Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

Remote work and permanent establishment

Decision date | Rā o te Whakatau: 22 July 2026

Issue date | Rā Tuku: 17 November 2026

TDS 26/21

DISCLAIMER | Kupu Whakatūpato

This document is a summary of the original technical decision so it may not contain all the facts or assumptions relevant to that decision.

This document is made available for **information only** and is not advice, guidance or a "Commissioner's official opinion" (as defined in s 3(1) of the Tax Administration Act 1994). **You cannot rely on this document as setting out the Commissioner's position more generally or in relation to your own circumstances or tax affairs.** It is not binding and provides you with no protection (including from underpaid tax, penalty or interest).

For more information refer to the Technical decision summaries guidelines.

Subjects | Kaupapa

This item summarises a private ruling that considered the situation of a partner who is working remotely from New Zealand for a limited liability partnership established in the United Kingdom. The issue was whether this arrangement creates a permanent establishment and gives rise to income for the partnership.

Taxation laws | Ture tāke

All legislative references are to the Income Tax Act 2007 (ITA), unless otherwise stated.

Summary of facts | Whakarāpopoto o Meka

1. The ruling concerns a limited liability partnership (LLP) that is incorporated in the United Kingdom (UK) and is resident in the UK for income tax purposes.
2. A partner of the LLP (one of many) has relocated to New Zealand for personal reasons and works remotely from home while continuing as a partner in the LLP. The reasons for the relocation were not related to the LLP's business and the LLP did not initiate, request or require it.
3. The arrangement has the following features:
    - The LLP does not provide office space, fit-out or equipment, other than a secured laptop that it has issued. The partner provides all other equipment they need to carry out the work.
    - The partner does not undertake any work for LLP clients that are located in New Zealand. Further, they do not solicit work on behalf of the LLP from New Zealand persons or businesses, or otherwise market the services of the LLP in New Zealand.
    - The partner does not have day-to-day authority to substantially negotiate, accept, enter into or conclude contracts or otherwise legally bind the LLP. They also cannot incur expenses on behalf of the LLP.

Issues | Take

4. The main issues considered in this ruling were whether the entering into and performing of the arrangement by the partner:

This summary is provided for information only and is not binding on the Commissioner. See page 1 for details.

- create a permanent establishment for the LLP as that term is defined in s YD 4B; and
- result in any income for the LLP having a source in New Zealand under s YD 4 or give rise to assessable income for the LLP as defined in s BD 1(5).

Decisions | Whakatau

5. TCO concluded that, to the extent the partners in the LLP are tax resident in the UK or New Zealand for the purposes of the double tax agreement between New Zealand and the UK (NZ–UK DTA), the entering into and performing of the arrangement by the partner:
   - do not create a permanent establishment for the LLP as that term is defined in s YD 4B; and
   - do not result in any income for the LLP having a source in New Zealand under s YD 4 or give rise to assessable income for the LLP as defined in s BD 1(5), due to the overriding effect of s BH 1(4).

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Permanent establishment

Definition of "permanent establishment"

6. Section YD 4B provides that, where a taxpayer is resident in a country with which New Zealand has a double tax agreement (DTA) that contains a definition of "permanent establishment", the meaning in that DTA applies unless s GB 54 applies.
7. Section GB 54 applies only if all of the requirements in s GB 54(1)(a) to (j) are satisfied, including the requirement that the non-resident, or a group including the non-resident, is a "large multinational group". As the LLP is not part of a large multinational group, s GB 54 does not apply. Therefore, the definition of "permanent establishment" in the NZ–UK DTA applies.
8. The LLP is treated as fiscally transparent for UK tax purposes. TCO therefore considered art 1 of the DTA as modified by art 3 of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. TCO concluded that, to the extent the LLP's income is treated as flowing through to partners who are resident in the UK or New Zealand, those partners are entitled to the

This summary is provided for information only and is not binding on the Commissioner. See page 1 for details.

benefits of the NZ–UK DTA. Accordingly, the permanent establishment definition in art 5 of the NZ–UK DTA applies.

