New Zealand Tax Profile

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1 Corporate Income Tax

1.1 General Information

Tax Rate

Company tax (includes deemed companies, such as unit trusts) applies at rate of 28%.

Residence

A company is considered to be resident in New Zealand if it is incorporated under New Zealand law. Companies incorporated under foreign law are considered to be New Zealand resident if they are effectively managed from New Zealand.

Basis of Taxation

Resident companies are taxed on their worldwide income. Non-resident companies are taxed only on their New Zealand sourced income.

Tax Losses

Tax losses can be offset between entities that share at least 66% commonality of ownership.

Tax losses may be carried forward indefinitely subject to ultimate shareholder continuity remaining above 49%.

There is no provision for the carry back of tax losses.

Tax Consolidation/Group relief

A parent company and its wholly-owned subsidiaries can elect to be treated as a consolidated group (as one taxpayer) provided that all entities are New Zealand tax residents. Most transactions within the group are ignored in calculating the tax liability of the consolidated group. There are specific rules to deal with deductibility of the group's expenses as well as the taxability of certain transactions. Entities within a consolidated group automatically group profits and losses. Each entity has joint and several liability for unpaid income tax of the consolidated group.

Losses can be offset by a company with another company which is at least 66% commonly owned. This applies whether or not the companies are resident. However, if the loss company is not resident, the company must have a fixed establishment (broadly a branch) in New Zealand for its losses to be offset.

Limited liability with loss offset can be achieved through the use of certain business structures that are treated as flow-through entities for New Zealand income tax purposes. These include limited partnerships.

Transfer of Shares

No duty applies on transfer of shares. Sale of shares in a company is not taxable (unless the shares were purchased with the purpose of resale or the vendor is in the business of trading in shares).

Transfer of Assets

No duty applies on the transfer of land, buildings, and other tangible and intangible assets. Sale of business assets will be taxable if the assets were acquired with the purpose of resale. Tax depreciation claimed is clawed-back as income if a business asset is disposed of for more than its depreciated value.

Capital Duty (Non-Tax Planning)

New Zealand has no capital duties.

CFC Rules

New Zealand has Controlled Foreign Company ("CFC") rules. There is no requirement to attribute income of a foreign subsidiary unless the CFC derives more than 5% of its income from "passive" sources (e.g. income in the form of dividends, interest, royalties, and rents). This passive income must be returned in New Zealand.

New Zealand also has Foreign Investment Fund ("FIF") rules for non-controlling interests in foreign companies. Similar rules to those for CFCs (see above) apply where a person has a shareholding interest of 10% or more in a FIF. A separate regime exists for less than 10% shareholdings in FIFs.

Thin Capitalization

New Zealand's thin capitalization regime limits the amount of interest deductions permitted where, broadly, the total interest bearing debt-to-assets of the New Zealand company (or group) exceeds:

- 60% (where a single non-resident, or group of non-residents – see below, own 50% or more of the New Zealand company or group); or
- 75% (where a New Zealand company or group has CFCs or certain FIF interests); and
- 110% of the debt-to-asset ratio of the worldwide group.

The thin capitalization rules apply to investment by multiple non-residents who jointly own 50% or more of a New Zealand company or group and who "act together" to control the entity or group (this is defined to include providing debt in proportion to equity or where debt funding is governed by a shareholders' agreement

New legislation has been enacted that from income years starting on or after 1 July 2018:

- Require the interest rate on related-party loans between a non-resident lender and a NZ borrower to be priced using a restricted transfer pricing rule. The rule will have the effect of typically deeming a credit rating one notch below that of the ultimate parent for NZ borrowers at high risk of Base Erosion and Profit Shifting (BEPS), and exclude loan features not found in third party debt, when calculating NZ deductible interest.
- Change the debt-to-asset calculation for thin capitalization purposes so that the comparison is:
  - Interest-bearing debt to;
  - Assets less "non-debt liabilities" (such as provisions and trade creditors).

Special thin capitalization rules apply for banking entities.

Interest Deductibility Restrictions

Interest is generally deductible for a company. This general rule is limited by the thin capitalization rules and for income years beginning on or after 1 July 2018, by related party interest rate limitation rules. If the latter apply, they will generally require the interest rate for the NZ borrower to be determined by reference to the highest credit rating within the global group. The allowable adjustments to that rating depend on the nature of the company and its position. However, generally, no more than two credit rating notches are allowed for the NZ borrower's rating.

Amalgamations of Companies

The Companies Act has an amalgamation procedure that allows two or more (amalgamating) companies to merge so that there is one surviving (amalgamated) company.

There are two procedures – a short-form and a long form. There are certain requirements to apply one or the other. A short-form amalgamation, if available, usually takes less time.

The effect of the amalgamation is that all the assets and liabilities of the companies are assumed by the amalgamated company. If the amalgamation is a qualifying amalgamation, there should be no tax consequences of the amalgamation.

However, as the shares in the amalgamating companies are deemed cancelled, tax dividend consequences may need to be considered.

General Anti-Avoidance

New Zealand has a mix of general and specific anti-avoidance rules. Under the general anti-avoidance rule, transactions are void if they defeat the purpose and intention of New Zealand's tax laws (i.e. have a more than incidental purpose or effect of tax avoidance).

Anti-Treaty Shopping

Anti-treaty shopping provisions are contained in a number of tax treaties. A number of recent Double Tax Agreements entered into by New Zealand, which have lower withholding tax rates than under domestic law, also have limitations on benefits provisions.

New Zealand signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the "MLI") in June 2017. New Zealand has signaled it will take a comprehensive approach to the adoption of the MLI Articles. This includes adoption of Article 7 of the MLI (Treaty anti-abuse rules). The MLI will be force in New Zealand from 1 October 2018 and will progressively amend New Zealand's Double Taxation Agreements as other countries also bring the MLI into force.

Other Specific Anti-avoidance Rules

Specific anti-avoidance regimes include the transfer pricing, CFC, FIF, and thin capitalization rules (discussed in various sections).

