



P R E F A C E

This profile on Doing Business in New Zealand has been prepared by Staples Rodway, an independent member of Baker Tilly International in New Zealand.

The profile is designed to provide information on a number of subjects important to those contemplating investing or doing business in New Zealand.

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The guide is one of a series of country profiles compiled for use by Baker Tilly clients and professional staff. It may be obtained from any of our international offices, or from within New Zealand from one of the network's member firms, details of whom can be found at the back of this guide.

“Doing Business in New Zealand” has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this booklet may not be comprehensive and readers should not act upon it without seeking professional advice.

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1 INTRODUCTION

1.1 *New Zealand Business Environment*

Through locating in New Zealand or partnering with New Zealand organisations you can develop ideas, concepts and technologies with a people renowned for their interest in, and uptake of, new thinking. New Zealand is a country with an economic outlook, free market philosophy and political stability that is highly geared for success. New Zealand has an efficient, market-oriented economy, a stable and secure business environment and no corruption.

1.2 *Geography and Physical Features*

New Zealand lies in the south-west Pacific Ocean and comprises two main and a number of smaller islands. Their combined area of 270,500 sq km is similar to the size of Japan or the British Isles. The main North and South Islands are separated by Cook Strait which at its narrowest point is 20 km wide.

1.3 *Cities & Weather (Cities from North to South)*

	Auckland	Hamilton	Wellington	Christchurch	Dunedin
Population (2001 census)	1,165,278	114,975	344,094	322,191	116,739
Av.Summer Temperature (c)	23.1	24.3	21.3	22.3	19.0
Av.Winter Temperature (c)	14.7	13.6	11.3	11.3	9.9
Annual Rainfall (mm)	1,119	616	1,018	616	788

1.4 Key Statistics

New Zealand Standard Time (NZST) is 12 hours ahead of GMT.

Total Population	3,792,654 (2001 census)
North Island	2,849,721
South Island	842,213
Land Area	271,000 square kilometres
Currency	NZ Dollar (known as the “kiwi” in foreign exchange trading)
Main Language	English
Economy	(Data given for year to March 2001)
GDP	NZ\$112,316 million
Real GDP growth	4.4%
Exports	NZ\$31,939 million
Imports	NZ\$31,927 million
Underlying inflation rate	1.3%
Unemployment rate	5.7% (March 2001 quarter)

1.5 Multiculturalism

New Zealand is an inclusive, multicultural society that includes Maori and Pacific Island peoples along with those of Asian and European origin - a multicultural mix that reflects the country's changing immigration patterns. This mix of peoples contributes well to the ability to trade with countries around the globe.

1.6 Political System

New Zealand is a parliamentary democracy with a 120-member single chamber House of Representatives. Its political and legal system is based on that of Great Britain, though it has recently changed its voting system to a form of proportional representation. Voting age is 18, and elections are held every three years.

New Zealand enjoys a high degree of political stability, thanks in part to its long democratic traditions. Governments are formed by moderate centre-right and centre-left parties and have generally enjoyed tenures of at least two three-year terms.

1.7 Constitution

New Zealand is an independent state; a monarchy with a parliamentary government. Queen Elizabeth II (of the United Kingdom) has the title Queen of New Zealand. The Governor-General is the representative of the Sovereign in New Zealand. New Zealand's constitutional history can be traced back to 1840 when by the Treaty of Waitangi the Maori people exchanged their sovereignty for the guarantees of the treaty and New Zealand became a British colony.

The Governor-General's main constitutional function is to arrange for the leader of the party with the most support in Parliament to form a government.

The Crown is part of Parliament and the Governor-General's assent is required before bills can become law. The Governor-General is required, however, by constitutional convention to follow the advice of ministers. In extraordinary circumstances the Governor-General can reject advice if he or she believes that a government is intending to act unconstitutionally. This is known as the reserve power. The Sovereign appoints the Governor-General on the Prime Minister's recommendation, normally for a term of five years.

1.8 Land ownership

Almost all privately-owned land in New Zealand is held under the land title system of the Land Transfer Act 1952. All property rights are derived from the Crown and title to land in private ownership is a matter of public record. A Certificate of Title to a piece of land is the basic record of transactions concerning that land. It provides the legal description and diagram of the land; all owners, both current and historic; and a summary of registered legal documents concerning the land.

Documents listed on a Certificate of Title may include mortgages, leases, various types of charges, and rights and restrictions which affect the land in some way. These are held in the Land Registry Office in the district where the land is situated and are available for public search. Copies of unregistered documents are also available on the Land Titles Database.

2.1 Legal system

New Zealand has a common law system, derived from the British system of justice. New Zealand's judicial system comprises three main levels: the lower (District) courts, the upper (High) courts and the Court of Appeal, with a further and ultimate appeal to the Judicial Committee of the British Privy Council. There are also a number of specialised tribunals and courts. It should be noted that the right of appeal to the Privy Council is currently under review by the Government.

In addition, there are a number of specific tribunals and bodies with jurisdiction in specialised areas such as resource management and employment law.

New Zealand has a single legal profession in which most members hold a practising certificate as barrister and solicitor. Individuals may, however, elect to practice as barristers only or (rarely) solicitors only. Queen's Counsel are appointed in a manner similar to the United Kingdom.

