carried on by the person”*. The requirement to carry on a business through the fixed place is also included in the definition of a permanent establishment, which refers to *“a fixed place of business through which the business of a person ... is wholly or partly carried on”*. For GST purposes, the definition of resident requires that the “fixed or permanent place” simply relates to the activity that is being carried on. It does not require that the activity amount to a business, nor does it require that the activity be carried on in or through the fixed or permanent place.
30. In addition, the income tax terms are defined to specifically exclude a number of establishments (such as, facilities for storage, display or delivery) while the GST definition is general in its terms. However, the Commissioner accepts that the various commentaries relating to the *OECD Model Tax Convention* and the *OECD Multilateral Convention to Implement Tax Treaty Related Measures to prevent BEPS* may be useful in understanding the similarities and differences in the terms.

### **“Having” a fixed and permanent place “relating” to the activity**

31. Having a fixed or permanent place looks at the connection between the person and the place. “Having” a place does not require ownership or a formal lease of the physical location but will require the person to have a place at their disposal, or available for their use, relating to their New Zealand activity. As para (a) refers to the person “having a *fixed or permanent place*”, the relationship that the person has with the place must be enduring or lasting as opposed to temporary.



32. Finally, if the person has a fixed or permanent place, that place must be related to the taxable activity or other activity in New Zealand. This means that there must be a connection between the activity and the place. This is illustrated in *Example 1 to Example 5 and Example 8 and Example 9*.
33. The ordinary meaning of “relating” is a connection between things: *Concise Oxford English Dictionary* (12th ed, Oxford University Press, Oxford, 2011). This suggests a degree of connection is required between the fixed or permanent place and the relevant activity.
34. The context of the provision does not appear to require a departure from the ordinary meaning of “relating to”. The provision is part of the definition of “resident” in the Act, which affects both the imposition of GST on supplies under s 8 and whether supplies can be zero-rated under the zero-rating provisions. In general, these provisions are intended to give effect to the destination principle, under which supplies of goods and services are taxed in the jurisdiction where the goods and services are consumed. Requiring a connection between a person’s activity in New Zealand and a fixed or permanent place in New Zealand before the person is considered resident for GST purposes (and subject to GST at the standard rate) is consistent with that purpose.
35. In *Example 6 and Example 7* the non-resident company owns property in New Zealand. In both *Example 6 and Example 7*, the property does not “relate to” the taxable activity carried on in Australia but is related to an activity of making accommodation available in New Zealand.

### “To the extent that”

36. For GST purposes, a person is deemed to be resident in New Zealand “to the extent that” the person carries on, in New Zealand, any taxable activity or any other activity while having any fixed or permanent place in New Zealand relating to that taxable activity or other activity.
37. Similarly, the definition of “non-resident” in s 2 states that non-resident “means a person **to the extent that** the person is not resident in New Zealand” [emphasis added].
38. The use of the phrase “to the extent that” means that a single legal person can, for the purposes of the Act, be both resident and non-resident. In *Example 6 – Holiday house in New Zealand* and *Example 7 – Holiday house used as a place of residence and home office*, the non-resident company is treated as resident for GST purposes to the extent of the activity of providing accommodation in New Zealand.

## Unincorporated bodies – para (b) of the definition of resident

39. Paragraph (b) of the definition of resident provides that an unincorporated body will be deemed to be resident in New Zealand if the body has its centre of administrative management in New Zealand.
40. This is necessary to provide clarity for unincorporated bodies who can register under the Act. This is because unincorporated bodies are not separate legal entities for income tax purposes, so cannot establish their residency under any specific income tax rules.
41. The “centre of administrative management” test is a factual enquiry that focuses on where the day-to-day administrative management of the unincorporated body is carried out, rather than the controlling or superior management function. This means that the centre of administrative management is where the day-to-day business is carried on as opposed to where the unincorporated body is ultimately controlled from.

