Russell McVeagh

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Inland Revenue
PO Box 2198
WELLINGTON 6140

Email: public.consultation@ird.govt.nz

RUSSELL MCVEAGH SUBMISSION ON EXPOSURE DRAFT PUB00548: CAN AN ACTIVE INVESTOR PLUS VISA HOLDER BECOME TAX RESIDENT UNDER THE PERMANENT PLACE OF ABODE TEST?

1. INTRODUCTION

Overview

1.1 This letter contains our submissions on the exposure draft published in September 2026 PUB00548 *Questions We've Been Asked Can an Active Investor Plus visa holder become tax resident under the permanent place of abode test?* (the "**Draft QWBA**").

1.2 In our practice, we have advised AIP visa holders and applicants, and New Zealand-based providers of investment opportunities to those individuals (eg AIP funds). While we welcome guidance for active investor plus ("**AIP**") visa applicants and holders, we consider there are several respects in which the Draft QWBA can be improved to provide more accurate and practical guidance that will better suit the circumstances of those applicants and holders.

1.3 We would be happy to discuss any aspect of these submissions with officials.

2. SUBMISSION 1: THE DRAFT QWBA SHOULD ADDRESS THE DAY COUNT TEST

Submission

2.1 The Draft QWBA should be reframed as an AIP-specific residence guide; rather than only addressing the "permanent place of abode" ("**PPA**") test, it should provide more overview and examples of the day-count residence test in the AIP context, so as to act as a "one stop shop" for AIP investors.

Partners
Frederick Ward
Malcolm Crotty
Joe Windmeyer
Guy Lethbridge
John Powell
Tim Clarke
David Hoare
Matthew Kersey
David Butler
Craig Shrive
Deemple Budhia
Mei Fern Johnson
Daniel Jones
Allison Arthur-Young
Christopher Curran
David Raudkivi
Tom Hunt
Daniel Minhinnick
Troy Pilkington
Marika Eastwick-Field
Ian Beaumont
Joe Edwards
Benjamin Paterson
Emmeline Rushbrook
Anna Crosbie
David Weavers
Liz Blythe
Nathaniel Walker
William Irving
Kirsten Massey
Cath Shirley-Brown
Simon Pilkinton
Michael Taylor
Greg Neill
Emma Peterson
Sarah Blackmore
Jesse Fairley
Tom Gillespie
Petra Carey
Bradley Aburn
Natalie Steur
Doran Wyatt
Bevan Peachey
Michael Loan
Hannah Wilson
Alex MacDuff
Tony Sycamore
Jeremy Upson
Lauren Rapley
Sarah DeSourdy Hastings
Sam Nelson
Brian Clayton

Explanation

2.2 We do not consider the observation at paragraph 29 that "[t]he 183-day rule can be readily managed by AIP visa holders and their advisors" should be a governing principle for Inland Revenue's guidance to AIP visa applicants and holders. For one thing, the discussion of the 183-day test in paragraphs 25 to 28 of the Draft QWBA omits any mention of the recently-enacted non-resident visitor regime, which could significantly change the application of that test to an AIP visa holder.

2.3 The non-resident visitor regime is not widely known about (given its novelty) and has requirements that are not necessarily intuitive to non-residents. Further guidance on that regime, especially in the context of AIP visa holders, would be useful. To this end, we note that merely cross-referring to the more fulsome discussion of tax residence in IS 25/16 will not be helpful, as it does not discuss the non-resident visitor regime.

3. SUBMISSION 2: THE DRAFT QWBA SHOULD INCLUDE PINPOINT REFERENCES TO IS 25/16

Submission

3.1 The Draft QWBA should include pinpoint cross-references to the relevant paragraphs of IS 25/16. Where no substantive AIP-specific guidance is provided, the discussion could be materially shortened and readers' experience improved by directed references to IS 25/16 for detailed analysis.

Explanation

3.2 The Draft QWBA states at paragraph 3 that it should be read "in conjunction with IS 25/16: *Tax residence*, which discusses the rules in more detail", with similar statements repeated at paragraphs 24, 30, and 70. However, the Draft QWBA does not provide helpful cross-references to the parts of IS 25/16 relevant to the issue being discussed.