Legislation has been enacted in New Zealand's Parliament that will implement a Permanent Establishment anti-avoidance rule for multinationals with over EUR 750m global turnover, if certain conditions are met. This is part of the New Zealand response to BEPS.

Rulings

The New Zealand Inland Revenue issues both binding and non-binding rulings on tax issues. Binding rulings can be either public or private rulings.

Inland Revenue charges a fee for considering and issuing a private binding ruling.

Hybrid Instruments

Loans are treated as equity for tax purposes if the interest on the loan is dependent on the debtor's profits or dividends payable. Prior to 1 April 2015, loans provided by shareholders in proportion to equity were re-characterized as equity thereby preventing a deduction for interest. Certain hybrid instruments need to be bifurcated to determine the respective values of the debt and equity components (determined under tax rules, not financial reporting). New Zealand's "financial arrangements" rules will need to be applied to determine the income/expenditure arising on the debt component over the instrument's life.

In addition, recently enacted legislation broadly implements the BEPS Action 2 recommendations for income years beginning on or after 1 July 2018. For cross-border hybrid financial instruments between related parties, if there is a deduction in NZ but non-inclusion income in the other jurisdiction, the primary rule denies the deduction.

Hybrid Entities

Whether an entity is to be regarded as a non-transparent or transparent entity is based on statute and whether or not the entity is recognized as a separate legal entity. New Zealand treats companies (and unit trusts) as non-transparent, for tax purposes. Partnerships (including New Zealand registered limited partnerships) are treated as transparent. Some of New Zealand's tax treaties provide relief for hybrid entities.
Recently enacted legislation also applies the BEPS Action 2 recommendations to hybrid entities. Further rules are expected to be enacted in relation to foreign trusts and New Zealand limited partnerships.

Related Business Factors

A limited liability company is typically used for conducting business in New Zealand. Other common trading structures include trading trusts, partnerships and limited partnerships, and incorporated and unincorporated joint ventures.

There are generally no capital requirements for establishing a legal entity (but note that certain activities are regulated and may require minimum capital to be maintained by the company). There are also no foreign exchange transaction restrictions or capital controls. New Zealand however does have anti-money laundering rules.

Recent changes to the New Zealand Companies Act 1993 and Limited Partnership Act 2008 require a company or limited partnership to have at least one director/general partner with a "New Zealand connection" (that is, living in New Zealand or another country where New Zealand has the right to enforce fines/criminal judgments).

1.2 Determination of taxable income and deductible expenses

1.2.1 *Income*

General

New Zealand taxes all income, as defined by the Income Tax Act, at the same rate. Income includes business income and investment income of all types.

Income is generally taxable when it is derived. This may be different from when it is received. For certain types of income, income is taxed as it accrues (i.e. on an unrealized basis.)

These rules apply equally to domestic or foreign assets of a company. (However, the FIF and CFC rules may apply.)

Branch Income

Foreign branch income of a New Zealand company is taxed on the same basis as domestic income. There is no branch exemption. Foreign tax paid is available as a credit, subject to conditions being met. The credit is limited to the New Zealand tax payable on the income.

A New Zealand branch of a foreign company is taxed on its New Zealand sourced income.

Capital Gains

New Zealand does not have a comprehensive capital gains tax regime. However, certain gains (or losses) are treated as taxable income (or taxable losses). This generally includes gains made in the course of a business or if the property is acquired with a dominant purpose of disposal. Further, certain gains are deemed to be income and not capital receipts (for example, gains from the sale of bonds).

Dividend Income

Company tax paid generates imputation credits, which can be attached at the ratio of 28/72 to cash dividends paid (i.e. up to $28 of imputation credits can be attached for every $72 of cash dividend). Imputation credits can be used by shareholders to reduce tax payable on the dividend. There are rules that limit a company's ability to carry forward and use imputation credits in future income years. These generally prevent streaming of imputation credits and also require a continuity of shareholding of at least 66% to carry imputation credits forward. If this is not met, imputation credits will not be available to attach to dividends paid after any shareholding continuity breach.

Where the dividend is paid to a resident shareholder, resident withholding tax ('RWT') must generally be deducted such that the total of attached imputation credits and RWT is 33% of the gross dividend. (E.g. RWT of 5% must be deducted if a dividend is fully imputed except where the dividend recipient is another resident company and elects for no RWT to be withheld.)

Dividends paid within a wholly-owned group of New Zealand resident companies are exempt.

The default rule is that any distribution by a company, including on a liquidation, is treated as a dividend. A distribution is not a dividend if it qualifies as a return of share capital when shares are cancelled or if it is a distribution of a capital gain amount on liquidation of the company (provided the shareholder is not an associated non-resident company).

Dividends received by a New Zealand company from a foreign company are generally exempt. If however, the dividend is deductible to the foreign company, New Zealand will tax the dividend. Foreign tax credits are available if the dividend is taxed or if the FIF rules apply to tax the investment.

Interest Income

Interest income paid to a NZ resident investor is generally subject to RWT. The rate of withholding depends on the type of investor (e.g. individuals can elect a rate of 10.5%, 17.5%, 30% or 33% whereas companies can elect 28%). Certain non-individual investors may be eligible for a 0% withholding rate (by application to NZ Inland Revenue) if certain requirements are met.

All gains from financial arrangements (of which interest will be part) are taxed normally on a full accrual basis. This includes foreign currency gains (and losses). Most companies must follow their financial reporting method for determining when financial arrangement income is taxed.

There are alternative methods which can be applied which defer the tax on unrealized gains (but the will apply equally to defer deductions for unrealized losses.)

Other Significant Items

Many gains, which might be considered capital gains, are explicitly included in taxable income. Although New Zealand does not have a separate capital gains tax, it should not be assumed that gains are not taxable.

1.2.2 *Expenses*

General

Expenditure is generally deductible when incurred. The expenditure must be incurred to generate assessable income or incurred in carrying on a business to generate assessable income. Capital and private expenditure are not deductible. However, capital expenditure may be depreciable depending on the asset it creates.

There are a number of spreading regimes that alter the timing of deductions. This includes depreciation, interest expenditure, and prepayments so that the deduction is spread over the period to which it relates.