## Day-count tests – para (c) of the definition of resident

42. The residency status of a natural person for income tax purposes is based on two rules: the permanent place of abode test and the day-count rules. There are two “day-count” rules:
  - Section YD 1(3) of the ITA 2007 provides that a natural person is a New Zealand resident if they are personally present in New Zealand for more than 183 days in total in a 12-month period. For income tax purposes, s YD 1(4) of the ITA 2007 treats the person as a resident from the first of those 183 days.
  - Under s YD 1(5) of the ITA 2007, a person who is a resident under the day-count test provided in s YD 1(3) stops being a resident if they are personally absent from New Zealand for more than 325 days in total in a 12-month period. Again, for income tax purposes, s YD 1(6) of the ITA 2007 treats the person as not resident from the first of those 325 days.<sup>2</sup>
43. For GST purposes, para (c) modifies the day-count tests used when determining the residence and non-residence of a natural person so that the rules in s YD 1(4) and (6) of the ITA 2007 are ignored and the start and end dates are prospective, commencing on the day after the relevant day that triggers the residence or non-residence:

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<sup>2</sup> For further information on the income tax residency tests, see “[IS 16/03: Tax residence](#)”, *Tax Information Bulletin* Vol 28, No 10 (October 2016): 2.

- (c) **the effect of the rules in section YD 1(4) and (6) of that Act are ignored** in determining the residence or non-residence of a natural person, and residence is treated as—
- (i) starting on the day immediately following the relevant day that triggers residence under section YD 1(3) of that Act; or
  - (ii) ending on the day immediately following the relevant day that triggers non-residence under section YD 1(5) of that Act [Emphasis added]

44. The reason for this difference is to ensure that when supplies are made, a supplier can apply the correct GST treatment based on the residency of the recipient at the time the supply is made.
45. Before para (c) was amended to read as quoted in [43], the rules led to uncertainty for suppliers. For example, a supply to a non-resident who was outside New Zealand at the time of the supply, might be zero-rated. However, that might have later been found to be incorrect if the recipient's New Zealand residence was backdated under s YD 1(4) or s YD 1(6). This is illustrated in *Example 11 – Residence – Day-count tests*.
46. The amendment ensures the supplier can establish the correct GST treatment at the time of supply.

## Branches and divisions

### Overview

47. Where a registered person carries on a taxable activity in branches or divisions, s 56 allows the person to apply to the Commissioner to register the branch or division as a separate registered person.
48. A requirement for registering the branch or division as a separate person is that each branch or division maintains an independent system of accounting and can be separately identified, either by reference to the nature of the activities carried on or the location of the branch or division (s 56(2)).
49. A non-resident person, who has a branch or division making supplies in New Zealand, may apply to have that branch or division registered under s 51. The branch or division is then treated as a separate person for GST purposes (s 54B(5)).
50. If the branch or division is registered in New Zealand (under s 51) and has a fixed or permanent place relating to the activity carried on, the branch or division may be resident for GST purposes under para (a) of the definition of resident.

51. Because the registered branch or division is treated as a separate person for GST purposes, the non-resident person can maintain their non-resident status. This means the non-resident may be able to register under s 54B (provided they meet all the requirements of s 54B(1)). This is illustrated in *Example 10 – Non-resident company with a New Zealand-based branch*. For further details about the registration of non-residents, see "[IS 21/03: GST – Registration of non-residents under section 54B](#)" (Inland Revenue, 2021).
52. It is important to note that there are separate obligations on non-resident or "overseas companies" under the Companies Act 1993. A non-resident company, as an "overseas company" who is "carrying on business in New Zealand", is required to be registered under the Companies Act 1993 (s 334). Registration, by itself, of the non-resident company under the Companies Act does not give rise to residence under the GST Act.

### **Further rules for branches or divisions– s 56B**

53. Section 56B contains further rules for branches or divisions. This provision applies to certain supplies of imported goods and services which are subject to a reverse charge. These are supplies treated by s 8(4B) as made in New Zealand or, where a liability for output tax has arisen under s 20(3JC). The reverse charge requires the recipient to account for output tax on the supply.
54. Section 56B will only apply to a person if they carry on activities both inside and outside New Zealand, through branches or divisions. For this purpose, a branch or division includes a head office of a company.
55. Section 56B provides that for this purpose each branch and division:
  - is treated as a separate person, carrying on a separate activity;
  - inside New Zealand is treated as a resident; and
  - outside New Zealand is treated as a non-resident.
56. Importantly, s 56B(4) provides that these rules apply whether or not the branch or division is registered for GST under s 56.
57. The reason for the introduction of s 56B was to clarify that a supply which is subject to the reverse charge provisions, between branches or divisions (including a Head Office) of an entity that operates both in New Zealand and outside of New Zealand, is treated as a supply, even though the parties may be a single legal entity.
58. For further information about the rules related to:
  - imported services, see "[GST on cross-border supplies of remote services](#)", *Tax Information Bulletin*, Vol 28, No 6 (July 2016): 12;

- imported goods, see [“GST on low-value imported goods”](#), *Tax Information Bulletin*, Vol 31, No 8 (September 2019): 2; and
- later amendments, see [“GST on low-value imported goods remedials”](#), *Tax Information Bulletin*, Vol 32, No 4 (May 2020): 81.