2.2 Free trade with Australia

New Zealand has a comprehensive free-trade arrangement with Australia. This means that a business operating from New Zealand gains duty free access to a potential trans-Tasman market of 24 million people (the product content must be 50% New Zealand and/or Australian to qualify).

2.3 Investment record and Investment incentives

The New Zealand Government recognises the importance of international investment and is actively working to provide an environment that enables international investors to bring or establish operations and/or to collaborate with New Zealand companies to best advantage.

Investment is governed by The Overseas Investment Commission (OIC) using clearly described and straightforward processes. Most investment in New Zealand does not require approval. Only proposals that involve

international investment equity in a company of 25% or more, have a value of NZ of \$50 million plus, or are related to fishing quota or particular land purchases require OIC approval.

Depending on location, local government agencies may be willing to assist investors, usually by rebating local government charges, providing guidance through resource consent procedures, etc. This type of incentive is considered on a case by case basis and is dependent on the benefits the investment will bring to the location/region.

2.4 Labour force

The New Zealand labour market is flexible and deregulated, the workforce is highly educated and multi-skilled. There is no payroll tax, no social services tax and no superannuation tax. A small levy for accident compensation means almost universal protection in a no fault system.

Relationships between employers and employees are also regulated by statutes such as the Minimum Wages Act 1983, the Holidays Act 1981 and the Equal Pay Act 1972. The Health and Safety in Employment Act 1992 governs safety in the workplace.

2.5 Banking and Finance

New Zealand's banking system is supervised by the Reserve Bank of New Zealand. The main function of the Reserve Bank is to implement Government monetary policy according to annual directives. It also registers and supervises other banks.

New Zealand has an open door policy on bank registration. At present there are four major trading banks and numerous other banking institutions. Many of the big international banks are represented in New Zealand through agents or sales offices. All types of financial instruments are available, although some are more negotiable than others.

Consumer credit is regulated by a number of statutes in addition to normal contract law. These include the Sale of Goods Act 1908, the Hire Purchase Act 1971, the Chattels Transfer Act 1924 and the Credit Contracts Act 1981.

2.6 Security exchanges

Shareholder members of the New Zealand Stock Exchange, operating through exchanges in the major cities, deal in New Zealand listed securities, plus a selection of Australian and other overseas listings.

The New Zealand sharemarket is small by international standards. It consists of approximately 150 listed entities with a total market capitalisation of approximately NZ\$72 billion. The market is dominated by the top 10 stocks, which account for more than 58% of its total value. A small number of New Zealand companies are also listed on sharemarkets overseas; mainly Australia and in a few cases the United States.

Companies seeking to list on the New Zealand Stock Exchange must do so via a broker member of the New Zealand Stock Exchange Association. The cost of floating a company in New Zealand is likely to be between NZ\$300,000 and NZ\$500,000, depending on size and underwriting requirements.

Companies must issue a prospectus for all securities offered to the public in New Zealand, including company shares. The process is regulated by the Securities Act 1978.

The Securities Commission is responsible for administering the provisions of the Securities Act.

A company wishing to list on the NZSE will need to consult with professional advisers in order to assist with the listing. Advisers can provide assistance on a range of issues including legal matters, financial and accounting matters, offering document preparation and due diligence, underwriting and marketing. Professional advice is usually sought from underwriters, stockbrokers, lawyers and accountants and in some instances, industry specific advisers.

2.7 Company Law

Companies cannot be incorporated and registered in New Zealand unless their name is first approved by the Registrar of Companies (a process that normally takes about 24 hours).

A company registered in New Zealand must:

- maintain a registered office as its official point of contact;
- keep registers of shareholdings and directors and any charges over company property; and
- adhere to specified reporting requirements (mainly the Financial Reporting Act 1993).

Overseas companies:

Before an overseas company (that is, a company incorporated outside New Zealand) can register or conduct business in New Zealand, it may need to obtain consent from the Overseas Investment Commission.

2.8 Exporting to New Zealand

New Zealand's tariff system is based on the International Harmonised Commodity Description Coding System. Customs duty is payable on the entry of goods, and calculated according to their description in a customs tariff. Tariff rates for goods imported into New Zealand have steadily reduced over recent years.

Anti-dumping rules apply to goods imported to and sold in New Zealand at prices below the marginal cost of production in their country of origin. The rules apply when it can be demonstrated that harm has been or is likely to be caused to New Zealand manufacturers of similar goods. Goods and Services Tax (GST) is also payable on imports.

Constraints on imports do not usually mean that overseas exporters experience a competitive disadvantage against New Zealand producers. Exporting to New Zealand can be a viable and profitable first step towards a closer business involvement with the country.

2.9 Foreign Investment

2.9.1 Licensing

There are no restrictions on overseas owners of intellectual property rights, licensing or franchising New Zealand businesses. Royalties are subject to New Zealand's taxation laws.

2.9.2 Establishing a New Zealand branch

Setting up a permanent base of an overseas business in New Zealand has immediate taxation consequences and may need permission from the Overseas Investment Commission.

Acquiring assets in New Zealand may also require consent from the Commerce Commission. Overseas companies must register with the Companies Office within 10 working days of starting business in New Zealand. They must also file audited, branch and company financial statements with the Company Registrar each year.