Minimum Taxation Requirements for the Deductibility of Losses

If expenses exceed income, a tax loss results. Generally, tax losses are not quarantined for offset against certain types of income only.

Capital Losses

Capital losses are non-deductible. However, similar to gain, what may be regarded as a capital loss may be treated as a revenue loss under specific rules and regimes. If so, the usual loss rules will apply.

Carry Forward

A company can carry forward a tax loss if there is at least 49% continuity of shareholding in the company. The continuity period is from the beginning of the year of loss until the end of the year of use. (Part year calculations can be made where there is a breach to allow losses to be applied against taxable income in the pre-breach period.)

The continuity is measured at the ultimate shareholder level. Generally, intermediate company shareholders are looked through. However, certain groups of shareholders may be treated as a single shareholder and changes within that group may be ignored

Carry Back

There is no ability to carry back tax losses.

Bad Debts

Bad debts are deductible only when written off as bad. Generally, deductions are limited to income previously included as taxable. There are specific rules for deducting bad debts, which apply to those in the business of lending.

Chang of Control Rules

A change of control, due to shareholder changes, will not reset the cost base of a company's assets and liabilities. It will not be treated as a deemed realization of the company's assets and liabilities.

However, realizations may be deemed to occur on exit of a company from a consolidated income tax group.

As noted above, a change of control arising from shareholding changes may affect the company's ability to carry forward tax losses and imputation credits for future use.

Depreciation/Capital allowance

Depreciation deductions are allowed in relation to depreciable property. Depreciation rates for tax are set by NZ Inland Revenue with reference to the economic life of the property. Depreciation rates are based on legal life of the property for certain intangible property that qualifies as depreciable property.

Tax depreciation rates are not generally an incentive rate and may differ to accounting rates.

No tax depreciation deduction is available for buildings.

Double Deductions

An expense can only be deducted once.

Interest Expenses

The treatment of interest is discussed above.

Inventories

The acquisition cost of trading stock is deductible. However, trading stock held at year end must be valued and included in assessable income.

Other Significant Items

Capital expenditure which does not produce a depreciable asset will generally be non-deductible expenditure. Unsuccessful software development expenditure is an exception.

1.3 Tax Compliance

Compliance Requirements

New Zealand has a self-assessment tax regime. Taxpayers are required to file an income tax return reflecting their assessable income and deductible expenses for a tax or income year. The return is deemed an assessment for that period.

The assessment may be amended by Inland Revenue on audit or if the taxpayer requests an amendment or makes a voluntary disclosure of an error.

Mandatory Electronic Filing

Income tax returns may be filed electronically but there is no mandatory electronic filing requirement. There are however mandatory electronic filing requirements for other tax types, such as GST and PAYE (employer tax deductions). This is typically based on the quantum of annual tax payments of that type.

Requirement to Prepare Tax Computation / Return in Functional Currency

Assessable income and expenses are required to be disclosed in New Zealand dollars.

There are statutory rules for converting income and transactions in other currencies to New Zealand dollars.

Documents to File with Tax Return

Financial statements, or a summary of those statements in the approved Inland Revenue format (called the IR 10), are required to be submitted to the Inland Revenue by the income tax return due date. There are a number of additional disclosures that must be filed with a tax return. These include CFC and FIF disclosures.

New Zealand Groups with revenue of NZ$80 million or more must provide information to NZ Inland Revenue under the Basic Compliance Package reporting measure (see section 7 for more information).

Otherwise, further information relating to a return is normally collected separately and on request by NZ Inland Revenue.

Language to File Return, Computation and Supporting Documentation(s)

Tax returns and business records must be maintained and provided in English if requested by NZ Inland Revenue.

Filing Extension Availability and Details

Tax returns are due:

- 7 July for balance dates ending on 1 October to the following 31 March;

- The 7th of the 4th month after balance date for April to September balance dates.

If the return is filed by a tax agent, the tax return due date is deferred until the 31 March:

- Of the year plus 2 if the balance date is 1 October to 31 December;

- Of the year plus 1 if the balance date is 1 January to 30 September.

As an example, for 31 October 2018 and 30 April 2019 balance dates, the tax return is due 31 March 2020 if filed by a tax agent.

Payment of Estimated Tax

“Provisional tax” for a tax year is payable in instalments in the 4thand 8th months of the taxpayer’s relevant tax year and the 1st month of the following tax year (normally stated as due in the 4th, 8th and 13th months). Use of money interest and penalties may apply for shortfalls of payments to the actual liability at each instalment. To minimize interest charges, therefore, taxpayers are required to try to ensure that the correct amount is paid at each instalment, such that the payments are equal to or greater than their total liability.

There are a number of methods to calculating the amount of provisional tax due at the relevant due dates. The most commonly used are the standard method (provisional tax is based on the tax liability in the most recently filed tax return plus an appropriate uplift) and the estimation method (provisional tax is based on estimate of the taxable income for the relevant year.) Recent changes allow taxpayers to avoid use of money interest charges for the first and second provisional tax instalments if they pay provisional tax using the standard method.

The Accounting Income Method is a recent change for smaller taxpayers (those with annual turnover of NZ$5 million or less) that used approved accounting software packages. It aligns provisional tax obligations with accounting income (adjusted for certain tax concepts) through the year. More regular provisional tax payments are due under this method

Interim Tax Returns

Interim tax returns are not usually filed.

Payment of Tax

If there is a shortfall of provisional tax payments for a tax year, further tax, called terminal tax, is due generally either 11 or 13 months after balance date. However, for April to September balance dates, payments are due by February or April of the following year. (The difference in timing depends on whether a tax agent is used or not.)

Penalties for Non-Compliance

New Zealand is able to impose a full range of penalties, based on a taxpayer's behavior and the tax positions taken, if that results in tax shortfalls. The penalized behaviors include not taking reasonable care, taxing an unacceptable tax position, gross carelessness, taking an abusive tax position and tax evasion.

Late payment and late (tax return) filing penalties may also apply.