3.3 We agree that IS 25/16 contains the Commissioner's detailed application of the tax residence rules, including the PPA test. The inclusion of pinpoint cross-references would materially improve usability and assist readers in applying the two publications together. They would also reduce the need for the Draft QWBA to repeat or paraphrase existing guidance, allowing it to focus on those aspects of the PPA analysis that are genuinely relevant to AIP visa holders.

3.4 Consistent with that approach, the Draft QWBA could be improved by removing or shortening content that is ancillary to the PPA analysis. While we welcome further guidance for AIP investors, the focus of the Draft QWBA should be on providing practical and pragmatic advice that applies the principles discussed in IS 25/16. Unnecessary length, duplication of information, and discussion of issues outside of scope, all risk frustrating this objective. For example:

(a) paragraphs 4 to 7 refer to facts about AIP visas that will be well-known to AIP visa holders;

(b) paragraphs 17 to 22, and footnotes 6 and 9, discuss the transitional residence regime (and related opt-out rules) but do not materially assist in determining whether an AIP visa holder has a PPA in New Zealand and could instead be addressed through a brief cross-reference to IS 25/16; and

(c) paragraphs 25 to 28 describe the 183-day test, which is expressly beyond the scope of the Draft QWBA. As discussed above, these paragraphs omit any mention of the recently-enacted "non-resident visitor" regime and therefore paint an incomplete picture of how the 183-day test may apply to an AIP investor. If these paragraphs are to be retained, they should be updated to reference the non-resident visitor regime.

3.5 The Draft QWBA would be improved by focusing more directly on the factors relevant to the PPA analysis and addressing non-substantive matters through targeted cross-references to IS 25/16.

4. SUBMISSIONS ON THE DRAFT QWBA EXAMPLES

4.1 We support the inclusion of the 13 worked examples in the Draft QWBA which provide welcome guidance on how the Commissioner applies the PPA test to AIP visa holders. However, for the reasons set out in Submissions 2 to 6 below, we consider that the examples should be revised to provide more balanced and practical guidance.

Submission 3: Examples 4 and 7 place disproportionate weight on family relocation

Submission

4.2 Proposed Examples 4 and 7 should be revisited, as they risk suggesting that the relocation of a taxpayer's family to New Zealand operates as a de facto trigger for the acquisition of a PPA.

Explanation

4.3 The Draft QWBA examples 4 and 7 place considerable emphasis on the point at which a taxpayer's family relocates to and occupies a New Zealand dwelling.

(a) Example 4 (James) involves a taxpayer who spends approximately 90 days per year in New Zealand over the five-year investment period. At the end of the first year, his spouse and children relocate to New Zealand and live in the property full time. The Draft QWBA concludes that the property becomes a PPA for James "from the time his family moves there at the end of the first year", notwithstanding that there is no corresponding change in James's own pattern of physical presence or any other factor indicating change in habitual use of the property.

(b) Similarly, in Example 7 (Carlos), the Draft QWBA concludes that a PPA arises from the time Carlos' family relocates to a New Zealand property. It is not entirely clear from the facts whether Carlos occupied the property before his family arrived, or whether the family's relocation is itself intended to be the event that gives rise to the PPA, with the conclusion section silent on the business he runs in Chile.

4.4 By contrast, Example 9 in IS 25/16 states that "the permanent place of abode test needs to be considered on an individual basis" (consistent with *CIR v Diamond* [2015] NZCA 613 at [61]). In that example, although the taxpayer's wife and children relocate to New Zealand which the taxpayer visits for 2.5 months per year, IS 25/16 concludes that the taxpayer does not acquire a PPA at that point. Rather, a PPA arises only later, after the taxpayer rearranges his work commitments, spends approximately four months each year in New Zealand, and the nature and quality of his use of the property changes. This is difficult to reconcile with Example 4 of the Draft QWBA where family relocation appears to be the principal factor driving the outcome.

4.5 We agree that the relocation of a taxpayer's spouse and dependent children to New Zealand will often be a significant factor in the PPA analysis. We also agree with the observation in paragraph 65 of the Draft QWBA that assessing the timing that a PPA arises requires an "overall assessment of the person's circumstances". However, as currently drafted, Examples 4 and 7 risk implying that family relocation is a threshold event that gives rise to a PPA, rather than one factor in the overall assessment.

