

TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

Opening value of FIF income calculation

Decision date | Rā o te Whakatau: 31 October 2025

Issue date | Rā Tuku: 18 February 2026

TDS 26/ 01

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Subjects | Kaupapa

This item summarises a private ruling that considered the opening value for the fair dividend method of calculating the foreign investment fund income of a taxpayer whose transitional residence period has ended.

Taxation laws | Ture tāke

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

Summary of facts | Whakarāpopoto o Meka

1. The Applicant owned foreign investment fund (FIF) interests at the end of 31 December 2024.
2. A non-standard balance date of 31 December has been approved by the Commissioner for the Applicant due to high compliance costs of having to return income to 31 March.
3. The Applicant met the criteria of being a New Zealand tax resident in December 2020 and continues to be a New Zealand resident. The Applicant had not previously been a New Zealand tax resident.
4. The last day of the Applicant's transitional residence period was 31 December 2024.
5. The Applicant will apply the fair dividend rate annual method under s EX 52 to calculate their FIF income for the income year ending 31 December 2025.

Issues | Take

6. The main issues considered in this ruling were whether:
 - the opening value of each FIF interest under ss EX 52 and EX 64 for the Applicant's income year ending 31 December 2025 is nil; and
 - s BG 1 applies to the Arrangement.

Decisions | Whakatau

7. The Tax Counsel Office (TCO) concluded that:
 - the opening value of each FIF interest under ss EX 52 and EX 64 is nil for the Applicant's income year ending 31 December 2025; and
 - s BG 1 does not apply to the Arrangement.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Opening value under s EX 52

8. A person has FIF income in an income year if they have rights in a FIF and the rights are an attributing interest in a FIF (s CQ 5). However, a person's rights in a FIF are not an attributing interest if they are a transitional resident (s EX 41). This means that while the Applicant was a transitional resident, they did not have any FIF income under s CQ 5.
9. Once the Applicant is no longer a transitional resident, they need to calculate their FIF income. The Arrangement provides that the Applicant will use the fair dividend rate (FDR) annual method set out in s EX 52 to calculate their FIF income.
10. The FDR formula is set out in s EX 52(3) as:
$$(0.05 \times \text{opening value}) + \text{quick sale adjustment}$$
11. The "opening value" in the formula is relevantly defined in s EX 52(5) as the total of the market values of the FDR interests that the person holds at the start of the income year.
12. As the Applicant has an income year ending 31 December, "at the start of the income year" refers to 1 January 2025. Therefore, whether the Applicant has an opening value exceeding nil for the year ending 31 December 2025 will depend on whether the Applicant had rights in an attributing FIF interest "at the start of the income year".
13. Section EX 64(4) provides that a person is deemed to acquire the FIF interest "immediately after the change of residence or status". Further the person is treated as not holding the FIF interest when they are a transitional resident unless they had previously ceased being resident.
14. The deemed acquisition occurs "immediately after the change of residence or status". Based on item 2 of s 54 of the Legislation Act 2019, if the legislation states a period

starting from or after a specified day or event (change of residence/status), the period does not include that day or event.

15. However, the Legislation Act 2019 can be overridden if the context of the specific provision suggests otherwise. The use of the qualifier “immediately” suggests that a different interpretation is appropriate in the context of s EX 64(4) and that there is no intervening day between the change of residence or status and the deemed acquisition of the FIF interests.
16. Section HR 8(3) provides that the period of transitional residence “ends on the earliest of” three dates. The relevant date for the Applicant is the end of the 48th month after the month in which the person acquired a permanent place of abode in New Zealand, which was 31 December 2024.
17. Item 4 of s 54 of the Legislation Act 2019 provides that if a period is described as “ending by, on, at, or with a specified day, act, or event”, then the period “includes that day or the day of the act or event”.
18. On the basis that the Applicant’s period of transitional residence ended on 31 December 2024, the change of status (ie, from a transitional resident to a resident) occurred on 1 January 2025. It follows that the deemed acquisition of the FIF interests occurred on 1 January 2025.
19. The ordinary meaning of the words suggests that the deemed acquisition occurs **after** the start of the income year. This means the FIF interest at the start of the income year for the Applicant is nil. This interpretation is consistent with the policy intent of the provisions and the intent that a taxpayer will not have an opening value in the year that they acquired the FIF interests.

Issue 2 | Take tuarua: Tax avoidance

20. Section BG 1(1) provides that a “tax avoidance arrangement” is void as against the Commissioner. Section GA 1 enables the Commissioner to make an adjustment to counteract a tax advantage obtained from or under a tax avoidance arrangement.
21. The Supreme Court in *Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289 considered it desirable to settle the approach to applying s BG 1. This approach is referred to as the Parliamentary contemplation test, which is an intensely fact-based inquiry. *Ben Nevis* has been followed in subsequent judicial decisions.
22. TCO’s approach in making this decision is consistent with Interpretation Statement: IS 23/01 Tax avoidance and the interpretation of the general anti-avoidance provisions

sections BG 1 and GA 1 of the Income Tax Act 2007 (3 February 2023) (IS 23/01). IS 23/01 will not be replicated in this TDS but in summary the steps are as follows:

- Understanding the legal form of the arrangement. This involves identifying and understanding the steps and transactions that make up the arrangement, the commercial or private purposes of the arrangement and the arrangement's tax effects.
- Determining whether the arrangement has a tax avoidance purpose or effect. This involves:
 - Identifying and understanding Parliament's purpose for the specific provisions that are used or circumvented by the arrangement.
 - Understanding the commercial and economic reality of the arrangement as a whole by using the factors identified by the courts. Artificiality and contrivance are significant factors.
 - Considering the implications of the preceding steps and answering the ultimate question under the Parliamentary contemplation test: Does the arrangement, when viewed in a commercially and economically realistic way, make use of or circumvent the specific provisions in a manner consistent with Parliament's purpose?
- If the arrangement has a tax avoidance purpose or effect that is not the sole purpose or effect of the arrangement, consider the merely incidental test. The merely incidental test considers many of the same matters that are considered under the Parliamentary contemplation test.

23. Taking into account all of the relevant facts and circumstances (noting that as this is a summary it may not contain all the facts or assumptions relevant to the decision and, therefore, cannot be relied on) TCO concluded as follows.

The Arrangement and its tax effects

24. The legal form of the Arrangement is the holding of FIF interests at the end of 31 December 2024.

25. The Arrangement gives rise to the following tax effects:

- The Applicant returns their income using a 31 December non-standard balance date.
- The Applicant has no FIF income under the transitional resident rule in the income year ended 31 December 2024.

- The Applicant's opening value for the FDR annual method will be nil in the year ending 31 December 2025.
- The Applicant will only have FIF income under the FDR annual method in the year ending 31 December 2025 from quick sales.

Parliament's purpose

26. The transitional residence rules provide that new migrants or returning New Zealanders who satisfy the criteria are entitled to tax exemptions for a period, even though they are tax resident in New Zealand. FIF income does not arise if a taxpayer holding an interest in a FIF is a transitional resident. The purpose of the transitional residence rules is to remove the tax barriers that inhibit international recruitment to New Zealand.
27. The FIF calculation methods are specific methods Parliament has devised to impose a reasonable level of tax on foreign share investments. The FDR annual calculation method uses the start of the income year as a measurement date. This can lead to what appear to be distortions in who has FIF income in an income year. These outcomes are the result of Parliament prescribing a standard measurement date and are not inconsistent with Parliament's purpose.
28. The Commissioner has the discretion to approve a taxpayer's request for a non-standard balance date for filing income tax returns (s 38 of the Tax Administration Act 1994). The Commissioner will not approve a change in balance date when (among other circumstances) a reason for the change is to defer the payment of tax or to take earlier advantage of a tax incentive or concession or if the taxpayer has investment income and no direct involvement in a business activity.¹

Commercial and economic reality of the Arrangement

29. TCO determined the commercial and economic reality of the Arrangement as follows:
 - The Applicant owned the FIF interests at the end of 31 December 2024.
 - Nothing in the Arrangement suggests artificiality or contrivance. The Applicant's change of balance date was approved by the Commissioner because the Applicant had a complex portfolio of business interests and investments and would suffer high compliance costs in adjusting for a 31 March balance date.

¹ SPS 24/01: Requests to change a balance date *Tax Information Bulletin* Vol 36, No 8 (September 2024).

The transitional residence period ended as prescribed by law and there is no suggestion that the Applicant planned the timing of their New Zealand tax residency to ensure that the transitional residence ended at the end of the income year.

- From a commercial perspective, the Applicant has not dealt with their FIF interests in any way that is unusual or contrived.
- The key events (change of status, the deemed acquisition and the measurement date for the FIF interests) are prescribed by legislation. The only variables are the Applicant's balance date and when they became a New Zealand tax resident under the permanent place of abode test. The Commissioner approved the 31 December balance date, determining tax residency under the permanent place of abode test is factual and there is no indication this date has been contrived to achieve a nil opening value under the FIF rules.

Does the arrangement make use of or circumvent the specific provisions in a manner consistent with Parliament's purpose?

30. TCO considered that the Arrangement is consistent with Parliament's purpose.
31. The transitional residence rules provide a specific exemption from the FIF rules and that the Applicant did not have a FIF interest while they were a transitional resident. Further, the FDR annual calculation method provides that there is no FIF income in the year that a taxpayer acquires a FIF interest (except quick sale income).
32. The use of the start of the income year as the measurement date is a tax concept that creates a boundary line. This can cause outcomes that appear somewhat arbitrary. For example, if the transitional residence ended on 30 November 2024, the Applicant would have FIF income in the year ending 31 December 2025. However, if the transitional residence ended on 31 January 2025, the Applicant would not have FIF income (except from quick sales) in the year ending 31 December 2025. This is consistent with Parliament's purpose in legislating a specific tax exemption and calculation method.
33. It is likely Parliament would consider that the Arrangement makes use of the relevant provisions in a manner consistent with Parliament's purpose for those provisions. Therefore, TCO concluded that the Arrangement does not have a tax avoidance purpose or effect.

Conclusion

34. As TCO concluded that there is no tax avoidance purpose or effect of this Arrangement, it was not necessary to consider whether the Arrangement is a "tax avoidance arrangement". Therefore, it was also not necessary to consider the merely incidental test.
35. Accordingly, TCO concluded that s BG 1 does not apply to the Arrangement.