Penalties and/or Interest for Underpayment of Taxes

In additional to potential penalties, use of money interest is charged by the NZ Inland Revenue on underpayments (including where provisional tax is underpaid – see above). Credit interest is paid by the NZ Inland Revenue on tax overpayments. Taxpayers can use tax pooling intermediaries to manage their use of money interest exposure.

Statute of Limitation

A filed tax return generally becomes statute barred four years from 31 March following the filing of the return.

For example, a 2018 return filed 31 March 2019, will become statue barred from 31 March 2023.

Note that a recent law change has extended the statute bar period for transfer pricing adjustments to 7 years.

1.4 Financial Statements/Accounting

Details of Local Accountant Requirements

Public Interest Entities and those considered “large” by the legislation are required to prepare GPFR in compliance with New Zealand Generally Accepted Accounting Practice (NZ GAAP). Compliance with NZ GAAP requires entities to prepare financial statements following New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS), or where there is reduced public accountability for the entity, in compliance with the NZ IFRS Reduced Disclosure Regime (NZ IFRS RDR). Entities reporting in accordance with NZ IFRS RDR must apply all recognition and measurement criteria of NZ IFRS, but are permitted to include reduced disclosures in the financial statements.

Financial Statements are required to be completed within five months after the balance date and must be signed as approved by two directors, unless the company has only one director. The financial statements, or a summary of those statements in the approved NZ Inland Revenue format (called the IR 10), are required to be submitted by the tax return due date, including under the Basic Compliance Package requirements for New Zealand Groups with revenue of NZ$80 million or more (see section 7 for more information).

Fiscal Year

The standard tax year is 31 March. Balance dates falling between the 1 October previous and the following 30 September are deemed to be within the same tax year. (For example, both a 31 October 2018 balance date and a 30 September 2019 balance date will fall within the 2019 tax year.)

Non-standard tax balance dates must be approved by NZ Inland Revenue. Alignment with a parent company’s balance date or with certain industry recognized balance dates is generally accepted as a reason for a non-standard tax balance date.

Periodicity of Local Books to be Closed

The standard tax year is 12 months. Longer or shorter periods may be allowed to accommodate changes in tax balance dates and occasionally if the entity is established but not yet trading.

Retention Period for Statutory Financial Statements / Working papers

Business records must be kept for a minimum 7 year period.

Requirements to Retain Physical Copies Locally/Electronically Stored Data to Reside on In-country Server

However, approval to hold records outside New Zealand can be given. Usually some assurance must be given that NZ Inland Revenue will be able to access the records, if held offshore.

Requirements to Prepare Financial Statements in Local Currency

Financial statements can be prepared in the functional currency of the entity. However, taxable income must be stated and determined in New Zealand dollars (this also applies to any disclosures supporting the tax calculation, such as the IR 10 or financial statements filed with NZ Inland Revenue).

What GAAP must the Financial Statements be Prepared Under?

Public Interest Entities and those considered “large” by the legislation are required to prepare GPFR in compliance with New Zealand Generally Accepted Accounting Practice (NZ GAAP). Compliance with NZ GAAP requires entities to prepare financial statements following New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS), or where there is reduced public accountability for the entity, in compliance with the NZ IFRS Reduced Disclosure Regime (NZ IFRS RDR). Entities reporting in accordance with NZ IFRS RDR must apply all recognition and measurement criteria of NZ IFRS, but are permitted to include reduced disclosures in the financial statements.

Entities that are not required to provide statements in accordance with either standard are required to prepare financial statements in accordance with the Tax Administration (Financial Statements) Order 2014. This sets the required accounting policies and disclosures to support tax return calculations.

Prescribed Format and Details for Financial Statements

The requirements setting out which entities are required to prepare and file General Purpose Financial Reports (GPFR) are included in various entity and sector-specific legislation including the Financial Markets Conduct Act 2013 and the Financial Reporting Act 2013.

Filing Due Date

If there is a filing requirement, the financial statements must be filed within five months of balance date.

Filing Format of Financial Statements

There is no prescribed format.

Filing Extension Availability and Details

Not applicable. Late filing fees may apply if financial statements are filed after the due date.

Penalties for Non-Compliance

In addition, penalties and Court action may apply to company directors if a company does not file audited financial statements.

1.5 Incentives

Intellectual Property Incentives

None

R&D Incentives

R&D incentives in New Zealand to date have been provided predominantly through Government R&D grants, administered by Callaghan Innovation (www.callaghaninnovation.govt.nz). This is proposed to change with the re-introduction of R&D tax incentives (see below).

The primary R&D grants available for businesses are:

Growth grants: Companies can receive up to 20% co-funding of their eligible R&D expenditure over a period of 3 years, capped at NZ$ 5 million per annum. Growth grants are available to companies who have spent at least 1.5% of revenue on eligible R&D (i.e. "R&D intensity" of at least 1.5%) over the previous 2 years with a minimum spend of NZ$ 300,000 per annum. They must also provide a sufficiently detailed 3 year R&D plan. New growth grants will cease from 31 March 2019, with a transition period for existing grant recipients until 31 March 2020.

Project grants: Discretionary grants of up to 40% of R&D project costs are available to companies that have R&D projects that are technically challenging, will build long-term technical capacity in the business, and have potential for commercialization(and where funding will have a tangible impact).

Eligible businesses are also able to cash-up the value of R&D generated tax losses. The refund was capped at $140,000 cash starting in the 2015-16 year (i.e. losses of up to $500,000 cashed out), incrementally rising to $560,000 cash over the next 5 years (i.e. losses of up to $2 million cashed up by 2020-21). Eligible businesses must be loss-making and have an R&D wage intensity (i.e. eligible R&D labor costs divided by total labor costs) of at least 20%. The eligible R&D expenditure is broadly similar to that which would be deductible for tax purposes.

Research costs can generally be expensed, for tax purposes, while development costs must typically be capitalized. (The tax treatment generally follows accounting.) Capitalized development costs may be depreciated if it gives rise to depreciable intangible property.

Following a change of Government in the 2017 New Zealand General election, the new Government is proposing the (re)introduction of a 12.5% R&D tax credit. A consultation document on the design of the tax credit regime was released in April 2018. The details of the regime and its commencement date are expected to be confirmed through legislation to be introduced in late 2018.

