

A substantial tax benefit for migrant Kiwis living in Australia

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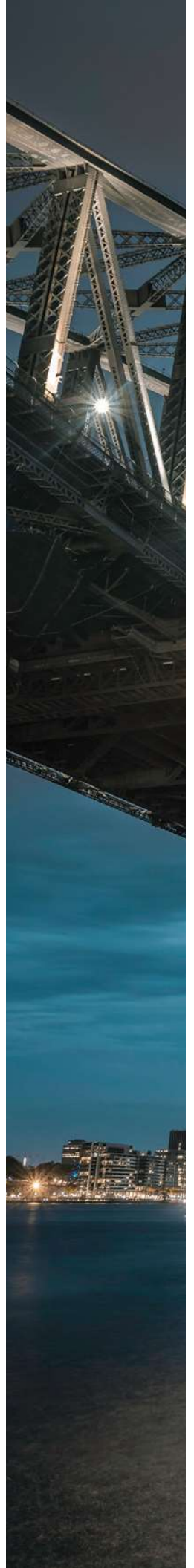
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It is a reality of the modern and mobile world we live in that many of our clients have adult children who are now living overseas and particularly in Australia. This article discusses a little-known tax advantage for Kiwis who have jumped the ditch.

First, some background: Kiwis arriving in Australia are issued with a Special Category Visa (SCV) which allows the visa holder to stay indefinitely. Until 26 February 2001, SCV holders were generally treated the same as permanent visa holders. However, in 2001, the Australian government made changes to the SCV and, since 26 February 2001, it has been technically classified as a 'temporary visa', despite its holders having the right to indefinite residence in Australia.

The downside of this arrangement, as most New Zealanders are aware, is

that Kiwis with this visa are not entitled to most social security payments from the Australian Government, despite paying Australian taxes while living and working in Australia. However, there is also an upside which is not often mentioned by the media - as holders of temporary visas, most of their foreign income is not taxed in Australia under the temporary resident tax exemption. Kiwis who have subsequently married an Australian citizen or permanent resident will have a changed visa status and, with that, will also lose their temporary tax resident tax exemption.