Setting up a branch operation provides overseas investors with complete control over the New Zealand business. However, it has much the same legal compliance obligations as a subsidiary and also exposes the overseas head office to the full extent of the branch's liabilities. The most common form of investment in New Zealand by non-residents is through a subsidiary company rather than a branch.

2.9.3 Establishing a New Zealand subsidiary

Overseas companies can establish a subsidiary by:

- acquiring an existing trading company
- acquiring an existing non-trading or "shell" company
- incorporating a company.

The administrative requirements for establishing a subsidiary are similar to those for a branch. Subsidiaries are required to file financial statements with the Company Registrar each year but they are not required to file financial statements for the overseas parent company.

Subsidiaries offer the benefits of:

1. a separate legal identity
2. limited liability of shareholders or members
3. perpetual succession (the business continues regardless of membership changes)
4. individual powers and obligations.

2.9.4 Overseas Investment Commission

The Overseas Investment Commission (OIC) is responsible for approving certain classes of investment proposals by prospective overseas investors, and for expanding local investment by existing overseas investors. An "overseas" person includes any company or individual not ordinarily resident in New Zealand, and any New Zealand company where overseas owners hold 25% or more of its shares or voting power.

Overseas people need consent from the OIC to acquire or take control of 25% or more of:

- businesses or property in New Zealand worth more than NZ\$50 million
- land over 5 hectares and/or worth more than NZ\$10 million
- any land on most off-shore islands
- land over 0.4 hectares which includes or adjoins certain sensitive areas (such as foreshores, lakes, specified islands, reserves, and historic or heritage areas)
- The OIC reviews proposals in terms of the net economic benefit to New Zealand. It approves investments that do not involve land if the investor has business experience and acumen, financial commitment and good character. Investments involving land must also meet a "national interest" test.

2.9.5 Repatriating funds

There are no restrictions on foreign investors repatriating capital or income from New Zealand.

2.9.6 Financial Transactions Reporting Act 1996

This Act is designed to help prevention, detection, investigation and prosecution on money laundering. It imposes certain obligations on financial institutions in the way they conduct financial transactions. Parties that fail to comply with this Act face significant penalties. The Act sets out the steps that parties need to take to identify record and report money laundering.

2.9.7 The New Zealand Takeovers Code

The New Zealand Takeovers Code is based on a fundamental rule that prevents any person from becoming the holder or controller of 20% or more of the voting rights in a Code company except in the manner permitted by the Code. Code companies are companies registered under the Companies Act 1993 that are listed on the NZSE or have been listed on the NZSE in the past 12 months or have 50 or more shareholders and \$20m or more of assets.

The aim of the Code is to provide commercial and sensible rules to ensure that takeovers take place in an orderly fashion. It seeks to ensure that all shareholders are treated equally and, on the basis of proper disclosure, are able to make an informed decision as to whether to accept or reject the offer.

The Listing Rules contain takeover provisions for those listed non-company entities.

2.9.8 Off Market Investing

There are a number of significant businesses in NZ which are privately owned, i.e. not listed on the NZSE. In fact the ratio of privately owned to publicly owned companies is probably higher than for any other country in the OECD.

The sale and purchase of such businesses is usually transacted through financial professionals, most usually chartered accountants and merchant banks. Foreigners investing in NZ would be well advised to make contact with such professionals to avail themselves of a broader selection of potential acquisitions.

2.10 Accident Insurance

Everyone in New Zealand - whether a citizen, resident or temporary visitor - is normally covered by the Government run Accident Rehabilitation and Compensation Insurance scheme. It is commonly known as "ACC", and provides 24 hour, no fault cover to people who suffer accidental injuries.

This means ACC usually pays a large portion of your medical bills if you suffer a personal injury in New Zealand which is caused in the main by an accident (including sports injuries), medical mistake, or criminal action.

Since 1 July 2000 ACC is the sole provider of work injury insurance for all employers, self-employed and private domestic workers in New Zealand. It is compulsory for all employers and self-employed people to have accident insurance.

2.11 Government Grants and Assistance

There are three main organisations providing grants. These are,

- Technology NZ
- Industry NZ
- TradeNZ

The process of applying for grants or assistance is simplified by first approaching Industry NZ, which is the flagship of the Government's hands-on economic development drive. It helps businesses and regions by co-ordinating access to resources information.

TradeNZ's "Export Network Programme" provides financial support for export companies to form partnerships to achieve export results that would not be possible on an individual basis. (Reimbursement is on a dollar for dollar basis to a maximum of 50% of pre-approved network costs).

3.1 Companies

All companies are registered under the Companies Act 1993. The Act allows directors considerable flexibility in managing a company. At the same time, the Act ensures directors are accountable for their actions.

3.1.1 Constitution

Companies do not require a Constitution. If there is no Constitution the Company will simply be governed by the standard provisions of the Act. However there are advantages in adopting a Constitution such as providing for restrictions on share sales, insurance and indemnity for directors and company financing of share purchases.