Article 5 of NZ–UK DTA

9. TCO considered art 5(1) and (5) to be relevant to this ruling.

10. Article 5(1) defines a "permanent establishment" as a fixed place of business through which the business of an enterprise is wholly or partly carried on. This is the primary test that must be met unless a specific provision applies under art 5.

11. The OECD Model Commentary,[1] which New Zealand courts have accepted as an aid to treaty interpretation,[2] states that a permanent establishment generally requires a place of business; that place to be fixed; and the business of the enterprise to be carried on through that place.

12. The OECD Model Commentary further provides that a home office is not automatically a place of business of an enterprise merely because an individual carries out the enterprise's activities there. If the individual works from home for 50% or more of their working time, the particular facts and circumstances will determine whether the enterprise has a place of business at the home office.

13. A key consideration is whether there is a commercial reason for the individual's presence in that state. A commercial reason exists where the individual's location facilitates the enterprise's business, such as by providing access to customers, suppliers, personnel, expertise or other business resources. Generally, this requires the enterprise to have a reason for the individual to be physically present in that state. Where the enterprise has no commercial reason for it, the home will not ordinarily be a place of business of the enterprise. Different considerations are involved where an individual is the only person, or the primary person, conducting the business of an enterprise.

14. The OECD Model Commentary also makes clear that certain factors do not, by themselves, establish a commercial reason. These include the mere presence of customers or suppliers in the state, being in a different time zone, or situations where

[1] The OECD Model Commentary that TCO considered was the 2017 version as updated by the 2025 Update to the OECD Model Convention as the relevant update is of a clarifying nature only and the underlying treaty text it considered was the same as or similar to the Model Convention.

[2] *Commissioner of Inland Revenue v JFP Energy Inc* [1990] 3 NZLR 536. The use of the OECD Model Commentary as an aid to treaty interpretation is consistent with IS 16/05: Income Tax – foreign tax credits – how to claim a foreign tax credit where the foreign tax paid is covered by a double tax agreement *Tax Information Bulletin* Vol 28, No 19 (December 2016): 41 at [70]–[71].

This summary is provided for information only and is not binding on the Commissioner. See page 1 for details.

the enterprise allows remote work to retain the services of an individual or to reduce office costs.

15. Article 5(5) may also deem a permanent establishment to exist where a person acting for an enterprise habitually concludes, or plays the principal role in concluding, contracts on behalf of the enterprise.

Application to the facts

16. TCO considered that the partner's home is not a place of business of the LLP for the following reasons:

- The partner was not the sole person conducting the entire business or most of the business of the partnership. Instead, the partner was one of many partners and their activities in New Zealand were only part of the LLP's business.
- The LLP had no commercial reason to have the partner located in New Zealand. The relocation occurred solely because of the partner's personal circumstances and they did not relocate to advance the LLP's business interests.
- The LLP had no business need for the partner to be located in New Zealand and no other facts indicated that the premises were at the disposal of the LLP.
- The partner remained qualified in their home jurisdiction and did not become qualified in New Zealand.
- The partner continued to work for the LLP and performed that work from New Zealand merely for personal reasons.
- Any New Zealand clients of the LLP did not give rise to a commercial reason for the partner to be based in New Zealand. The partner did not undertake work for New Zealand clients, solicit New Zealand clients, or market the LLP's services in New Zealand.
- The fact that New Zealand is in a different time zone from the UK did not, of itself, create a commercial reason for the partner's presence in New Zealand. The provision of the services was not an activity that ordinarily required a presence in New Zealand or depended on the New Zealand time zone.

17. Further, the partner did not have day-to-day authority to substantially negotiate, enter into or conclude contracts on behalf of the LLP, was not authorised to incur expenses or provide undertakings on the LLP's behalf, and did not issue engagement documentation. Therefore, art 5(5) of the NZ–UK DTA did not apply.

This summary is provided for information only and is not binding on the Commissioner. See page 1 for details.

