

9 October 2026

Tax Technical
Inland Revenue

By email: public.consultation@ird.govt.nz

PUB00548: Can an Active Investor Plus visa holder become tax resident under the permanent place of abode test?

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa appreciates the opportunity to provide feedback on Inland Revenue's draft 'question we've been asked' (**draft QWBA**): *Can an Active Investor Plus visa holder become tax resident under the permanent place of abode test?*
2. This submission has been prepared with input from members of the Law Society's Immigration & Refugee Law Committee, Tax Law Committee, and the wider profession.¹

General comments

3. There is currently limited guidance that addresses the common scenario of when someone purchasing a residential property in New Zealand and staying there when in New Zealand may obtain a permanent place of abode (and therefore tax residence) in New Zealand. The Law Society therefore welcomes more detailed guidance from Inland Revenue on this topic.

Title and focus of draft QWBA

4. The title and focus of the draft QWBA (and in particular, the references to 'Active Investor Plus visa holders') could be expanded because the factors set out in the guidance could be relevant to anyone moving to New Zealand, irrespective of which residence visa they hold. For example, the guidance could also apply to an Australian citizen who moves to New Zealand.
5. The Law Society accordingly suggests that the title of the draft QWBA should be amended to "Can an Active Investor Plus or other residence-class visa holder become tax resident under the permanent place of abode test?". Consequential amendments should also be made to other references to Active Investor Plus visa holders in the draft QWBA. In

¹ Information about our law reform committees is available on our website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/.

particular, it is important that statements in the QWBA are consistent with and do not undermine the position in Inland Revenue's Interpretation Statement IS 25/16.²

The use of the dwelling

6. The draft QWBA notes that there are circumstances where a person's house in New Zealand may become a permanent place of abode regardless of how the person classifies the time – for example, someone simply categorising their time at an abode in New Zealand as “holidays” does not necessarily mean the person does not habitually reside at the abode here on a permanent basis.³
7. We note that IS 25/16 provides clearer guidance on this issue, and this guidance should at the very least be referenced in this draft QWBA. IS 25/16 recognises that a New Zealand property that is used as a holiday home for two or three months of the year will *not* qualify as a permanent place of abode because the person does not habitually reside at that property on a permanent basis.⁴
8. To ensure there is sufficient clarity regarding Inland Revenue's position on this issue, the Law Society recommends more closely aligning the draft QWBA, and in particular, paragraphs [44] and [45], with the language and examples in IS 25/16 (which recognise that a holiday home that is used for just two or three months of the year should not qualify as a permanent place of abode).

Family and social ties (paragraphs [50] to [52] of the draft QWBA)

9. In this context, it is important to note that case law has clarified that the relevant question is whether the *taxpayer* – and not members of the taxpayer's family – have a permanent place of abode in New Zealand, and that a taxpayer providing a home in New Zealand for their family does not necessarily mean that the taxpayer also has a permanent place of abode.⁵ This position has been accepted by Inland Revenue in IS 25/16 (Example 5).

References to double tax agreements and centre of vital interests test

10. Examples 4, 5, 7 and 13 of the draft QWBA express a view (albeit a tentative one) on how the ‘centre of vital interests’ test in the relevant double tax agreement will apply, based on the facts of that scenario.
11. The centre of vital interests test requires an intensely factual enquiry (see, for example, *Oppenheimer v HMRC*),⁶ and the Law Society considers it is not appropriate for Inland Revenue to express a view on the application of this test without first undertaking this analysis.
12. Recent case law (for example, *Oppenheimer*) also suggests that Inland Revenue's view places undue emphasis in each of these examples on the fact that the taxpayer's family resides in New Zealand.

² Inland Revenue *IS 25/16 Interpretation Statement / Putanga Whakamāori: Tax Residence* (16 May 2025)

³ At [44].

⁴ See Example 9 at pages 36-38. Example 3, at page 31, suggests that 5 months per year may create a permanent place of abode.

⁵ *Commissioner of Inland Revenue v Diamond* [2015] NZCA 613 at [61].

⁶ [2022] UKFTT 112 (TC).

13. The Law Society therefore suggests:
- a. removing the references to how the centre of vital interests test might apply in examples 4,5, 7 and 13; and
 - b. instead noting that, while a permanent place of abode in New Zealand will arise in the relevant examples, tax residence may still tie-break to the taxpayer's home jurisdiction depending on the application of double tax agreement residence tie-breaker tests such as the permanent home test or the centre of vital interests test.
14. Inland Revenue may also wish to consider whether it would be worthwhile preparing a separate, more in-depth publication on how the centre of vital interests test applies.
15. It is also worth noting that the Taxation (Annual Rates for 2026–27, FBT Simplification, Foreign Investment Funds, and Remedial Measures) Bill proposes, among other things, to align the start date of a person's transitional residence entitlements with the date that they tie-break as a tax resident to New Zealand under a double tax agreement.⁷ This proposed change further underscores the need for specific and detailed guidance on the double tax agreement tie-breaker tests (including the centre of vital interests test).

Next steps

16. We would be happy to meet with you to discuss this feedback, or to answer any questions, if that would be helpful. Please feel free to get in touch via the Acting Manager Law Reform and Advocacy, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz).

Nāku noa, nā



Jesse Savage
Vice President

⁷ Clause 97 of the Taxation (Annual Rates for 2026–27, FBT Simplification, Foreign Investment Funds, and Remedial Measures) Bill 344—1, introduced to Parliament on 10 September 2026.