3.1.2 Directors

The definition of “director” includes those named as directors, those who effectively exercise the powers of directors and those who influence a director. Directors have statutory duties to:

- act in good faith in what they believe, on reasonable grounds, are the best interests of the company
- exercise powers for a proper purpose
- not act in a way that contravenes the Act or the Constitution
- not allow the company's business to be carried on in a manner likely to create loss to creditors
- not agree to the company incurring an obligation unless the company can reasonably meet the obligation
- exercise the care and skill of a reasonable director in the same circumstances
- disclose any material financial interest or benefit that they (or their relatives) have in any transaction with the company
- generally not disclose information they hold as a director
- disclose certain details if they buy or sell the company's shares. Any share purchase by a director must not be at less than fair value. Any share sale by a director must not be at more than fair value.

A company can indemnify or insure directors, if its Constitution permits it.

Directors are accountable in that they must certify in writing that they have met certain requirements of the Companies Act (for example, regarding share issues, the solvency test and amalgamations). All directors' certificates must be available for shareholders to inspect.

3.1.3 Shareholders' Rights And Remedies

Shareholders' rights under the 1993 Companies Act include:

- **The Right To Be Bought Out**
Dissenting minorities can force a company to buy their shares when they vote against major transactions or certain amendments to the Constitution or the rights attaching to their shares.
- **The Right To Information**
A shareholder may make a written request to the company for information.
- **The Right To Inspect Records**
Specified company documents must be available for inspection.
- **The Right To Question Management**
The board of directors takes responsibility for managing the company but shareholders can question management at shareholders meetings.
- **The Right To Approve Major Transactions**
A company must not enter into a major transaction (as defined in the Act) unless it is approved by a special shareholders' resolution.
- **The Right To Sue A Director**
A shareholder may bring an action against a director for a breach of duty owed to that shareholder.
- **The Right To A Remedy For Prejudicial Or Oppressive Conduct**
Shareholders have a right to a remedy for prejudicial or oppressive conduct by the company.

3.1.4 The Solvency Test

The solvency test is pivotal to the Act:

- a company must be able to pay its debts as they become due in the normal course of business; and

- the value of the company's assets must be greater than the value of its liabilities.

The solvency test applies when a company:

- buys out a minority shareholder
- gives financial assistance for the purchase of its own shares
- redeems or purchases its own shares
- approves discount schemes for shareholders
- implements a unanimous shareholder agreement
- makes distributions to shareholders
- reduces shareholder liability.

3.1.5 The Essential Requirements of a Company

In order to be incorporated under the Companies Act 1993, a company must have:

- a name which has been reserved by the Registrar of Companies
- at least one share
- at least one shareholder
- at least one director
- a registered office, and
- an address for service.

The registered office and address for service need not be at the company's place of business, nor in the same place. The address for service must not be a postal centre or document exchange

3.1.6 Financial Statements and Accounting Records

Organisations need to provide audited financial statements if:

- they are an overseas company operating in New Zealand (i.e., a branch operation); or
- they are a subsidiary of an overseas company; or 25 % or more of the voting power is held directly or indirectly by an overseas company or non-resident.

Under the Companies Act 1993 and the Financial Reporting Act 1993, every company must keep accounting records. These records are specified in the Companies Act, which also requires them to be in English and kept for at least seven years from the year they were filed.

Financial statements must be supplied to shareholders at least every calendar year and must comply with statutory disclosure requirements. Companies must also file an annual return of directors, shareholders and other matters with the Registrar of Companies.

Overseas companies, and those controlled by overseas interests, must provide a copy of their financial statements and auditor's report to the Registrar of Companies within 20 days of the directors being required to sign the financial statements (which must be done within five months of the balance date).

Listed companies are required to provide regular reports to the NZSE. Preliminary half year and full year accounts are required within 75 days of the balance date. Full year audited annual reports are required to be sent to shareholders and the NZSE within four months of the balance date. In addition, Mining Issuers are required to provide a Consolidated Cash Flow Statement within 1 month of the end of each quarter.

3.2 Partnerships, joint ventures and trusts

Partnerships are regulated by the Partnership Act 1908 and by the common law of partnership, largely based on British law. However, partnership law is not as well developed as contract and company law, particularly if disputes arise.

Joint ventures are generally documented in much more detail than partnerships, but still require careful planning and monitoring.

Holding business investments through New Zealand trusts may offer the advantages of flexibility and tax minimisation, although they are somewhat complex and unconventional.

4.1 Tax Overview

The corporate tax rate is 33% and there is minimal, or in many instances no, capital gains tax. The overall level of tax paid by an international company in New Zealand, including withholding tax, is limited by double taxation agreements.

100% tax deductibility is also available for research and development. New Zealand's tax system includes the following direct and indirect taxes:

Income tax. The resident corporate (business) tax rate is 33%. The top personal tax rate is 39% on incomes over NZ \$60,000.

Goods and services tax. Charged at the rate of 12.5% on an input/output basis for virtually all goods and services. This excludes exports, financial services (due to change in 2004), and other minor items.

Fringe benefit tax. Payable on certain items people may receive as part of an employment package eg. company cars.

There are also gift duties, minimal import tariffs and miscellaneous excise duties (for instance on alcohol and tobacco).

There are no death duties and no capital gains tax, although specific provisions of the Income Tax Act 1994 apply to certain land transactions.

There are no payroll taxes or social security levies on employee wages, the only add-on being Accident Compensation Corporation (ACC) levies that allows employees to receive 80 per cent of their wages from the ACC Fund to a capped maximum should they be unable to work due to an accident. This is a no-fault system that minimises lengthy and costly litigation.

