



EXEMPTIONS UNDER DOUBLE TAX AGREEMENTS FOR INCOME FROM INDEPENDENT PERSONAL SERVICES AND EMPLOYMENT INCOME

1. All 38 double tax agreements that New Zealand has entered into contain provisions that exempt income from employment from NZ tax if certain conditions are met.
2. The exemption for income from independent personal services varies between double tax agreements.
3. In all cases, the relevant double tax agreement must be carefully consulted.

Exemptions for income from employment

4. All double tax agreements allow NZ to tax income from employment earned in NZ. However, income from employment earned in NZ by a non-resident will be exempt from NZ tax if all of the following requirements are met:
 - (a) The recipient must not be present in NZ for more than 183 days in any 12-month period (*how this is counted differs between agreements – see below*).
 - (b) The remuneration must be paid by, or on behalf of, an employer who is not a NZ resident, or must be borne by, or deductible by, a permanent establishment that the employer has in the other Contracting State.
 - (c) The remuneration must not be borne by, or deductible in determining the profit attributable to, a permanent establishment in NZ.
5. In some double tax agreements the 183 days are counted based on a 12-month period commencing or ending in the income year concerned: Australia, Austria, Czech Republic, Hong Kong, the new treaty with Japan (not yet in force), the new treaty with Papua New Guinea (not yet in force), Poland, Russian Federation, Singapore, South Africa, Spain, Taiwan, Thailand, Turkey and the United Arab Emirates.
6. In other double tax agreements the 183 days are counted based on any consecutive 12-month period: India, Indonesia, Ireland, the UK, and the US.
7. The double tax agreement with Norway refers to 183 days in a 12-month period, counted by the presence in NZ in the income year concerned together with the preceding and the succeeding income years.
8. Finally, a number of double tax agreements require the test to be confined to the income year concerned–i.e. the exemption applies provided that the recipient is not present in NZ for more than 183 days in the income year itself: Belgium, Canada, Denmark, Fiji, Finland, France, Germany, Italy, Japan (old treaty), Korea, Mexico, the Philippines, Sweden and Switzerland.

9. There is an additional exemption in the double tax agreement with Australia for remuneration derived by an individual who is a resident of either Australia or New Zealand, in respect of a secondment to the other country. The remuneration is taxable only in the individual's country of tax residence, provided that the individual is not present in the other country for more than 90 days in any 12-month period.

Exemptions for income from independent personal services

10. The general rule is that a non-resident's New Zealand income from providing independent personal services will be exempt from NZ tax under a double tax agreement, if both of the following requirements are met:
 - (a) The non-resident must not have a fixed base regularly available in NZ for the purpose of providing the services.
 - (b) The individual performing the activities must not be present in New Zealand for more than 183 days in any 12-month period (*how this is counted differs between agreements – see below*).
11. This is the rule in the double tax agreements with Belgium, China, Denmark, India, Indonesia, Ireland, Norway, the Russian Federation and Sweden. Note however, that there are variations on this rule and it really depends on the particular double tax agreement in question.
12. In the double tax agreements with some countries, the exemption is based completely on whether there is a fixed base regularly available in NZ, and there is no reference to any count test. This is the case in the double tax agreements with Finland, France, Germany, Italy, Korea, the Netherlands and Switzerland.
13. In other double tax agreements the way in which the count test is applied differs between agreements, and the number of days of presence in New Zealand can also be different: for example, the double tax agreement with Indonesia provides for a period of presence in New Zealand of only 90 days.
14. In the double tax agreements with the Philippines, the Netherlands, and with Sweden, the test is confined to the days of presence in the income year concerned.
15. The double tax agreement with Norway refers to 183 days in a 12-month period, counted by the presence in NZ in the income year concerned, together with the preceding and the succeeding income years.
16. The new double tax agreement with Papua New Guinea (not yet in force) provides that income in excess of US\$10,000 derived in a 365-day period can be taxed in the country of source.
17. If the exemption does not apply due to the existence of a fixed base or a permanent establishment, only so much of the profits that are attributable to the fixed base or to the permanent establishment may be taxed in New Zealand.

18. Some double tax agreements specify the circumstances in which a permanent establishment will arise as a result of performing services. The agreement with Australia, the agreement with Hong Kong, and the new agreement with Japan, for example, provide that there will be a permanent establishment in New Zealand as a result of performing services in NZ if:
- (a) The non-resident who performs the services is present in New Zealand for more than 183 days in a 12 month period, and more than 50% of the gross revenues attributable to the active business activities of the non-resident (Australian) are derived from the services performed in NZ by that individual; or
 - (b) The non-resident who performs the services is present in NZ for a period or periods exceeding 183 days in any 12-month period and the services are performed for the same project or for connected projects.
19. The double tax agreements with China and South Africa contain similar provisions: a presence in NZ exceeding 183 days in any 12-month period while performing services for the same project or connected projects, will be deemed to be a permanent establishment in NZ. This specifically includes consultancy services.
20. The double tax agreements with Mexico, Poland, South Africa, Taiwan, Thailand, Turkey, the United Arab Emirates and the UK all provide that a permanent establishment will exist if:
- (a) services are provided by an enterprise of a Contracting State in NZ for more than 183 days in a 12-month period; or
 - (b) independent personal services are performed by an individual present in NZ for more than 183 days in a 12-month period.