

Revenue Ruling

Ruling Number	: PUB-LT-2022-2
Title	: Section 16H Discretion - New Zealand Citizens Holding a Special Category Visa
Date of Ruling	: 1 July 2022
Tax Line	: Land Tax
Legislative Reference	: Land Tax Act 2000
Replaces previous ruling	: N/A

Preamble

Division 1A of Part 2 of the [Land Tax Act 2000](#) (the Act) charges an additional amount of land tax known as the Foreign Investor Land Tax Surcharge (FILTS) on certain residential property owned by a “foreign person” at 1 July.

[Section 16H](#) of the Act provides that the Commissioner of State Revenue (the Commissioner) may publish circumstances under which a “foreign person” is taken not to be foreign for the purposes of the Act.

This Ruling is a publication made by the Commissioner in accordance with section 16H of the Act.

Ruling

A New Zealand citizen who is the holder of a special category visa within the meaning of the *Migration Act 1958* of the Commonwealth is not a foreign person for the purposes of the Act, and therefore not liable for FILTS. The Special Category visa (subclass 444) is a temporary visa that allows a New Zealand citizen to stay and work in Australia. However, the visa is withdrawn when the person leaves Australia, meaning that the person may become liable for FILTS, even if their departure from Australia is for a short period only.

In order to avoid the imposition of FILTS in circumstances where a New Zealand citizen is temporarily outside of Australia on 1 July of the relevant financial year, the Commissioner has determined that a transferee is taken not to be a foreign person, for the purposes of the Act, in the following circumstances:

- the owner is a natural person; and
- the person is a citizen of New Zealand and held a Special Category visa (subclass 444) at all material times; and
- the person’s principal residence was in Australia on 1 July of the relevant year; and
- on 1 July of the relevant financial year, the person was temporarily outside of Australia for a period of three months or less.

Although a New Zealand citizen would ordinarily be considered to have become a foreign person for the purposes of the Act in circumstances where they temporarily leave Australia, where the conditions (shown at the bottom section of the previous page) are met:

- the person is taken to not be a foreign person in relation to FILTS; and
- the person is not required to provide notice under section 16J(b) of the Act; and
- FILTS is not chargeable in respect to that person's interest in relevant land for that financial year.

Date of application of this ruling

This Revenue Ruling applies from 1 July 2022.

More information from the State Revenue Office

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JC Root
Commissioner of State Revenue

1 July 2022