Submission 4: The examples should not speculate on the application of the DTA tie-breaker tests

Submission

4.6 Commentary on the application of the Double Tax Agreement ("**DTA**") tie-breaker tests in Examples 4 (James), 5 (David), 7 (Carlos), 9 (Elena) and 13 (Jerry and Olivia) should be removed.

Explanation

4.7 The Draft QWBA raises the potential implications of becoming dual tax resident (paragraphs 12 to 16), without purporting to provide substantive guidance on the tie-breaker tests themselves. The examples go further, however, expressing the Commissioner's views on the likely outcome of the tie-breaker tests in specific scenarios. Whilst these notes are brief and qualified, their inclusion should be revisited. In short, the analysis is too brief and speculative to provide meaningful guidance to an AIP visa holder about how a DTA tie-breaker test is applied.

4.8 The examples should instead be limited to noting that a DTA may be relevant where a person becomes dual resident, with readers referred to specific sections of IS 25/16 for the detailed discussion of the Commissioner's view of the application of the DTA tie-breaker tests.

4.9 In the alternative, if the Commissioner considers it necessary to address the DTA tie-breaker tests in the AIP visa context, this would more appropriately be dealt with in supplementary guidance dedicated to those issues, or through significantly expanded discussion that does not risk over-simplifying how DTA tie-breaker tests are approached.

Submission 5: The examples should better reflect the circumstances of AIP visa holders

Submission

4.10 The majority of the examples do not engage with characteristics other than the family relocation and could be tailored better to AIP visa holders. We consider the examples should be revised to address the full range of durability factors as discussed in the explanation section at paragraphs 41 to 61, rather than on family relocation as the primary differentiating factor.

Explanation

4.11 Every positive PPA example other than Examples 9 and 13 is triggered by family relocation, with the same dominating the conclusion section of most examples. Where the conclusions engage substantively with any specific durability factor, it is overwhelmingly the taxpayer's family ties that trigger PPA. Employment, business interests, economic ties, and personal property are either dismissed in a sentence or confined to background facts. The Draft QWBA therefore does not illustrate how the PPA test would apply to the full range of durability factors relevant to AIP visa holders — particularly the significant wealth, active business interests, and multi-jurisdictional economic ties that characterise this visa category, such as demonstrated in Example 13.

4.12 The 13 examples focus predominantly on visa holders who purchase residential property in New Zealand and stay there when visiting. While this is undoubtedly a common scenario generating PPA questions, there are other AIP visa scenarios that arise in practice and would benefit from guidance, for example:

(a) AIP visa holders who hold their New Zealand residential property through a family trust or a company, rather than personally. The Draft QWBA notes at footnote 10 that a dwelling "does not need to be owned by the person — for example, it could be rented, held in a family trust, or owned by a family company or another family member." However, no worked example illustrates this scenario.

(b) AIP visa holders in the Balanced Category who are eligible for a reduction in the physical presence requirements under BN10.15.1 of the INZ Operational Manual. These visa holders may spend materially fewer than 105 days in New Zealand over the five-year period. An example addressing this reduced-presence scenario would assist such AIP visa holders and their advisers.

(c) In all but two examples (7 and 8), the AIP visa holders buy a house. In those two examples where they do not, the visa holders stay in hotels. It would be helpful if the examples considered a more diverse range of abode that may be available to a taxpayer, such as situations in which a taxpayer enters into a longer-term rental agreement, where the taxpayer stays at the same short-term accommodation each year (eg a single residence that can be booked through an online platform), or where the rental location might move each year (eg there are repeated visits to New Zealand but the taxpayer does not stay at the same property).

4.13 We submit that the Commissioner should update existing examples or include additional examples addressing the scenarios described above.

Submission 6: The guidance should distinguish between different types of personal property

Submission

4.14 Paragraph 56 of the Draft QWBA should be amended to better reflect how the nature of personal property retained in New Zealand is relevant in the PPA analysis. As currently drafted, paragraph 56 treats personal property as a single undifferentiated category. We also submit that the examples should more clearly illustrate the qualitative distinction between different types of personal property.

