

# Tax Free New Zealand

When one considers their options for International tax planning purposes the original jurisdictions of Panama and Liberia are no longer the only directions to look. International tax advisers now have a sophisticated array of relatively cheap and safe structures based on what has become known as an international business corporation (IBC). The British Virgin Islands as well as the Bahamas are well documented choices. Many such jurisdictions have British based systems of common law providing confidence for both the planner and their clients.

Generally the selection of offshore jurisdiction depends on the ultimate purpose of a given structure. Our experience has shown that clients like to hold investments or carry on business activities with confidence that their activities will remain private and secure, and that the chosen country is likely to remain politically stable with minimum regulation.

## Scrutiny

In recent history the Organisation for Economic Cooperation and Development (OECD) has come down hard on jurisdictions that participate in what the OECD calls 'harmful tax competition' and have actively sought to reduce the widespread use of so called 'tax havens'. This campaign has achieved varying results but it has quite noticeably brought many so called tax havens unwelcome scrutiny. Transactions to or from these 'black listed' jurisdictions with low or zero tax will often alert or 'red flag' various authorities to what is considered a suspicious transaction that may be earmarked for further investigation.

This situation has brought a whole host of 'onshore offshore' jurisdictions to the attention of the savvy international investor. Naturally, great care must be taken when selecting a jurisdiction to maximise privacy and minimise scrutiny.

## New Zealand

New Zealand is certainly a country worthy of attention. New Zealand is famous for its many sheep, its clean green environment, its national rugby team the 'All Blacks' and more recently as Middle Earth in multi award winning *The Lord of the Rings* trilogy. New Zealand is a politically stable, economically advanced country and boasts membership to various international bodies including the British Commonwealth, the OECD and FATF and is not 'black listed' by any country.

The New Zealand legal system is very advanced, as is the banking and accounting infrastructure. Together these make New Zealand a very suitable

base for international business. Much of its law is based on English common law which is widely understood in many jurisdictions that have a strong historical link with the UK. Generally speaking, the New Zealand system of law is both modern and highly flexible, giving considerable advantages in administration over a number of other jurisdictions. New Zealand is normally considered a high tax country taxing both profits as well as world wide income. Therefore, it is probably one of the least conspicuous jurisdictions for effective international structuring. New Zealand is however an extremely interesting country for these reasons:

- A tax elimination structure on world wide income
- No Capital Gains taxes
- No Stamp duties
- No tax reporting required in New Zealand
- No disclosure is made of the existence of a trust
- No disclosure of your involvement
- No registration or filing of the trust is required in New Zealand
- Contemporary company and trust law designed to accommodate international commerce
- An extensive network of double taxation treaties

Although there are no capital gains taxes in New Zealand transactions in the nature of short term/regular transactions may fall under the capital profits net. Capital gains attract no tax irrespective of where the asset is located. Profits can generally be distributed tax free via liquidation. On a number of occasions in 2000, the New Zealand Minister of Revenue reiterated the present government policy not to introduce a capital gains tax. Combine these features with the use of the New Zealand double taxation treaties and you have a very interesting tax elimination opportunity.

New Zealand's trust law is governed by the Trustee Act 1956 as well as common law decisions in New Zealand, the United Kingdom, and other common law countries. New Zealand trust law is one of the purest in the world and has not been distorted or modified to fit governmental taxation policy.

A New Zealand foreign trust is a trust where from the latter of 17 December 1987 or the date upon which the first settlement was made to the trust, no settlor of that trust was a tax resident of New Zealand. A "foreign trust" is exempt from taxation of income and capital gains in New Zealand as long as the settlor remains a non-resident, no income is

earned in New Zealand, and no beneficiary of the trust is a New Zealand resident.

To qualify as a tax elimination structure in New Zealand certain criteria must be met, which differentiate it from a regular IBC. The typical structure consists of two separate entities that essentially work together.

- 1) A so called 'foreign trust' also known as an 'offshore trust' where the trustees have discretion over the assets held in trust.
- 2) A special purpose New Zealand company. This company is formed for the special purpose of being the New Zealand resident trustee for the New Zealand foreign trust.

Companies can be readily and cheaply incorporated in New Zealand at short notice with relatively little formality.

To incorporate in New Zealand the following information is required:

- Proposed name – names containing the words “bank”, “insurance”, “royal” or “cooperative” are restricted;
- The names and residential addresses of the individuals to be appointed as directors;
- The number of shares to be issued, and the name and the address of the principal shareholder.

Under New Zealand law directors and shareholders are not required to reside in New Zealand. No attendance in New Zealand is required either as all formalities can be carried out by e-mail or fax. The company may operate bank accounts either in New Zealand or in other international centres. The directors and shareholders of a New Zealand Company may be resident or non resident. There is no requirement to carry out an annual statutory audit of the financial statements for a non-active New Zealand company. If the special purpose company does no business of its own, meaning it only ever acts in its capacity as a corporate trustee for the New Zealand foreign trust, then that company will not need to register or file returns with New Zealand's Inland Revenue. Providing that all income earned by the trust is sourced from outside New Zealand then the Trust is not required to register with the New Zealand's Inland Revenue or file annual tax returns either.