## Examples

59. The following examples demonstrate how the rules will likely apply in different scenarios.

### Example 1 – When a person is resident for GST

Overseas engineering company BWBuild Co is not resident in New Zealand under s YD 2 of the ITA 2007. The company has a contract to perform in New Zealand.

The contract requires BWBuild to provide design services and oversee the construction of an irrigation plant. The company leases, for a 12-month term, office space in a local building from which it carries out the services under the contract. During the term of the lease, BWBuild is carrying on its taxable activity in New Zealand while having a lease of the office space.

In this instance, the office space constitutes a fixed or permanent place relating to the activity of providing design services and overseeing the construction of an irrigation plant. The office space is at the disposal of the company for the term of the lease. A 12-month term is of sufficient duration to have an element of permanence. Therefore, BWBuild is deemed resident for GST for the activities it carries out under the contract.

### Example 2 – Not resident – no fixed or permanent place

Following on from *Example 1*, two years later, BWBuild Co is asked to provide consultancy services to Design Co, a company that is providing similar design services. The contract provides that BWBuild will train Design staff on the use of software BWBuild developed. For this contract, it is agreed BWBuild will provide two staff for an initial period of six weeks and further support, as required, over the following three months. The staff will work out of Design’s premises.

During this period BWBuild is carrying on a taxable activity in New Zealand in providing the services under the contract.

BWBuild does not lease or own or have any other arrangements for any other premises in New Zealand at this time. While BWBuild can use Design's premises for the purpose of carrying out the services under the contract, its staff have a limited right of access to the premises and for a short period of time. On these facts, BWBuild does not have a "fixed or permanent" place, as Design's premises are not at BWBuild's disposal during the term of the contract. Therefore, BWBuild is not a resident for GST purposes in relation to the activities under this contract.

### **Example 3 – Not resident – no fixed or permanent place**

Anakin Co is a non-resident entity that provides satellite data to customers outside New Zealand. It obtains the satellite data from its satellites sending the data back to earth through antennas around the world. As part of its operation, Anakin obtains the right to use an antenna owned and maintained by Lucas Farms in a rural New Zealand location.

Anakin wants to register under s 54B to claim back the GST component of any service charges from Lucas Farms and any other GST costs that may be charged in New Zealand in carrying on its activity. However, Anakin wonders whether the right to use the antenna might be treated as a fixed or permanent place, meaning Anakin would be treated as New Zealand resident for this activity.

While the antenna is fixed or permanently located on land, Anakin's arrangement with Lucas Farms does not give Anakin exclusive use of the antenna or enable it to make alternative maintenance arrangements. Therefore, the antenna or any associated space around it cannot be regarded as permanently at Anakin's disposal.

This arrangement to use the antenna does not mean Anakin has a fixed or permanent place in New Zealand. Therefore, under this arrangement, Anakin is not a resident for GST purposes in relation to this activity.

**Example 4 – Supply of machinery to New Zealand – not a fixed or permanent place**

Duke Engineering Co is a US-resident company that supplies, on a three-year lease, a large piece of machinery to Butler Co, a New Zealand manufacturing company. The machine remains the property of Duke and is to be removed from New Zealand at the end of the contract. Duke wonders whether having the machine in New Zealand might mean that Duke has a fixed or permanent place in New Zealand.

Duke is a manufacturer of equipment with a worldwide operation. It makes supplies of equipment by way of sale or lease. The machine is leased to Butler and housed in Butler's premises. While the lease of the machine is for a period that has an element of permanence, the machine itself is not a fixed or permanent "place" that Duke has relating to its activity in New Zealand. The premises in which the machine is located are also not available or at the disposal of Duke and cannot be regarded as a fixed or permanent place relating to their activities in New Zealand.