Special Tax Regimes for Specific Industries or Sectors

New Zealand has special tax regimes for forestry, mining of certain specified minerals (i.e. gold, silver, iron, petroleum), and farming (e.g. livestock). In addition, there are specific rules for certain financial entities, such as banks and life insurers.

Other Incentives

New Zealand does not have any other tax incentives, such as headquarter incentives, tax holidays etc.

1.6 International Taxation

Double Taxation Relief

New Zealand provides a combination of unilateral and tax treaty based double tax relief through foreign tax credits. For a foreign tax credit to be allowed, the foreign tax must be imposed on the New Zealand taxpayer and be for income which is also taxed in New Zealand. The foreign tax credit amount is limited to the New Zealand tax on the income and where the income is covered by a double tax agreement, is also limited to the amount of foreign tax that can be properly imposed by the other country under the relevant treaty provisions.

Base Erosion and Profit Shifting (BEPS) Development

New Zealand is an active participant in the OECD's work program on BEPS.

BEPS legislation (the Neutralizing Base Erosion and Profit Shifting Act 2018) was enacted 28 June 2018. The legislation contains:

- amendments to the transfer pricing rules, including a related party interest rate limitation rule. and increasing the statue bar period for transfer pricing disputes to 7 years;
- amendments to the thin capitalization rules so that "non-debt liabilities" of the NZ taxpayer (or NZ group) are generally excluded from assets, in the calculation of the NZ debt-to-asset ratio, when assessing whether the 60% thin capitalization safe harbor threshold is breached;
- deemed Permanent Establishment rules for arrangements aimed at preventing a NZ taxable presence for foreign multinationals with global turnover greater than EUR750m, where there is NZ-based facilitation of sales activity and the arrangement avoids New Zealand or New Zealand and foreign tax;
- comprehensive implementation of the OECD's Action 2 Hybrids recommendations (with some delayed effective dates).

The BEPS legislation generally has effect for taxpayers with effect for balance dates beginning on or after 1 July 2018. Other BEPS related changes include:

- NZ's ratification of the Multilateral Convention to Implement Tax Treaty and Related Measures to Prevent BEPS (the "MLI"), which will come into force in New Zealand from 1 October 2018. The MLI will allow New Zealand to adjust its existing double tax agreements with other participating countries to adapt to the OECD's new treaty provisions on anti abuse, dispute resolution and transfer pricing.
- Automatic Exchange of Information ("AEOI") using a Common Reporting Standard and Country-by-Country ("CbC") reporting. AEOI applies to New Zealand financial institutions from 1 July 2017 (Note: the United States Foreign Account Tax Compliance Act ("FATCA") has applied to New Zealand financial institutions from 1 July 2014.) CbC reporting applies to New Zealand groups with revenue of more than approximately NZ$1.2b (NZD equivalent of EUR750m) from 2016-2017.
- Recent legislative changes have strengthened New Zealand's non-resident withholding tax ("NRWT") regime to address perceived weaknesses in those rules in relation to related party debt. These include a tightening of the rules for accessing the concessionary Approved Issuer Levy ("AIL") regime (as an alternative to NRWT), preventing the deferral of withholding tax payments on related-party loans and eliminating existing exemptions from deducting withholding tax. The changes have wide impact.
- The Convention on Mutual Administrative Assistance in Tax Matters has effect in New Zealand from 1 January 2015. This allows the New Zealand Inland Revenue to seek assistance from other tax authorities in pursuing international tax evasion and tax debt.

Foreign-Exchange Controls

There are no foreign exchange controls in New Zealand. However, anti-money laundering rules apply.

International Withholding Tax Rates

Dividends: Dividends paid to a non-resident are subject to withholding tax at 30%. However, fully imputed dividends are subject to 0% withholding tax if the shareholder owns more than 10% of the company, or 15% otherwise. These rates may be reduced under a tax treaty.

Supplementary dividend regime: A New Zealand resident company may pay a supplementary dividend accompanying a fully imputed dividend to shareholders holding less than 10% of the company's shares.

The effect of the supplementary dividend rules is the dividend is grossed up for the withholding tax. The company receives a tax credit for the supplementary dividend paid to fund this gross up.

There are special anti-avoidance rules to prevent dividend stripping and re-characterization of dividends as non-taxable amounts.

Interest: Interest payments to non-residents are subject to withholding tax at 15%. This rate may be reduced under a tax treaty or if New Zealand's Approved Issuer Levy ("AIL") regime applies instead (i.e. a 2% AIL can be paid instead of withholding tax on interest if the payer and recipient are not associated while a 0% AIL is available for widely-issued bonds that meet certain requirements).

There are avoidance rules targeted at related party debt where:

- This is disguised through use of back-to-back or other arrangements to take advantage of the lower AIL rate;
- There is a timing difference between when the interest deduction is available to the payer and the withholding tax on **the interest is payable.**

Royalties: Royalty payments to non-residents are subject to withholding tax at 15%. This rate may be reduced under a tax treaty.

Note that the tax treaty definitions of a royalty may not be the same as the domestic law definition. The effect of this difference is that an item of income may be taxed at a treaty rate when New Zealand would not consider the amount to be a royalty under domestic law (i.e. it may be lease or business profits income). This applies particularly to the use of property and the provision of certain technical services.

The BEPS legislation potentially captures such income even if the income is derived from outside New Zealand – for example, if the services are performed outside New Zealand, through a new source rule.