Conclusion on Issue 1 | Take tuatahi

18. Consequently, TCO concluded that, to the extent the partners in the LLP are tax resident in the UK or New Zealand for the purposes of the NZ–UK DTA, the entering into and performing of the arrangement by the partner do not create a permanent establishment for the LLP as that term is defined in s YD 4B.

Issue 2 | Take tuarua: Income under s BD 1(5) or s YD 4

19. Section BD 1(5) provides that a person's amount of income is assessable income unless it is, relevantly, their "non-residents' foreign-sourced income". Whether income is foreign-sourced depends on the source rules in s YD 4.

20. Section YD 4 sets out when classes of income are treated as having a New Zealand source. Under s YD 4, this includes: income derived from a contract that is made outside New Zealand but the person wholly or partly performs the contract in New Zealand (s YD 4(3)); income through a permanent establishment (s YD 4(17C)); and income under a DTA (s YD 4(17D)).

21. Section BH 1(4) provides that where a DTA applies, the DTA overrides the provisions in the ITA. The New Zealand courts have recognised this overriding effect, noting that where there is any inconsistency between domestic law and a DTA, the DTA prevails.[3] However, this overriding effect does not apply to ss BG 1, BH 1(4C), BH 1(5), BH 1(5B), s RF 11C, any other Inland Revenue Act, the Official Information Act 1982, the Privacy Act 1993 and, most relevantly, s GB 54 of the ITA.

22. Where it is determined that s BH 1(4) applies, the provisions of the DTA override the provisions of the ITA, including the source rules in s YD 4 and whether an amount is "assessable income" in s BD 1(5), and thus provide relief from New Zealand tax. However, it is still necessary to consider whether any articles of the DTA could create an income taxing right for New Zealand as the DTA can allocate income taxing rights on a particular source of income to New Zealand.

Application to the facts

23. TCO considered that to rule that the LLP has no income under s BD 1(5) or s YD 4, the following requirements must be satisfied:

[3] *CIR v ER Squibb & Sons (NZ) Ltd* (1992) 14 NZTC 9,146.

This summary is provided for information only and is not binding on the Commissioner. See page 1 for details.

- None of the exclusions to s BH 1(4) applies, so the LLP is allowed relief from New Zealand tax as set out under the NZ–UK DTA.
- No articles of the NZ–UK DTA could create an income taxing right for New Zealand in relation to income derived by the LLP.
- If any income is not dealt with in the NZ–UK DTA, New Zealand does not have a right to tax that income under its domestic rules under s BD 1(5).

24. TCO considered and concluded the following:

- None of the exclusions to s BH 1(4) applies. As concluded at [7], s GB 54 has no application because the LLP is not a large multinational group. Accordingly, the NZ–UK DTA has overriding effect.
- None of the NZ–UK DTA articles, other than art 8 (business profits) and art 21A (other income), is potentially relevant to the arrangement. Under art 8, the profits of a UK enterprise are taxable only in the UK unless the enterprise carries on business through a permanent establishment in New Zealand. As the LLP does not have a permanent establishment in New Zealand, its profits are taxable only in the UK. Further, art 21A applies only to income that has not been dealt with elsewhere in the DTA. Because art 8 has already allocated taxing rights over the LLP's business profits to the UK, those profits have been "dealt with" and art 21A does not apply. Accordingly, no provision of the NZ–UK DTA gives New Zealand a right to tax income derived by the LLP from the arrangement.
- As the LLP's income has been dealt with under the NZ–UK DTA, it was not necessary to consider whether New Zealand has the taxing right under its domestic source rules.

Conclusion on Issue 2 | Take Tuarua

25. Accordingly, to the extent that the partners in the LLP are tax resident in the UK or New Zealand for the purposes of the NZ–UK DTA, TCO concluded that due to the overriding effect of s BH 1(4), the entering into and performing of the arrangement by the partner:

- do not result in any income for the LLP having a source in New Zealand under s YD 4; or
- give rise to assessable income for the LLP as defined in s BD 1(5).

This summary is provided for information only and is not binding on the Commissioner. See page 1 for details.