The levies are charged on a two-tiered basis, employees on their personal remuneration, and to employers based on total remuneration to employees. Levies are reviewed annually and are charged at a flat uniform rate of \$1.02 per \$100.00 gross income (1.02%) to employees. Employers are charged dependent on their industry sector. Some high injury employers bear levies of up to 4.5% on employee remuneration.

4.2 Income tax

Income tax in New Zealand is levied on individual and corporate taxpayers on the basis of "taxable income". That is, annual income from all sources goes to a common pool, from which all allowable deductions are subtracted. What remains is the annual taxable income.

Incomes of husband and wife are treated separately for tax purposes. Partnerships are not taxable, but individual partners are taxed on their share of partnership income. Trust income is taxed to either the trustees or the beneficiaries. Charitable organisations, certain government departments and Crown agencies are exempt from taxation.

There is no specific capital gains tax regime in New Zealand. However, profits or gains from disposing of personal property are taxed when:

1. It is acquired for resale
2. The taxpayer's business involves dealing in such property
3. There is an undertaking or scheme with the aim of making a profit
4. Income tax is also payable for some transactions on the borderline between income and capital, including:
 - certain sales of land, for example if the land has been developed
 - gains on all types of financial arrangements (including those by a creditor waiving a debt claim)
5. Annual increments in the value of some investments.

6. Business income

Business income is calculated on an "accruals" basis, where sales and dispositions are considered as income when they are completed, not when payment is actually received. Income from financial arrangements (e.g., debt) is returned annually, generally on a yield-to-maturity basis. Other investment and employment income is generally taxed when it is received.

Income tax deductions are generally permitted for any expenditure or loss incurred while earning gross income. "Loss" includes situations where the taxpayer does not undertake any actual expenditure (such as writing off a bad debt). However, some types of expenditure are prohibited as deductions, particularly capital expenditure.

Deductions are also not permitted for expenditure or loss incurred while earning income from employment (except expenses involved in calculating an individual's income tax liability).

Deductions are allowed for depreciating capital equipment and assets, recognising that equipment and assets decline in value over time. Depreciation rates basically equate to the asset's expected useful life.

4.3 International anti-avoidance regimes and double taxation

New Zealand has wide ranging Controlled Foreign Company (CFC) and Foreign Investment Fund (FIF) regimes. The CFC regime attributes to New Zealand resident shareholders the appropriate portion of income earned by an overseas company. The FIF regime attributes as income to New Zealand residents the annual increment in value of their investments.

New Zealand has double tax treaties with 27 countries, including major trading partners such as Australia, Japan, the United Kingdom and the United States. While each treaty is unique, a common objective is to provide rules for allocating taxation that would be levied in both countries. The treaties override domestic law.

4.4 Individual taxation

Individuals are taxed on a 31 March income year basis, with returns due on 7 July for 1 October to 31 March balance dates. New Zealand residents are taxed on their worldwide income. Non residents are liable to pay New Zealand income tax only on their New Zealand sourced income.

You are a resident of New Zealand if:

1. you have a permanent place of abode in New Zealand (whether or not you have such an abode outside New Zealand)
2. you are physically present in New Zealand for more than 183 days in any 12-month period
3. you are away from New Zealand in the service of the New Zealand Government.

If you intend to make New Zealand your permanent place of residence, you become resident for tax purposes on the day you arrive. People on short stay secondments may be exempt from income tax if they meet certain criteria.

Salaries paid to individuals employed by an overseas company but working in New Zealand on short stay assignments are subject to New Zealand income tax.

This means:

1. the overseas company must lodge a bond with Inland Revenue equal to the income tax that would be payable on the individual's salary; or
2. the overseas company must make tax deductions from the employee's salary and account for them to Inland Revenue.

The following personal tax rates apply for resident and non-resident individuals (NZ\$ as at 31 October 2002):

\$0 to \$38,000 - 19.5 %
\$38,001 to \$60,000 – 33%
Above \$60,000 – 39%

These rates may be subject to change.

Investors should therefore undertake due diligence. Certain rebates are deductible from total income tax, but cannot exceed the income tax otherwise payable.

Current rebates include charitable donations, child taxpayer, housekeeper, low income and social welfare-related rebates such as family support and guaranteed family income.

4.5 Trusts

"Trustee income" is all income derived by a trustee, other than income distributed to beneficiaries as beneficiary income. Qualifying trusts are taxed at 33%. Foreign sourced income derived by a trustee is liable to New Zealand tax if:

1. a settlor (or trust creator) is resident in New Zealand
2. or a settlor dies as a New Zealand resident, and a trustee is a New Zealand resident.

The fact that a trust may not be liable for tax on foreign sourced income may offer tax planning opportunities.

Resident trust beneficiaries are liable to pay tax at marginal rates on their beneficiary income, and sometimes on taxable distributions received from a foreign or non-qualifying trust.

4.6 Company taxation

4.6.1 Resident and non-resident companies

New Zealand resident companies pay New Zealand income tax on their worldwide income. Non-resident companies are only subject to tax on income sourced in New Zealand. A "company" is any body corporate or other entity with a legal personality distinct from its members. It includes a unit trust.