Withholding Tax Rates under the Income Tax Treaties

New Zealand – Treaty Withholding Rates Table				
	Dividends		Interest	Royalties
	Individuals, companies	Qualifying companies		
	(%)	(%)	(%)	(%)
Domestic Rates				
Companies:	15 (non-residents) / 33 (residents)[1]	0/15 (non-residents)[2]	15 (non-residents)[3] / 28 (residents)[1]	15 (non-residents)
Individuals:	33 (residents)	N/A	15 (non-residents) / 33 (residents)	15 (non-residents)
Treaty Rates				
Australia	15	5 [4] / 0 [5]	10	5
Austria	15	15	10	10
Belgium	15	15	10	10
Treaty Rates	**Individuals, companies (%)**	**Qualifying companies (%)**	**Interest (%)**	**Royalties (%)**
Canada	15	5 [4] / 0 [6]	10	5 / 10 [7]

Chile	15	15	10 / 15 [8]	5
China (People's Rep.)	15	15	10	10
Czech Republic	15	15	10	10
Denmark	15	15	10	10
Fiji	15	15	10	15
Finland	15	15	10	10
France	15	15	10	10
Germany	15	15	10	10
Hong Kong	15	5 [4] / 0 [9]	10	5
India	15	15	10	10
Indonesia	15	15	10	10
Ireland	15	15	10	10
Italy	15	15	10	10
Japan	15	0 [10]	10	5
Korea (Rep.)	15	15	10	10
Malaysia	15	15	15	15
Mexico	15	5	10	10
Netherlands	15	15	10	10
Norway	15	15	10	10
Papua New Guinea	15	15	10	10
Philippines	15	15	10	15
Poland	15	15	10	10
Russia	15	15	10	10
Samoa	15	5 [4]	10	10
Singapore	15	5 [4].	10	5
South Africa	15	15	10	10
Spain	15	15	10	10
Sweden	15	15	10	10

Treaty Rates	**Individuals, companies (%)**	**Qualifying companies (%)**	**Interest (%)**	**Royalties (%)**
Switzerland	15	15	10	10

Taiwan	15	15	10	10
Thailand	15	15	10 / 15 [11]	10 / 15 [12]
Turkey	15	15	0, 10, 15 [13]	
United Arab Emirates	15	15	10	10
United Kingdom	15	15	10	10
United States	15	5 [4] / 0 [14]	10	5
Vietnam	15	5 [15]	10	10

Notes:

1 New Zealand has a Resident Withholding Tax (“RWT”) which applies to interest and dividends. It is included in this table for comparison purposes and to show the effect of domestic payments. The RWT rate varies with the type of income and the status of the recipient. (An RWT exemption can be sought in certain circumstances). Where a fully imputed dividend is paid to a resident corporate shareholder, no RWT deduction is generally required.

2 For dividends paid to a non-resident, if the non-resident owns 10% or more of the company paying the dividend, a 0% domestic rate applies to the extent the dividend is fully imputed. The 0% rate also applies to fully imputed non-cash dividends. A 15% domestic rate applies to fully imputed cash dividends paid to a shareholder holding less than 10%. The domestic rate is 30% in other cases.

3 2% approved issuer levy may apply if the NZ borrower (the “payer”) and foreign lender are not related, the payer is registered as an approved issuer and the security under which the interest is payable is registered with Inland Revenue.

4 If the beneficial owner of those dividends is a company that owns at least 10% of the shares in the payer.

5 If the beneficial owner of those dividends is a company that owns 80% or more of the shares in the payer and meets other criteria or if the beneficial owner is a Contracting State or government body and holds directly no more than 10% of the shares in the company paying the dividends.

6 If the beneficial owner of the dividends is a Contracting State, or government body.

7 5% applies for copyright royalties and other like payments and royalties for the use of, or the right to use, computer software or any patent or know how. 10% in all other cases.

8 10% applies for interest derived from loans granted by banks and insurance companies. 15% in all other cases.

9 0% applies if the beneficial owner is a company that has 50% or more of the shares of the company paying the dividends (provided special conditions are met) or the beneficial owner of the dividends is a Contracting State including a government investment fund).

10 If the beneficial owner of the dividends is a company that directly owns at least 10% of the shares of the company paying the dividends and meets certain other criteria.

11 10% applies when the interest is received by any financial institution or is paid with respect to debt arising from a sale on credit of any equipment, merchandise, or services. 15% in all other cases.

12 10% for certain types of royalties but 15% in any other case.

13 10% if it is paid to a bank. 0% if it interest arising in New Zealand and paid to the Government of Turkey or to the Central Bank of Turkey. 15% in all other cases.

14 0% if the beneficial owner of those dividends is a company that has owns 80% of the company paying the dividends and meets certain other criteria.

15 If the beneficial owner is a company which holds directly at least 50% of the shares in the company paying the dividends.

Other Agreements

New Zealand is a party to the OECD's Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the latter will enter into force for New Zealand progressively from 1 October 2018).

New Zealand has an intergovernmental agreement with the United States for their Foreign Account Tax Compliance Act (FATCA).

The Automatic Exchange Of Information initiative provides for the exchange of FATCA-type information. This exchange occurs under the OECD Convention on Mutual Administrative Assistance in Tax Matters and under some of New Zealand's DTAs.

Income Tax Treaties for the Avoidance of Double Taxation (Negotiated, not yet in force at time of publication)

Austria (2nd Protocol)	Luxembourg (DTA)
Belgium (3rd Protocol)	Netherlands (Protocol)
China (DTA)	United Kingdom (DTA)
India (3rd Protocol)	

Agreements for the Exchange of Information

Tax information exchange agreements allow for the exchange of information between two jurisdictions. The following agreements are in force:

Anguilla	Jersey
Bahamas	Marshall Islands
British Virgin Islands	Netherland Antilles
Cayman Island	Niue
Cook Islands	Saint Maarten
Cook Island	Samoa
Curacao	San Marino
Dominica	St Vincent and the Grenadines
Gibraltar	Turks and Caicos Islands
Guernsey	Vanuatu
Isle of Man	

New Zealand has signed tax information exchange agreements with the following (but these are not in force):

Bermuda	St Christopher and Nevis

Source: Inland Revenue (http://taxpolicy.ird.govt.nz/tax-treaties)

Indirect Offshore Disposal Rules

New Zealand does not have indirect offshore disposal rules. However, New Zealand's general anti-avoidance rule may need to be considered.

2 Transfer Pricing

Requirements

New Zealand has a comprehensive transfer pricing regime based on the OECD Transfer Pricing Guidelines and the ‘arm’s length’ principle.