**Example 5 – Staff seconded to New Zealand**

Following on from *Example 4*, eight months into the lease, Butler Co contacts Duke Engineering Co to say it is having production issues with the machine. Duke agrees to send one of its engineers (Harry) to New Zealand to tune up the machine and train the local staff during the contracted warranty and support period. The contract provides that the engineer will work on the premises and will use equipment supplied by Butler. Harry remains an employee of the US company during this time, but he works under day-to-day supervision of Butler. Butler reimburses Duke for Harry's salary costs. After five months, everything is working smoothly, and Harry returns to the US.

Although Duke is providing services in New Zealand during the warranty and support period, it has limited rights to Butler's premises. Harry's presence is only for the purpose of this contract. The premises are not at Duke's disposal, and therefore Duke does not have a fixed or permanent place relating to the activities carried on in New Zealand.

**Example 6 – Holiday house in New Zealand**

Baker Floyd is a marketing firm based in Australia. The company leases an apartment in Queenstown so that its directors and staff can holiday there. The lease is for a five-year term with a right of renewal for a further four years. The apartment is left unoccupied when not required by the directors or staff.

Baker Floyd does not carry on its taxable activity of providing marketing services in New Zealand as the activities it carries on are supplies of services made to customers in Australia. However, the making available of the apartment in Queenstown to its directors or staff is still an "activity". Whether the activity is a taxable activity depends on whether the supplies of the accommodation to its directors and staff are made for consideration and whether the activity, if it were carried on by a natural person, is a private recreational pursuit or hobby (s 6(3)(aa)).

The apartment is a place that is permanently available to Baker Floyd in New Zealand. Therefore, Baker Floyd has a place that is both fixed and permanent in New Zealand relating to the activity it carries on in New Zealand. Baker Floyd is resident "to the extent of" that activity. However, the apartment is not a fixed or permanent place relating to the Australian marketing activity.

If Baker Floyd makes taxable supplies in New Zealand by supplying accommodation in the apartment, Baker Floyd will need to consider whether to register for GST under s 51 in order to be entitled to claim back any GST input tax charged on supplies relating to the apartment in Queenstown.

**Example 7 – Holiday house used as a place of residence and home office**

Following on from *Example 6*, due to restrictions on travel during the COVID-19 pandemic, Baker Floyd is unable to use the Queenstown apartment for its intended purpose. However, Tom, a director of the company and a New Zealand resident, moves his family to New Zealand to be closer to his elderly parents. The Queenstown apartment is now the family home of Tom and Mary and their children.

Tom continues working for the company and has an office set up in the apartment. He has regular Zoom meetings and phone calls and continues to negotiate contracts with customers in Australia.



Baker Floyd is still carrying on two activities. It is still making supplies of marketing services to customers in Australia. Also, Baker Floyd is carrying on the activity of providing accommodation in the apartment in New Zealand to Tom and his family.

The apartment is a fixed or permanent place that relates to only one of the activities carried on by Baker Floyd. This is the activity of providing accommodation in the apartment to Tom and his family. This is likely to be an exempt supply of accommodation in a dwelling (s 14(1)(c)). This means Baker Floyd is resident for GST purposes, "to the extent" it carries on activities in New Zealand while having a fixed or permanent place "relating to" the activity.

However, as Baker Floyd is making exempt supplies in New Zealand it will not have any output tax liability. Also, it will not be able to claim back any input tax on expenses such as power or rates incurred for the property, as these will not be acquired for the purposes of making taxable supplies in New Zealand.

#### **Example 8 – Use of a logistics facility**

TransformU Co is an American wholesaler that, from time to time, imports yoga and Pilates fitness equipment into New Zealand for supply to fitness studios in New Zealand and Australia. The goods are stored at the warehouse of logistics firm Palatine Xpress Co. An employee of Palatine assists with the importation documents in New Zealand. The goods are stored until TransformU directs them to be shipped to New Zealand or Australian customers and are stored as part of the service supplied by Palatine.

TransformU makes no supplies in New Zealand to unregistered customers. Therefore, although the goods are in New Zealand at the time of supply, they may be treated as supplied outside New Zealand under s 8(4). TransformU pays a storage fee based on the cubic area the goods occasionally occupy. It also pays service fees for the importation assistance and transport of the goods. TransformU is not treated as a New Zealand resident for GST purposes as it does not have a fixed or permanent place in New Zealand.