Explanation

4.15 Paragraph 55 states that personal property "would be taken into account to the extent it indicates they habitually reside in their place of abode here on a more than temporary basis." Paragraph 56 adds that the weight depends on "the nature of the property and the person's circumstances." We agree that not all personal property carries the same weight, as recognised in the case law. For example, a bed and kitchen implements (both examples of personal property) are of virtually no significance in determining the taxpayer's connections to New Zealand when compared with, say, a taxpayer's favourite work of art or a box of family photographs.

4.16 Examples 2 (Mei), 3 (Hiro), 11 (Daniel and Julia), and 12 (Brad and Nicole) each involve AIP visa holders keeping personal belongings at their dwelling — items including clothing, golf clubs, ski equipment, vehicles, boats, and jet skis — yet in each case the conclusion simply states that keeping personal belongings "does not indicate sufficient durability of association". The analysis does not distinguish between recreational or seasonal items (golf clubs, ski equipment) and possessions indicative of settled residence (the bulk of one's furniture and household effects). Example 7 (Carlos) refers only to moving "personal belongings" to New Zealand without specifying the nature of those belongings, making it difficult for a reader to assess the weight attached to this factor.

4.17 IS 25/16 at paragraph 100 provides guidance on this qualitative distinction, providing that someone "leaves the bulk of their furniture and other personal

effects in New Zealand", which "would be of far more weight" than "someone leaving, say, a few personal effects with a relative or friend."

4.18 The examples should be amended to: (a) specify the type of personal property in each scenario (particularly Example 7); and (b) expressly state in the analysis that recreational and seasonal items (such as golf clubs, ski equipment, and vehicles kept for convenience) carry limited weight, whereas the retention of the bulk of one's furniture and household effects would be of significantly greater weight.

Submission 7: Examples 9, 12 and 13 should be refined

4.19 Example 9 (Elena) states that a pattern of spending approximately four months per year in New Zealand over numerous years is "enough on its own" to indicate residence on an enduring rather than temporary basis. That formulation is problematic because it suggests that annual presence is determinative.

4.20 We accept that regular annual presence of approximately four months is a strong indicator of habitual residence. However, the phrase "enough on its own" should be replaced with language that recognises it as a significant factor, while preserving the holistic analysis required by the authorities.

4.21 We also consider that Examples 12 and 13 need to be revisited and more clearly reconciled.

4.22 We consider the fact pattern in Example 12 to be very "close to the line" as to whether a PPA exists. There is an intention to reside permanently in New Zealand, a residential property is acquired and available for exclusive use, the family periodically visits the home over several years, the family keeps personal belongings in the residence (including two vehicles) and is involved in the local community with a country club membership and ski passes. In our view, those are the key elements to a finding that a PPA exists – it's not exactly clear what else is missing in order to find a PPA, other than perhaps that the use of the property is as a holiday home rather than necessarily being "enduring".

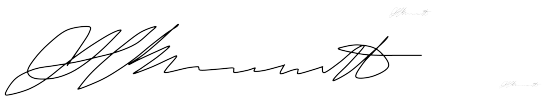
4.23 Similarly, Example 13 (Jerry and Olivia) would benefit from further engagement with the substantial contrary factors present on the facts, including the taxpayers' family, financial and personal ties remaining overwhelmingly overseas, and the absence of an intention to make New Zealand a permanent home. It is difficult to reconcile the conclusion in Example 13 with that reached in Example 12 (Brad and Nicole), where the intention was to move to New Zealand and there is little to no engagement in Example 12 with the enduring ties the family have with their overseas circumstances.

4.24 In summary, it is not clear to us what the distinguishing features are between Examples 12 and 13. Both examples tend towards the individuals concerned having a PPA in New Zealand, but some commentary addressing the differences between the two would be useful.

5. CONCLUSION

5.1 We welcome Inland Revenue's publication of further guidance for AIP visa applicants and holders, and would be happy to discuss this submission further with officials.

Yours faithfully



Greg Neill | Callum Burnett
Partner | Senior Associate

Direct phone: +64 9 367 8891 | +64 9 367 8080
Email:
greg.neill@russellmcveagh.com
callum.burnett@russellmcveagh.com