Transfer pricing documentation is not required to be lodged with the annual income tax return. However, the NZ Inland Revenue has strongly emphasized the desirability of robust and concurrent transfer pricing documentation to support positions taken. If a taxpayer fully documents its transfer pricing position, the NZ Inland Revenue is required to prove the taxpayer’s position is incorrect in order to amend an assessment on audit (although see below). Note: the recently enacted BEPS legislation, from income years starting on or after 1 July 2018:

- Shifts the burden of proof from NZ Inland Revenue to the taxpayer in transfer pricing matters.
- Extends the period in which Inland Revenue can re-open/dispute taxpayers' transfer pricing positions from 4 to 7 years.
- Allows Inland Revenue to disregard or replace transfer pricing arrangements that are not "commercially rational".
- Extends the application of New Zealand's transfer pricing rules to cover groups of non-residents who "act together" to effectively control a New Zealand entity or group (to align with the application of NZ’s thin capitalization rules to such arrangements).

Taxpayers can enter into unilateral or bilateral Advance Pricing Agreements (“APAs”) to minimize transfer pricing risk. A unilateral APA can be entered into with the NZ Inland Revenue, but is binding only on the New Zealand tax authority (foreign tax authorities can still challenge the transfer pricing position taken). A bilateral APA also removes the foreign tax risk, as long as the terms and conditions of the APA are satisfied.

New Zealand has mutual agreement procedures for resolving transfer pricing disputes.

Country-by-Country Reporting

New Zealand participates in Country-by-Country reporting. To date, this has been done by NZ Inland Revenue exercising its general information collection powers. Formal Country-by-Country reporting powers were introduced in the recently enacted BEPS legislation.

Master and Local Files Reporting

See Country-by-Country reporting

Common Reporting Standard

New Zealand has implemented the Common Reporting Standard (“CRS”) with effect from 1 July 2017. The first reporting period is for the period to 31 March 2018. Reporting was due 30 June 2018.

NZ Reporting Financial Institutions are required to have formal on-boarding processes for new accounts and are required to perform due diligence on existing accounts (i.e. accounts opened prior to 1 July 2017) in accordance with the NZ Applied CRS.

Account holders are obliged to provide self-certifications on account opening or as requested by their financial institution.

3 Indirect Tax

Indirect Tax

Goods and services tax (“GST”). GST is a comprehensive value added tax. Almost all supplies of goods and services are subject to the tax (see exceptions below).

Standard Rate

The standard GST rate is 15%.

From 1 October 2016, supplies of remote services (e.g. consulting services and digital content and media) by non-residents to New Zealand resident customers are generally subject to collection of GST. The non-resident supplier is required to register for and return New Zealand GST if their annual sales to NZ consumers exceed NZ$60,000.

Exceptions: some goods and services are treated as zero-rated (e.g. exports) or exempt (e.g. financial services). Currently, imports of goods where the GST and any duty would be less than NZ$60 if charged (“low-value” imported goods) are currently excluded from collection of GST. A discussion document was issued in May 2018 with proposals (broadly) to extend the remote services collection rules to low-value imported goods from 1 October 2019.

Further information

For more detailed indirect tax information, refer to:

KPMG's 2017 Asia Pacific Indirect Tax Country Guide

4 Personal Taxation

Top Rate

The top rate of personal income tax in New Zealand is 33% and applies for income over NZ$70,000.

Under New Zealand's tax system a rate of 10.5% applies on the first NZ$14,000 of income, 17.5% on income between NZ$14,001 and NZ$48,000, and 30% between NZ$48,001 and NZ$70,000.

Social Security

New Zealand has a comprehensive public compensation system for injuries and accidents (including in the workplace), provided by the Accident Compensation Corporation ("ACC"). The system is mainly funded by levies on employees. From 1 April 2018, the ACC levy on employees' earnings is 1.39% of gross earnings up to NZ$126,286.

In addition, New Zealand has a national work-based superannuation saving scheme called 'KiwiSaver'. While the scheme is voluntary, it works on an "opt-out" basis (i.e. new employees are automatically enrolled in KiwiSaver and must opt out within certain prescribed time frames). Participating employees and their employers must each currently contribute three% of gross salary to KiwiSaver. Savings are generally locked-in until the retirement age (currently 65). The New Zealand Government provides an incentive to KiwiSaver members in the form of a Government contribution up to NZD 520 per annum.

International Social Security Agreements

Australia	Greece	Malta	Pacific countries
Canada	Ireland	Netherlands	United Kingdom
Denmark	Jersey and Guernsey		

Source: Work and Income New Zealand

**New Zealand and Australia have an agreement to facilitate portability of national superannuation savings on migration of persons between the two countries.*

Visa Requirements

New Zealand's visa requirements vary by country. Specific advice should be sought.

Further Information

For more detailed personal taxation information, refer to:

[KPMG's Thinking Beyond Borders]

5 Other Taxes

Fringe Benefit Tax (FBT)

FBT applies to benefits provided by employers to employees (or their families), such as motor vehicles; low-interest loans; and free, subsidized or discounted goods or services. It is levied on employers according to the taxable value of the fringe benefit provided. The tax rate can vary with the tax rate of the employee receiving the benefit.

Stamp Duty

New Zealand does not have a stamp duty regime.

Property Taxes

There is no central Government property tax. Local councils can charge a levy ('rates') for services they provide based on the value of property. While New Zealand does not have a capital gains tax, gains realized on disposal of property may be taxable if the property was acquired with the intention of resale or the vendor is a dealer in property.

The sale of a residential property (other than the main family home and in limited other cases) within two years (the 'bright line' period) is taxable, for properties acquired between 1 October 2015 and 28 March 2018. This 'bright line' period was extended to five years for property acquired on or after 29 March 2018.

New Zealand also has rules which tax, for example, property acquired with the intention of sale, regardless of the length the property was held (the bright line rule applies if these other rules are not applicable.)

Buyers and sellers of residential land are also subject to additional information requirements (including their IRD number in certain circumstances) while non-residents will need to have a fully functioning New Zealand bank account in order to obtain an IRD number to transact.