TransformU could consider registering under s 54B to claim back any input tax incurred. Registration under s 54B would enable TransformU to claim back the GST incurred on the logistics service provider's fees but will not enable the claiming back of the GST charged under s 12(1) on importation of the goods into

New Zealand. This is because, when a non-resident registered under s 54B imports goods that are to be delivered to another person in New Zealand, s 20(3LC) treats the recipient of the goods as having paid the GST and the non-resident as not having paid the tax. See [IS 21/03: GST – Registration of non-residents under section 54B](#), for more information.

#### **Example 9 – Lease of part of a logistics warehouse**

TransformU has seen increasing demand for its equipment and wants to extend the range of goods it will supply. Several potential customers have asked whether they can view a sample of the goods before placing an order. TransformU enters into a contract with Palatine to have an area adjacent to the general warehouse set aside for their exclusive use. This includes a display area for potential customers to view the products. The ability to view the products at this location is advertised on their website. The contract term is for 12 months, with a right of renewal for a further 6 months.

The leased space is at the disposal of TransformU and is related to the activity of promoting and supplying the goods in New Zealand. TransformU therefore is carrying on an activity in New Zealand while having a fixed or permanent place in New Zealand relating to the activity.

#### **Example 10 – Non-resident company with a New Zealand-based branch**

Cavolo Management Co is an overseas-registered company with a branch based in New Zealand. Cavolo applies under s 56 to have its branch CavoloNZ registered for GST.

The head office of Cavolo plans to send two of its senior employees to a management conference in Auckland and has paid their conference fees. It asks whether it could register separately from CavoloNZ under s 54B to claim back the GST incurred on its employees' expenses in attending the conference.

The head office of Cavolo may register separately from its New Zealand branch, under s 54B, to claim back the GST incurred provided the costs relate to the overseas-based business activities and do not relate to the taxable activity of the New Zealand branch.

**Example 11 – Residence – Day-count tests**

Anna is an Australian chef living in Melbourne. She arrives in New Zealand on 18 May 2021 and takes a temporary job in a Nelson restaurant. On 13 June 2021 she returns to Melbourne.

Anna really enjoyed her time in New Zealand and is considering returning and opening her own food truck business in New Zealand. She contacts John, a New Zealand lawyer for advice on what the legal requirements would be. John invoices her for the advice on 28 July 2021. He zero-rates the supply because the advice is to a non-resident, who is outside New Zealand at the time he gives the advice.

Anna returns to New Zealand on 11 August 2021 and takes up another temporary chef's position while she looks for a suitable food truck opportunity. In October Anna finds a food truck for sale and agrees to purchase it. Settlement will take place on 1 February 2022.

Based on the day-count tests, Anna will become a New Zealand resident for GST purposes on 14 January 2022. This is because she will then have been personally present in New Zealand for more than 183 days in a 12-month period. She is present for 27 days in May and June, and a further 156 days from 11 August to 13 January 2022. Under para (c) of the definition of "resident", she is treated as resident for GST purposes starting on the day immediately after the day that triggers residence under s YD 1(3) of the ITA 2007. Anna is therefore resident for GST purposes from 14 January 2022 (the day after 13 January 2022). Therefore, John correctly zero-rated the supply of advice to Anna in the invoice dated 28 July 2021.

For income tax purposes Anna would be treated as a resident from the first day of the 183-day period under s YD 1(4) ITA 2007, so from 18 May 2021 (presuming she did not have a permanent place of abode in New Zealand prior to that date).

## References

### Legislative references

Companies Act 1993 – s 334

Goods and Services Tax Act 1985 – ss 2 (“non-resident”, “resident”), 6(1) and (3), 8, 11, 14, 20(3JC), 51, 54B(5), 56, 56B

Income Tax Act 2007 – s YD 1(3)–(6), 2(1)

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## About this document

Interpretation Statements are issued by the Tax Counsel Office. They set out the Commissioner's views and guidance on how New Zealand's tax laws apply. They may address specific situations we have been asked to provide guidance on, or they may be about how legislative provisions apply more generally. While they set out the Commissioner's considered views, Interpretation Statements are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further [Status of Commissioner's advice](#) (December 2012). It is important to note that a general similarity between a taxpayer's circumstances and an example in an Interpretation Statement will not necessarily lead to the same tax result. Each case must be considered on its own facts.