A company is deemed resident in New Zealand if:

1. it is incorporated in New Zealand; or
2. it has its head office in New Zealand; or

3. it has its centre of management in New Zealand; or
4. the directors, acting in their capacity as directors, control the company in New Zealand (whether or not their decision making is confined to New Zealand).

Resident and non-resident companies pay income tax at the rate of 33%.

4.6.2 Year ends and returns

New Zealand has a standard 31 March year-end for tax purposes. However, it is possible to apply to Inland Revenue for a different date. For 1 April to 30 September balance dates returns are due by the 7th day of the fourth month after balance date. When linked with a tax agent, returns are due by 31 March of the following year.

4.6.3 Tax losses

New Zealand companies may carry forward a loss for tax purposes from one income year and offset it against the taxable income of a future income year, as long as they maintain a 49% continuity of ultimate, individual shareholding (this is subject to certain tracing concessions).

Tax loss grouping provisions permit offsets where the same group of companies obtains the tax benefits of the loss offset. A group of companies is formed for tax purposes if the companies have a minimum 66% commonality of ultimate shareholding throughout the relevant tax period.

4.6.4 Consolidation regime

New Zealand resident companies that are 100% commonly owned can consolidate for tax purposes. Group members are taxed as if they were a single company.

4.6.5 Qualifying companies

Closely held New Zealand resident companies can choose to become a Qualifying Company (QC) which provides them the ability to access capital gains made by the QC free of tax without requiring a liquidation. Some QCs can also attribute tax losses to their shareholders.

Companies must satisfy a number of criteria before their decision to become a QC will be approved. For example, each company must ordinarily have five or fewer individual or trust shareholders.

4.6.6 Interest deductibility

Interest on money borrowed is tax deductible as long as:

1. it is payable while earning gross income
2. it is necessarily payable in conducting a business for the purposes of deriving gross income
3. it is payable by a group company on money borrowed to acquire shares in another group company.

4.6.7 Intercompany charges

A group company can charge another group company for management support or similar services.

4.6.8 Thin capitalisation

Thin capitalisation rules apply to New Zealand resident companies that are controlled by non-residents. These rules limit the deduction they can claim for interest expense if the New Zealand group debt percentage exceeds 75% and the New Zealand group debt percentage exceeds 110% of the worldwide debt percentage.

The New Zealand group debt percentage is how much of the group's total assets the interest-bearing debt represents. The rules apply on a consolidation basis or a group basis for companies that constitute a "group of companies" for New Zealand tax purposes. To the extent the thresholds are breached; interest expense is proportionately reduced.

4.6.9 Transfer pricing

The transfer pricing regime focuses on international profit shifting arrangements that involve non-arm's-length pricing. The rules apply to all cross border transactions between associated persons. They substitute an arm's-length price if the price payable by the New Zealand taxpayer exceeds, or the price received by the New Zealand taxpayer is less than, the arm's-length price.

4.7 Dividends and interest

4.7.1 Domestic Dividends

New Zealand resident shareholders are generally subject to income tax on dividends received from New Zealand-resident companies. However, if the shareholder is a New Zealand-resident company, dividends from another New Zealand resident company are exempt from income tax as long as the companies are part of a wholly owned group of companies and have the same balance date.

Dividends from overseas companies are exempt from income tax. However, the recipient company is generally required to make a foreign dividend withholding payment at the rate of 33% on the dividend received.

4.7.2 Imputation system

New Zealand operates a full dividend imputation system in which resident companies can pass onto resident shareholders imputation credits that reflect company tax paid. All New Zealand resident companies must maintain an Imputation Credit Account (ICA) and lodge an imputation return with their income tax return.

Fully imputed dividends are effectively not subject to further New Zealand tax. Individual shareholders with income over \$60,000 will pay an additional 6% in taxes on a fully imputed dividend. Imputation credits are not refundable, but may be converted to a tax loss if New Zealand-resident shareholders cannot use them fully.

New Zealand-resident corporate shareholders may carry forward imputation credits so that they are available to be passed on to the company's shareholders in future income years. However, the company must maintain a 66% continuity of ultimate beneficial shareholding (subject to certain tracing concessions).

4.7.3 Foreign dividend withholding payments

Foreign dividends paid to company shareholders are subject to the Foreign Dividend Withholding payments (FDWP) regime. In the same manner as imputation credits, FDWPs give rise to credits that may be attached to dividends paid to shareholders of a resident company. However, the FDWP is refundable to shareholders, including non-resident shareholders.

Companies normally maintain a separate FDWP credit account. The conduit regime may protect non-resident shareholders from New Zealand tax on foreign sourced income in limited circumstances.

4.7.4 Repatriating profits

Profits repatriated as dividends, royalties and interest are subject to Non-resident Withholding Tax (NRWT).

The rates are:

- Fully imputed dividends - 15% (fully imputed non-cash dividends 0%)
- Non imputed - 30%
- Interest and royalties - 15%

These rates may be reduced if the recipient's country of residence has a double tax treaty with New Zealand. NRWT on dividends, cultural royalties and interest paid to a non-associated person is a final tax on that income. If the recipient's country of residence has a double taxation treaty with New Zealand, NRWT may also be a final tax. In all other cases, NRWT is a minimum tax. NRWT is not deducted from interest paid to non-resident lenders where the parties are not associated persons and the borrower is recognised as an 'approved lender'. A tax-deductible levy of 2% of the interest paid (Approved Issuer Levy) must be paid by the appropriate date.