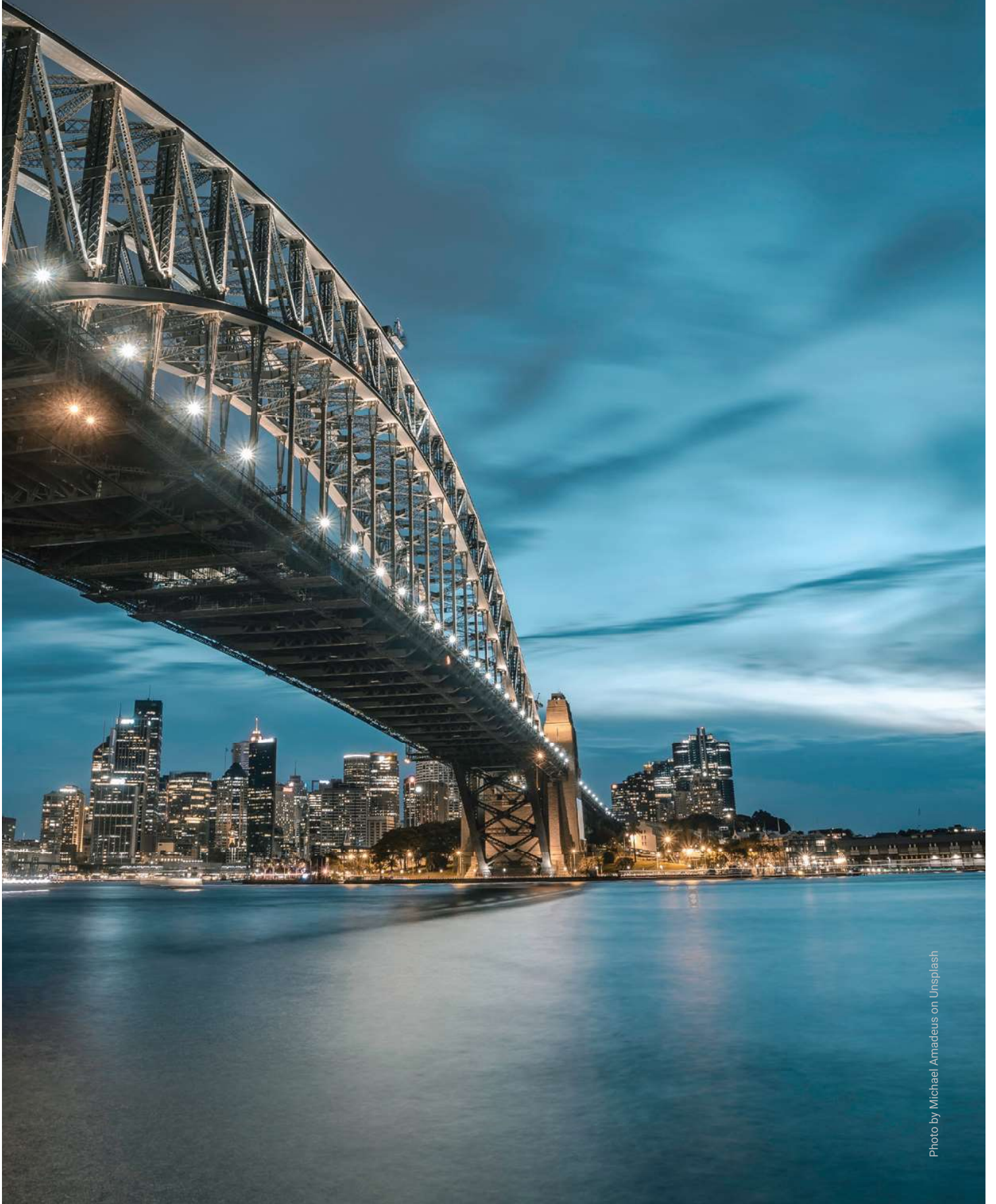




Photo by Michael Amadeus on Unsplash



So, how does the exemption work? Kiwis living in Australia will still be Australian residents for income tax purposes. They will still pay Australian tax on Australian sourced investment income (i.e. Australian dividends or Australian bank interest) and most employment-related remuneration (i.e. wages and income under employee share plans even if derived outside Australia). However, they do not have to pay Australian tax on passive income earned from sources outside Australia. So, if a Kiwi has kept a New Zealand bank account or receives dividends paid from a New Zealand company, they will have no Australian tax liability on that income. Assuming they are no longer New Zealand tax resident then New Zealand interest will be taxed in New Zealand at lower rates (10% for interest, or even 2% if the Approved Issuer Levy regime is used), and that will be a final tax.

Similarly, if they receive a distribution of income from a New Zealand resident trust, they are not liable to Australian tax on that distribution so long as the underlying income/gain is not Australian sourced. This exclusion can be very helpful in situations



where, for example, New Zealand resident parents wish to provide some financial assistance (via their family trust) to one of their children studying in Australia. Or they might want to gift or lend some funds to help a son or daughter living and working in Australia with the deposit on an apartment.

The temporary resident tax exemption saves Kiwis living in Australia a world of pain when it comes to trust distributions. When living or doing business overseas, one should never assume that tax rules are generally the same everywhere, and this is particularly true when dealing with trusts. Unlike New Zealand trusts, most Australian resident trusts will typically distribute all trust income in the year of receipt. They do not retain capital gains or profits in the way New Zealand trusts do. The Australian tax rules actively discourage their domestic trusts from doing that.

Similarly, when it comes to any foreign trust (whether resident in New Zealand or anywhere else), Australian tax rules are quite severe. It has 'transferor trust' rules that try to determine if an Australian has gifted or transferred assets to a foreign trust for consideration less than arm's length. Australia also has a 'retained profits' rule which essentially means that most foreign trust distributions will be taxable. Therefore, where a New Zealand resident beneficiary would normally receive a tax-free distribution from a New Zealand trust's capital gains reserves or post-tax retained earnings, that would almost certainly not happen for an Australian resident beneficiary, unless they have a temporary resident tax exemption.

So, the tax exemption can be a significant advantage in situations where a New Zealand family trust wishes to provide financial support to a family member living in Australia.

To sum up, yes there are many Kiwis living

OTHER ADVANTAGES FOR THE EXPAT KIWI FROM THE EXEMPTION:

Australian Capital Gains Tax (CGT)

If a CGT event occurs while a temporary resident, that person is not liable to the CGT (nor treated as having made a capital loss) unless the asset is 'taxable Australian property' (generally direct and indirect interests in Australian real estate).

Australian Withholding Tax

Interest paid by a temporary resident to foreign residents (for example, a New Zealand bank) is not subject to withholding tax.

and working in Australia who may not be entitled to social security benefits. But a temporary resident visa also has some significant tax advantages, and for our many successful 'exports' I'd suggest that, rather than worrying about social security, an awareness of those tax advantages could be much more advantageous.

Kiwis wishing to benefit pursuant to Australia's temporary resident rules may wish to act quickly. Australia is in the process of reviewing its residency rules, and there is a real possibility that this review will result in greater restrictions on the use of the temporary resident rules in the future.

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This article has been co-written with Denise Honey, international tax partner in Melbourne at Pitcher Partners, our Baker Tilly affiliate firm in Australia who provide excellent care and advice to our clients doing business in Australia.