Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > ADJUDICATION

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKAWĀ

Overseas borrower treated as being physically in New Zealand while studying overseas

Decision date | Rā o te Whakatau: 23 April 2026

Issue date | Rā Tuku: 18 November 2026

TDS 26/23

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

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Subjects | Kaupapa

This item summarises an adjudication on whether a borrower undertaking overseas study could be treated as physically present in New Zealand under s 25(1)(g) of the Student Loan Scheme Act 2011.

Taxation laws | Ture tāke

All legislative references are to the Student Loan Scheme Act 2011 unless otherwise stated.

Summary of facts | Whakarāpopoto o Meka

1. The Borrower completed undergraduate study in New Zealand and had a student loan.
2. Before completing their undergraduate studies, the Borrower made a substantial number of enquiries about undertaking postgraduate study overseas but was not successful.
3. After completing their undergraduate studies, the Borrower left New Zealand to work and travel overseas while continuing to look for postgraduate study opportunities.
4. A couple of years later, the Borrower secured funding for and admission to a postgraduate programme at an overseas university.
5. The Borrower applied under s 25(1)(g) to be treated as physically present in New Zealand for the period they were undertaking qualifying overseas study (the Disputed Period). This period did not include the time the Borrower had already been working and travelling overseas.
6. Customer and Compliance Services (CCS) declined the application on the basis that the Borrower's principal reason for leaving New Zealand a couple of years earlier had not been to study. The Borrower disputed the decision.

Issues | Take

7. The main issue that the Tax Counsel Office (TCO) considered was whether the Borrower qualified for an interest exemption.
8. TCO also considered a preliminary issue on the onus and standard of proof.

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Decisions | Whakatau

9. TCO decided that the Borrower was eligible to be treated as physically in New Zealand for the Disputed Period under s 25(1)(g). The Borrower therefore qualified for an interest exemption for that period.

Reasons for decisions | Pūnga o ngā whakatau

Preliminary issue | Take tōmua: Onus of proof

10. Except for proceedings relating to evasion or a similar act or obstruction, the onus of proof is on the taxpayer to show that an assessment is wrong, why it is wrong and by how much it is wrong.[1] However, if the taxpayer proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by that specific amount.[2]

11. The standard of proof is the balance of probabilities.[3]

12. It is appropriate to apply the same onus and standard of proof in the disputes process as in challenge proceedings. TCO considered whether the Borrower had discharged the onus of proof in the context of the issues that the parties raised in the dispute, based on the documentary evidence put before it.

Issue 1 | Take tuatahi: Did the Borrower qualify for an interest exemption?

Interest exemption on student loans

13. Under the Student Loan Scheme Act 2011, overseas-based borrowers are charged interest on their student loans. New Zealand-based borrowers are not.[4]

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[1] Section 149A(2) of the Tax Administration Act 1994. See also *Case V17* (2002) 20 NZTC 10,192; *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC); *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

[2] Section 138P(1B) of the Tax Administration Act 1994.

[3] *Yew v CIR* (1984) 6 NZTC 61,710 (CA); *Case Y3* (2007) 23 NZTC 13,028; *Case X16* (2005) 22 NZTC 12,216.

[4] Sections 133 and 134.

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New Zealand-based borrower and overseas-based borrower

14. Section 22(1) defines a borrower as "New Zealand-based" if the borrower is:

    - physically in New Zealand for a period of 183 consecutive days; or
    - treated as being physically in New Zealand for a period of 183 consecutive days because the borrower has been physically absent from New Zealand for a period, or aggregated periods, of no more than 31 days in any 183-day period starting from any day the borrower was in New Zealand.

15. A borrower ceases to be New Zealand-based if the borrower becomes "overseas-based" (s 22(4)).

16. Section 23(1) defines a borrower as "overseas-based" if the borrower is:

    - physically absent from New Zealand for a period of 184 consecutive days; or
    - treated as being physically absent from New Zealand for a period of 184 consecutive days because the borrower has been present in New Zealand for a period, or aggregated periods, of 31 days or less in any 184-day period starting from any full day the borrower was overseas.

17. A borrower ceases to be overseas-based if the borrower becomes "New Zealand-based" (s 23(4)).

Treating certain borrowers as being physically in New Zealand

Section 25(1)(g)

18. Section 25(1)(g) allows the Commissioner to treat a borrower as physically in New Zealand if the borrower is overseas principally to undertake qualifying study and has provided the required evidence, and it is fair and reasonable to exercise the discretion.

Principal reason

19. TCO concluded that "principal reason" means the main or primary reason why a borrower was absent from New Zealand.[5] Determining this requires an overall

[5] *CIR v BNZ Investment Advisory Services Limited* (1994) 16 NZTC 11,111 (HC), citing with approval *CIR v Mitchell* (1986) 8 NZTC 5,181 (HC) and *General Motors New Zealand Ltd v Taylor* (1983) 6 NZTC 61,880 (HC).

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assessment of all relevant circumstances, using both subjective and objective evidence.[6]

20. CCS argued that the principal reason for the Borrower's absence from New Zealand was to work and travel internationally, not to undertake study. CCS considered that the "principal reason" test should have been applied when the Borrower first went overseas.

21. TCO considered that the better view was that the principal reason for the Borrower's absence from New Zealand should have been assessed day-by-day or period-by-period, rather than only when the Borrower first went overseas.

22. CCS did not dispute that the Borrower's principal reason for being overseas during the Disputed Period, which was years after they had completed their undergraduate studies, was to undertake qualifying study under s 25(1)(g). The Borrower was able to provide extensive evidence in support of this. TCO therefore found that the principal reason test in s 25(1)(g) was satisfied for the Disputed Period.

23. Undertaking qualifying study does not automatically mean a borrower satisfies the test. The borrower must show that study is the main reason for their absence. Relevant factors may include their length of time overseas, return visits, overseas activities, intentions, personal relations and economic ties.

Fair and reasonable

24. In determining what was "fair and reasonable" in the context of s 25, TCO considered the scheme and purpose of the interest exemption provisions for New Zealand-based borrowers. TCO also considered the specified circumstances in which the Commissioner could treat a borrower as physically in New Zealand.

25. A discretionary decision may be considered unreasonable where it is irrational, is based on flawed or illogical reasoning, gives disproportionate weight to certain factors, or lacks a clear and justifiable basis for the decision reached.[7]

26. CCS declined the Borrower's application because it took a different approach to assessing the Borrower's principal reason. CCS did not raise any other grounds for why it would not be fair and reasonable for the Commissioner to exercise his discretion.

[6] *Wairakei Court Limited v CIR* (1999) 19 NZTC 15,202 (HC).

[7] *Associated Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 229; *Minister for Immigration and Citizenship v Li* [2013] HCA 18 at [68], [72] and [76].

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27. TCO concluded that the Borrower satisfied all requirements under s 25(1)(g). Therefore, TCO could see no reason why it would not be fair and reasonable for the Commissioner to exercise his discretion. Consequently, TCO decided in the favour of the Borrower.

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