4.7.5 Foreign Investor Tax Credit regime

New Zealand operates a tax credit regime for dividends paid to non-New Zealand resident shareholders. The regime means these shareholders will be in the same after tax position as resident shareholders who have received fully imputed dividends. The system is known as the Foreign Investor Tax Credit (FITC) regime.

The FITC regime avoids double taxing corporate income sent to non-New Zealand residents. If a New Zealand company pays fully imputed dividends to non-resident shareholders, the effective tax rate on this income is 33%, as opposed to 43.05% without the regime. This is achieved by way of a complex mechanism.

4.7.6 Resident Withholding Tax

Resident Withholding Tax (RWT) applies to most interest and certain dividend payments. It is deducted by whoever pays the interest or dividends and remitted to Inland Revenue. The recipient gets a tax credit for the deduction. Certain types of dividends are outside the scope of RWT, including dividends paid within a group of companies and non-resident withholding income.

Tax is deducted at the rate of 19.5% of the gross amount of interest paid or credited, or at 33% or 39% at the option of the taxpayer. Where recipients fail to provide payers of interest with their tax file numbers, tax is deducted at the rate of 39%. Companies must adopt a minimum 33% tax rate.

Some recipients, such as banks and businesses with income of more than \$2 million per annum, may apply for a certificate of exemption to enable interest and dividends to be paid to them on a gross basis.

4.8 Non-resident contractors' withholding tax

Non-resident contractors' withholding tax is imposed on:

1. payments for services performed in New Zealand by non-residents
2. non-residents who acquire rights to use personal property in New Zealand.

4.9 Employer obligations and Labour regulation

PAYE - New Zealand has a PAYE (pay as you earn) tax deduction scheme, in which employers deduct income tax from wage or salary payments to employees.

Fringe Benefit Tax - Employers pay Fringe Benefit Tax (FBT) on non-cash benefits they provide to employees for their past, present and future employment. These benefits include:

1. having a motor vehicle for private use
2. low interest loans
3. subsidised transport, if the business is public transportation
4. subsidised or discounted goods and services
5. non-financial contributions to superannuation funds
6. financial contributions to unregistered superannuation funds.

FBT is generally payable quarterly at the rate of 49% or 64% of the taxable value of fringe benefits provided in that quarter. It is usually tax deductible.

Superannuation - Any contributions employers make to a registered superannuation scheme are allowed as a deduction from their taxable income. Cash contributions are subject to a 33% withholding tax.

4.10 Tax administration and Reporting

New Zealand's taxation system is based on voluntary compliance. Taxpayers are required to self assess their tax liabilities and file an income tax return, for each income year.

Inland Revenue can carry out random and selected audits, and has wide powers of search and document seizure.

4.11 Provisional tax

New Zealand operates an instalment payment system, called the provisional tax regime. It is paid in three instalments depending on the taxpayer's balance date. If the final tax liability for the year is more than the provisional tax they have paid, they must pay the balance on or before the "terminal tax" date. Use of money interest may be payable on underpayments or receivable on overpayments.

4.12 Goods and Services tax

Goods and Services Tax (GST) is a consumption tax imposed on the supply of goods and services in New Zealand. It is not a tax on business profits or turnover, and is ultimately paid by the consumer or end user. The current GST rate is 12.5%.

There are certain limited exemptions from GST, while some supplies are charged with a 0% GST rate (such as exported goods and services). The supply of financial services is currently exempt, but this treatment is to be removed with effect from 2004.

Individuals, companies and branches are required to register for GST if the value of their supplies made in New Zealand exceeds NZ\$40,000 in the previous 12 months or will exceed NZ\$40,000 in the next 12 months. Once registered, they need to file regular returns of the GST they collect, and may reclaim any GST paid by them.

5 EMPLOYMENT REGULATIONS AND SOCIAL POLICY

5.1 *Permits*

A visa or permit to work in New Zealand is not necessary for:

- a New Zealand citizen or a New Zealand Residence Permit holder (to re-enter a current New Zealand Returning Resident's Visa is needed)
- an Australian citizen, or a resident who holds a current Australian resident return visa
- someone who is exempt from the requirement to hold a Permit to be in New Zealand
- work to be undertaken in New Zealand if it is not considered to be employment as set out below.

The activities set out below are not considered to be employment:

- Representation on an official trade mission recognised by the New Zealand Government
- Employment as a sales representative of an overseas company in New Zealand for a period or periods no longer than a total of 3 months in any calendar year
- Activity in New Zealand as an overseas buyer of New Zealand goods or services for a period or periods no longer than a total of 3 months in any calendar year
- Official business in the service of any government, or of any inter-governmental or international organisation that is entitled to any privileges and immunities under the Diplomatic Privileges and Immunities Act 1968
- Business consultations or negotiations in New Zealand on establishing, expanding, or winding up any business enterprise in New Zealand, or carrying on any business in New Zealand, involving the authorised representatives of any overseas company, body or person for a period or periods no longer than a total of 3 months in any calendar year
- Study or training under a scholarship or other award recognised by the Minister.

