

Determine if a Person is Ordinarily Resident in New Zealand

Contents

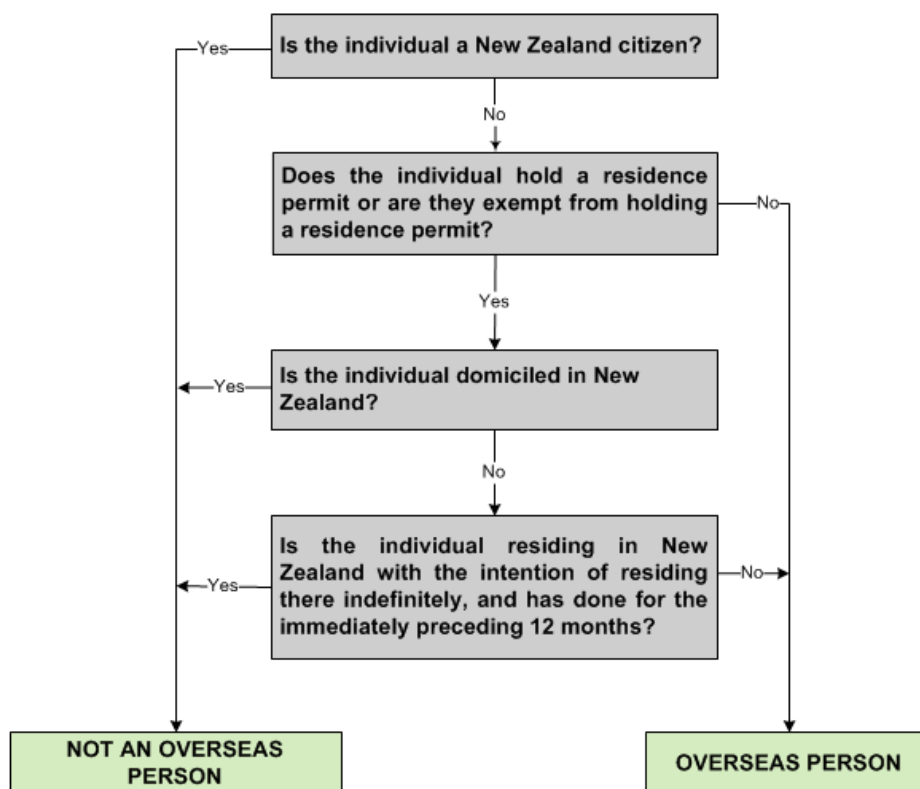
1. Introduction
2. Legislation
3. Residence criteria
4. Further information
5. Disclaimer

There are no recent updates to this resource.

Introduction

If you are ordinarily resident in New Zealand, you are not considered an overseas person and the consent requirement does not apply.

Use the following diagram to determine your status. If in doubt, refer to the further information in this guide or contact the OIO.



On the OIO website you can download this diagram to enlarge or print a copy.

Legislation

An "overseas person" is defined in section 7 of the Overseas Investment Act 2005.

Section 6(2) of the Act determines when an individual is ordinarily resident in New Zealand.

Criteria for "ordinarily resident"

"Ordinarily resident" is a conjunctive test - you must be entitled to reside in New Zealand indefinitely **and** either be domiciled or residing in New Zealand with the intention of residing here indefinitely, having done so for the immediately preceding 12 months.

Residence permit

To be ordinarily resident, you must be entitled to reside in New Zealand indefinitely.

Under section 16 (1) of the Immigration Act 1987, a residence permit entitles the holder of that permit to be in New Zealand indefinitely.

No other visa or permit entitles a person to remain in New Zealand indefinitely. This means that the holder of a work permit cannot be ordinarily resident in New Zealand.

Section 12 of the Immigration Act provides that, subject to section 7, any regulations made under section 150 of the Immigration Act may exempt persons from the requirement to hold a permit.

Regulation 25 and Part 2 of Schedule 1 of the Immigration Regulations 1999 exempt citizens of the Commonwealth of Australia from the requirement to hold a residence permit. Under current immigration policy, an Australian permanent resident entering New Zealand with a current Australian resident return visa will normally be granted a residence permit on arrival, subject to the applicant satisfying immigration good character requirements.

Domiciled in New Zealand

Section 9 of the Domicile Act 1976 governs the acquisition of New Zealand domicile.

Residing in New Zealand

A person must be residing in New Zealand, with the intention of residing here indefinitely, and have done so for the immediately preceding 12 months. Section 6(3) of the Overseas Investment Act provides that absence in New Zealand for more than 183 days in aggregate in the last 12 months (counting presence in New Zealand for part of a day as presence for a whole day) does not prevent a person from satisfying the requirement for residing in New Zealand for the last 12 months.

Residing is not defined in the Act. The Concise Oxford Dictionary defines "reside" as: "(Of person) have one's home; dwell permanently".

In Dempster and Attwell v C or IR¹ Thorp J stated: "The word reside is a word of flexible meaning. In its usual meaning, a person is said to reside where he sleeps. The fact that he may be away at work somewhere else in the daytime does not mean that he is not residing at the home to which he returns each night".

In Fox v Stirk & Bristol Electoral Registration Officer², Lord Denning stated: "I think that a person may properly be said to be resident in a place where his stay there has a considerable degree of permanence".

Also in Fox v Stirk & Bristol Electoral Registration Officer³, Lord Widgery stated: "Some assumption of permanence, some degree of continuity, some expectation of continuity, is a vital factor which turns simple occupation into residence".

The 12 month period is calculated having regard to the calendar months elapsed from the arrival of the person in New Zealand to take up residence, to the month in which the giving effect to the transaction, which would have otherwise required consent, occurs.

Further information

Visit the OIO website at www.linz.govt.nz/oio to find related links, documents and answers to frequently asked questions. Read the Overseas Investment Act 2005 and the Overseas Investment Regulations on www.legislation.govt.nz.

If you require further information, please contact the OIO.

Overseas Investment Office
Land Information New Zealand
160 Lambton Quay
PO Box 5501
Wellington 6145
New Zealand

Phone +64 4 462 4490
Fax +64 4 460 0111
Email oio@linz.govt.nz
www.linz.govt.nz/oio

Disclaimer

This website provides general information only. The OIO and LINZ do not assume any responsibility for giving legal or other professional advice and disclaim any liability arising from the use of the information. If you require legal or other expert advice you should seek assistance from a professional adviser.

¹ [1983] 6 NZTC 61,887.

² [1970] 2 QB 463; [1970] 3 All ER 7.

³ [1970] 2 QB 463; [1970] 3 All ER 7.