A residential land withholding tax applies to sales of NZ residential property (where the property is sold within the 'bright line' period) by offshore persons (e.g. non-residents, or entities owned more than 25% by non-residents). The withholding tax rate is 33% (individuals) or 28% (companies) of the vendor's gain (i.e. sale price less purchase cost) or 10% of the sales proceeds.

Inheritance Tax / Gift Duty

No inheritance or gift tax applies in New Zealand.

Other taxes

New Zealand has a number of other taxes including excise taxes on alcohol, tobacco, and petroleum.

Tax review

In December 2017, the New Zealand Government established an independent Tax Working Group ("TWG") to consider the structure of the New Zealand tax system, including the fairness of the system, its revenue raising capability, and its fit for purpose given technological and other changes. Specific issues the TWG has been asked to consider include the taxation of capital income, including whether NZ should adopt a capital gains tax (excluding the family home) to address housing affordability, and environmental taxation.

The TWG is expected to report back with its interim recommendations in late 2018, with its final report due in early 2019. The Government has indicated that any tax proposals will be legislated by early 2020, with application from 2021 (Note: NZ's next general election is due in late 2020, therefore, any changes will not have effect until after that election.)

6 Trade & Customs

6.1 Customs

Customs Duty

Customs duty is levied on certain goods entering New Zealand. The rates vary according to the types of goods, whether a concession is available, and the country of origin. Preferential rates may be applicable if the goods are sourced from a country with which New Zealand has a free trade (or similar) agreement. The customs value, which is derived using one of six valuation methods, is the base on which customs duty is charged.

The GST low-value imported goods proposals are expected to introduce a low-value threshold for the collection of customs duties. (The GST will replace those duties.)

Excise Duty

Motor spirits, tobacco, and alcohol products are levied with excise duty. The rates vary between the products.

6.2 Free Trade Agreements (FTA)

In Force

Australia	Hong Kong	Singapore
Australia and ASEAN	Malaysia	Thailand
China	Korea (Republic of)	Trans-Pacific Partnership (P4)

Notes

ASEAN = Brunei, Cambodia, Indonesia, Laos, Myanmar, Malaysia, Philippines, Singapore, Thailand and Vietnam.

Trans-Pacific Strategic Economic Partnership (P4) = Brunei Darussalam, Chile, Singapore

Concluded/Signed (pending domestic ratification)

- Anti-Counterfeiting Trade Agreement
- Gulf Co-operation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates)
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico Peru, Singapore, Vietnam)
- PACER PLUS (Pacific Agreement on Closer Economic Relations) (Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu)

In Negotiation

- Russia, Belarus and Kazakhstan
- European Union Free Trade Agreement
- India

- China (FTA upgrade)
- Pacific Alliance FTA (Chile, Colombia, Mexico, Peru)
- Regional Comprehensive Economic Partnership (ASEAN, Australia, China, India, Japan and Korea)
- Trade in Services Agreement (WTO)

Source: New Zealand Ministry of Foreign Affairs & Trade

7 Tax Authority

Tax Authority

NZ Inland Revenue

Link to Inland Revenue

Tax Audit Activity

NZ Inland Revenue's enforcement activity is based on risk profiling ('risk reviews') of taxpayers and industries. Generally, large taxpayers and corporates can expect to receive an annual risk review (this is typically by way of NZ Inland Revenue questionnaires and, in some cases, a follow-up meeting). Material issues identified, if any, may trigger a full audit of the taxpayer. NZ Inland Revenue can generally go back and re-open returns for the previous four years.

Large taxpayers and groups (approximately 900) are required to provide a 'Basic Compliance Package', comprising the financial statements, tax reconciliations, and group structures, along with their tax return. The stated aim is to allow Inland Revenue to examine a wider range of businesses (multinationals in particular) more closely, carry out additional macro-analysis of industries, and identify variations by jurisdiction. NZ Inland Revenue is also targeting international financing transactions through targeted questionnaires on funding structures, interest deductions, and transfer pricing.

NZ Inland Revenue also publishes benchmark data (e.g. profitability, return on assets, etc.) for a range of industries and has indicated that outliers can expect to have a higher risk of review.

NZ Inland Revenue is undergoing a significant multi-year "Business Transformation" program, which will impact how it interacts with taxpayers on a range of tax types, including PAYE, GST, business and withholding taxes, and personal taxes. A key focus of Business Transformation is on greater 'real time' collection of information (e.g. from businesses' payroll and accounting systems) and use of technology and data to assist with accuracy, compliance and ultimately risk assessment. Business Transformation has also resulted in an organizational restructure of NZ Inland Revenue's various business units.

Appeals

Taxpayers can enter into the disputes process to challenge a NZ Inland Revenue reassessment of their tax affairs. This is a legislatively prescribed process, with requirements imposed on each party. Disputes are referred to the Adjudication unit of NZ Inland Revenue for resolution (the Adjudication unit is meant to function independently of the rest of Inland Revenue). If the adjudication process finds in favor of the taxpayer, the outcome is binding on the NZ Inland Revenue. If the Adjudication unit finds in favor of NZ Inland Revenue, the taxpayer can take the dispute to litigation in the Courts. This can however be a costly affair and is typically avoided unless the tax amount involved is significant. A taxpayer can also seek judicial review of some (but not all) of the NZ Inland Revenue's actions during a tax dispute.

Tax Governance

NZ Inland Revenue has emphasized the need for Senior Management and Boards of Directors to be aware of the tax positions being taken and the need for documented tax risk management policies. NZ Inland Revenue's assessment of a taxpayer's tax governance processes can be a factor in its overall risk assessment and rating.

Current Topics for Focus by Tax Authorities

The stated aim of Business Transformation is to allow NZ Inland Revenue to examine a wider range of businesses (including multinationals) more closely and efficiently, carry out additional macro-analysis of industries, and identify variations by industry and jurisdiction.

NZ Inland Revenue is also targeting international transactions through targeted questionnaires on funding structures, interest deductions, and transfer pricing. The BEPS project has also encouraged a focus on the effects of existing arrangements under the rules as they applied prior to enactment of the BEPS legislation. A continuing focus can be expected as a result of the recently enacted BEPS legislation.

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