The activities may be undertaken while holding a Visitor Permit. A Work Permit is only needed if there is a time limit on the activity engaged in and the period required to be in New Zealand is longer than that period. Association (ISSA).

5.2 *Employment Relations Act 2000*

The Employment Relations Act 2000 (ERA) governs all employment relationships which arise between employers, employees and unions.

It covers the main requirements of employment law namely;

- Good Faith
- Unions
- Collective Agreements
- Individual Agreements
- Strikes and Lockouts
- Employment Relationship Problems
- Institutions

The following key points are a guide for companies to consider when drafting employment policy for business in New Zealand

- You must act in good faith
- Unions have access to your workplace
- Individual agreements (post 2-10-00) must be in writing
- Collective agreements can only be with unions
- You don't have to conclude a collective agreement
- Individual and collective agreements must contain certain provisions
- If you have a collective agreement you will have to consider education leave, time off for union meetings and deduction of union fees
- The primary remedy for personal grievance claims is reinstatement if that is what the grievant wants
- You can communicate with your employees but you cannot bargain with them in collective negotiations
- Fixed term agreements are allowed under certain circumstances
- Written probationary arrangements are allowed
- Individual contracts in place before 2-10-00 continue in force
- Collective contracts in place before 2-10-00 continue until their expiry (or earlier in certain circumstances)

NB: These above points should not be acted upon without first obtaining detailed advice.

5.3 The Health and Safety in Employment Act 1992

The principal object of the Act is to provide for the prevention of harm to employees at work.

It essentially relates to the duties of employers to ensure the safety of their employees. The Act:

- Promotes excellence in health and safety management by employers
- Prescribes, and imposes on employers and others, duties in relation to the prevention of harm to employees
- Provides for the making of regulations, and the development and approval of codes of practice, relating to hazards to employees, and in particular (but without limiting the generality of the foregoing) to significant hazards.
- It also covers inspection of the workplace by government inspectors and department medical practitioners, recording and notification of accidents and serious harm, and penalties for non-compliance.

5.4 Wage rates and employing staff

In New Zealand there are a range of laws designed to protect workers' safety and rights, including minimum wage rates.

The May 2002 minimum wage rates are:

- employees aged 18 years and over: NZ\$8.00 per hour, \$64 for an 8-hour day and \$320 for a 40-hour week.
- employees aged 16 to 17 years : NZ\$ \$6.40 per hour, \$51.20 for an 8-hour day, and \$256 for a 40-hour week.

Minimum wage rates and other labour laws are strictly enforced, and there have been several recent cases where employers have been forced to pay substantial fines and back-pay to workers where workers have not been paid the minimum wage.

Actual wage rates are set in negotiation between the employer and individual workers or unions representing groups of workers.

5.5 Unions

Union membership is voluntary. Nobody can be forced to join a union or a particular union, or a non-registered employees' organisation (such as a staff association).

Employees have a right:

- To choose to join or not join a union
- To join a particular union
- To resign from a union

Unions may enter into bargaining with an employer for a collective agreement, and may become a party to a collective agreement.

Collective Agreements

The ERA encourages the formation of collective agreements. Collective agreements may only be concluded between unions and employers.

Parties to a collective agreement will be the employer, the union(s) and members of the union(s) covered by the coverage clause, that is, doing the type of work specified in the agreement.

Individual Agreements

If employing someone on an individual agreement, the employer must, amongst other things, advise the employee to seek independent advice and, if there is an applicable collective agreement, specify that the individual will be covered by the terms and conditions of the collective for the first 30 days.

5.6 Hours of work

Hours of work are negotiated into employment contracts, but unless the parties agree otherwise, every employment contract under the Employment Contracts Act must fix the working week at not more than 40 hours, exclusive of overtime.

5.7 Parental leave

Under the Parental Leave and Employment Protection Act 2002 paid parental leave is available to employees who are having a child, and to their partners. It is paid from state taxes. Employment positions must be reserved for staff on parental leave.

5.8 Annual leave

At the end of each year in your employment an employee becomes entitled to three weeks annual leave on pay.

5.9 Public holidays

All employees (including casual employees, part-timers and employees on fixed-term agreements) are entitled to 11 public holidays on pay if they fall on days the employee would normally work. The employment agreement can provide for alternative days, but not for less than 11 public holidays.

Where an employee works on a public holiday, other than Waitangi Day or Anzac Day, they must receive a paid day's holiday in lieu, regardless of any penal payments paid for the day worked. If penal payments are paid on Waitangi Day or Anzac Day there is no requirement to grant a day in lieu.



NOTES



MEMBER FIRM CONTACT DETAILS

Baker Tilly International is represented in New Zealand by three independent member firms - Staples Rodway Limited through its network of offices, Horrocks McNab Ltd in Christchurch and Sherwin Chan Walshe in Wellington.

Staples Rodway is one of New Zealand's leading independent firms of Chartered Accountants and Business Advisers, specialising in an integrated range of services to owner operator businesses and high net worth individuals. They provide their growing and established business clients with audit, accountancy, personal and corporate taxation, GST, consultancy, corporate finance, financial services, asset management, information technology consulting, human resources consulting and corporate recovery services. The firm has national coverage and is represented internationally through its independent membership of Baker Tilly International.

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