This legislation was passed to promote the economic reality of a trust. New Zealand recognised the position that where a non-resident settlor places the trusteeship of their assets with a New Zealand resident and where all profits are earned and distributed outside New Zealand then there is no justification for New Zealand to tax

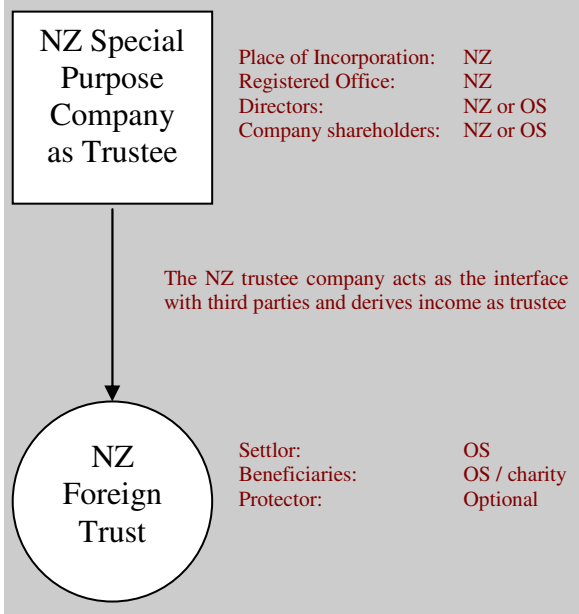
anyone on those profits. Unlike many other countries, where the taxation status of a trust is determined by the residence of the trustees, in New Zealand the taxation status of a trust is wholly determined by the residence of the settlor.

The New Zealand Inland Revenue issued the following draft practice note that had this example as its conclusion:

**Example**

- B Trustee New Zealand Ltd is a member of B Bank Group worldwide. It is ultimately controlled in the United Kingdom. B Trustee New Zealand Ltd provides international trustee services to trusts that do not have:
  - New Zealand settlor;
  - New Zealand resident beneficiaries; and
  - New Zealand sourced income.
- A taxable distribution is made by B Trustee New Zealand Ltd to Mr Zee. Mr Zee is not resident in New Zealand. The distribution is from a trust that has no New Zealand sourced income.
- Mr Zee is not subject to New Zealand income tax. The Trustee who is resident in New Zealand is not liable as agent to New Zealand income tax on the distribution.

The structure can be readily illustrated:



The Non-resident settlor must provide a settlement of value. The Income Tax Act 1994, s.OB1 provides a comprehensive definition of settlor for income tax purposes. It essentially includes anyone who has made a gift to the trust, anyone who

provides assets at less than market value, and anyone making a low interest or interest-free loan to the trust. Therefore, for income tax purposes it is possible for a trust to have several settlors. Anyone may make a genuine loan to the trust, even a New Zealand resident under certain conditions. Likewise, anyone may take genuine loans from the trust. Properly documented interest bearing loans are of course tax neutral.

The use of so called 'family trusts' and 'trading trusts' are common in New Zealand for domestic tax planning as well as for asset protection purposes. Charitable trusts are exempt from income tax in New Zealand if they have charitable purposes (the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community) as their objectives.

## Tax Treaties

The New Zealand Government has entered into tax treaties with the governments of 28 other countries. These are:

Australia (1995)	Korea (1983)
Belgium (1983)	Malaysia (1976)
Canada (1981)	Netherlands (1981)
China (1986)	Norway (1983)
Denmark (1981)	Philippines (1980)
Fiji (1977)	Russian Fed. (2001)
Finland (1984)	Singapore (1973)
France (1981)	South Africa (2002)
Germany (1980)	Sweden (1980)
India (1986)	Switzerland (1981)
Indonesia (1988)	Taiwan (1997)
Ireland (1988)	Thailand (1998)
Italy (1983)	United Kingdom (1984)
Japan (1963)	United States (1983)

## Conclusion

The New Zealand Foreign (Offshore) Trust structure is an excellent alternative to the regular IBC. The structure is easy to use and comprehend and when used in conjunction with a New Zealand company it becomes a highly accepted tax efficient international structure.

A New Zealand resident trustee does not by itself attract tax in New Zealand providing the "settlors, beneficiaries, and income are all non resident. The residence of the trustee is in principle not relevant to the New Zealand tax system."<sup>1</sup>

When income has a foreign source, liability to taxation in New Zealand depends generally on the residence of the settlor (not the trustee) if the income is not distributed and is held by the trustee or on the residence of the beneficiary if the beneficiary receives income.<sup>2</sup>

Foreign source income is not taxable in New Zealand to non-resident beneficiaries, even if the trust has a New Zealand connection such as a resident settlor or trustee.<sup>3</sup>

The taxation of the accumulated income of the trustee depends on the residence of the settlor. If the settlor is non-resident, then, ordinarily, the income is not taxable in NZ, even if the trustee is resident.<sup>4</sup>

## References

1. New Zealand Trusts and International Tax Planning, Professor John Prebble, [2000] B.T.R.: 5 pp 554.
2. Income Tax Act 1994, s.BD1 and s.HH4 (1) and s.HH4 (3) (a).
3. Income Tax Act 1994, s.BD1 (2)
4. Income Tax Act 1994, s.HH4 (3B)

## New Zealand Statutes of Interest:

Trustee Act 1956  
Companies Act 1993  
Income Tax Act 1994  
Financial Reporting Act 1993

**To view New Zealand Statutes click on this link:**  
[www.legislation.govt.nz](http://www.legislation.govt.nz)

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