Doing Business in New Zealand

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in New Zealand.

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Background

New Zealand is ranked first in the World Bank survey of business-friendly countries. The country was named as the easiest place to do business and to start a business out of the 190 economies in "Doing Business 2017". For the past, few years New Zealand has been ranked first in respect of being one of the easiest places to do business.

Source: "Doing Business 2017"

A co publication of the World Bank and the International Finance Corporation.

Country overview

New Zealand lies in the South West Pacific Ocean, approximately 1,500km east of Australia and 7,500km south of Hawaii. There are two main islands, being North Island and South Island. New Zealand has a long coastline relative to its area, and offers varied scenery including fiords, glaciers, lakes, volcanic regions and spectacular beaches, harbours and coastal areas. New Zealand has jurisdiction over the territories of Tokelau and the Ross Dependency in Antarctica.

Seasons in New Zealand are opposite to those in the northern hemisphere, with January and February being the hottest months and July – August the coldest. New Zealand's climate varies from sub-tropical in the north to extremely cold in central alpine areas. However, most areas enjoy a temperate climate, without extreme temperatures.

According to Statistics New Zealand the population of New Zealand at 31 March 2018 was estimated at 4,871,300. Recent immigration from other Pacific Islands, Asia and many European countries has resulted in an ethnically diverse population.

English is the official spoken in New Zealand, while Maori is the other official language of New Zealand. Many other languages are spoken by the various ethnic groups which make up New Zealand's multicultural population.

As a member of the British Commonwealth of Nations, New Zealand is a monarchy with a democratically elected and fully independent parliamentary government. By constitutional convention, the Governor General is the Queen's representative in New Zealand.

Parliament is the governing body of the nation, consisting of 120 Members of Parliament. Sixty four members represent the 64 general electorates, seven members represent the seven Maori electorate and the remaining 49 members are list members. Members are elected nationally every three years. All persons over the age of 18 may vote in elections.

Politics throughout much of the last century were dominated by two political parties, the National Party and the Labour Party.

From the 1996 general elections, the election of Members of Parliament has been by a system of proportional representation called Mixed Member Proportional (MMP). This has led to an increase in the number of smaller parties represented in Parliament.

Economic overview

New Zealand has a mixed, market driven economy, largely under the control of the private sector and heavily dependent on international trade.

In recent times, tourism and related industries have taken over as the largest contributor to the economy, cashing in on New Zealand's international image as one of the world's most beautiful countries.

New Zealand has a reasonably flexible system of employment law. The emphasis in its legislation is ostensibly on freedom of contract, with employees being protected by a "minimum floor" of statutory rights.

The Employment Relations Act is the principal statute governing employment in New Zealand. It aims to promote good faith in the employment relationship, and the rights of workers to bargain collectively.

The total employed labour force at March 2018 stood just over 2.6 million. In general:

- Employment growth remained strong.
- Wage growth steady.
- The workforce is well educated and well trained.

New Zealand has a decimal system of currency with the basic unit being the dollar. The dollar is freely floated against all major currencies. The law relating to currency exchange has been deregulated in New Zealand so that no restrictions are placed on the amount of funds which may be brought in or taken out from New Zealand.

There has been rapid change in the financial sector since 1984, when direct controls on the financial sector were removed. In April 2018, there were 26 banks registered in New Zealand, only a few of which were wholly New Zealand owned.

Monetary policy is operated by the Reserve Bank of New Zealand (RBNZ). The RBNZ also registers and supervises banks, manages the issue of notes and coins and provides policy advice to the Treasurer and Minister of Finance. A full range financial services is offered by the New Zealand banking system.

The NZX Market is New Zealand's principal market for equity security. It features the securities of the majority of New Zealand's listed companies and a number of overseas companies. At June 2018 companies listed on the NZSX had a combined market capitalisation of approximately NZ$136 billion.

Transport and Communication Infrastructure

New Zealand has well-established national and international transport and communication systems. One domestic airline provides air links between all major towns and cities and over 30 international airlines offer services to New Zealand.

Six container and 13 conventional ports provide access to a comprehensive network of shipping services.

Choice of Legal Form

Corporate structure options

Very few restrictions are imposed on foreign companies on the type of business operations permitted in New Zealand. Foreign companies investing in New Zealand in tourism or in sectors that contribute to foreign exchange earnings are particularly welcomed by the New Zealand Government.

There are three main ways for overseas companies to do business in New Zealand:

- incorporate a subsidiary
- registering a branch
- forming and registering a company
- merging with or acquiring a New Zealand company.

Incorporate a subsidiary

Incorporating a subsidiary in New Zealand is a relatively simple matter.

- The desired company name must be reserved (and approved by the Registrar of Companies) and certain administrative documentation must be registered.
- A New Zealand subsidiary is required to have a registered office in New Zealand.
- A New Zealand subsidiary is also required to either have a director that lives in New Zealand or have a director that lives in an enforcement country (currently only Australia) and is a director of a company registered in that enforcement country.

As a separate company from the overseas parent, the subsidiary is a separate legal entity from its shareholder. Shareholders of companies incorporated in New Zealand obtain limited liability automatically (unless an unlimited company is specifically created). Large companies, in which at least 25% of the shareholder voting power is held by a subsidiary of a company incorporated outside of New Zealand, a company incorporated outside of New Zealand or a person not ordinarily resident in New Zealand, may be required to file financial statements with the Registrar of Companies. These would relate only to their operations and the operations of any subsidiaries, not the operations of their overseas parent companies.

Registering a branch

An overseas company seeking to register a branch in New Zealand is required to reserve its name with the New Zealand Companies Office. The other administrative requirements must then be satisfied by filing an application within 10 working days from the start of business in New Zealand with information such as, the overseas company:

- name and residential address of all the directors;
- address of core place of business i n New Zealand;
- evidence of incorporation and copy of the constitution;

- name and address of a person in New Zealand authorised to accept services of documents on behalf of the company.

Forming and registering a company

A subsidiary company incorporated in New Zealand must have at least one shareholder and director (who can be the same person). Non-resident shareholders and directors are permitted. However, a company must have at least one New Zealand resident director. There is an exemption for this rule which allows a company to have no New Zealand resident director as long as one of the directors is an Australian resident who is a director of a company incorporated in Australia.

Generally, any legal entity may be a shareholder, however, only a natural person may be appointed a director. It is not necessary to appoint a company secretary.

There is no restriction on the size of a company's share capital. Companies are not permitted to have a par or nominal value attached to their shares. It is not necessary for the issue price to be fully paid.

The first step to registering a subsidiary is to apply to the NZ Companies Office to reserve the proposed subsidiary's name. Once the name of the proposed subsidiary company has been approved and reserved, the following incorporation documents must be filed:

- consent to act as director (a certificate is required stating the person is eligible to act as a director);
- consent of each shareholders;
- a copy of the constitution, if one is required;
- the name and residential address of each director and shareholder;
- details of the registered office, and address for services of documents, both of which must be in New Zealand;

The decision of whether to establish a branch office or a subsidiary company will be influenced by legal, tax and commercial considerations that are outlined later in detail.

The other forms of structures normally used are sole proprietorship, partnerships, joint ventures and trusts. These structures can be used in situations where the business is of a very small size or extremely large.

Audit Requirements

Requirement and thresholds

New Zealand does not have a set of legislations which details out the auditing requirements or thresholds. Rather, there are various legislation, acts and codes issued by various bodies which have incorporated auditing requirements.

As a benchmark, the following entities must have their accounts audited:

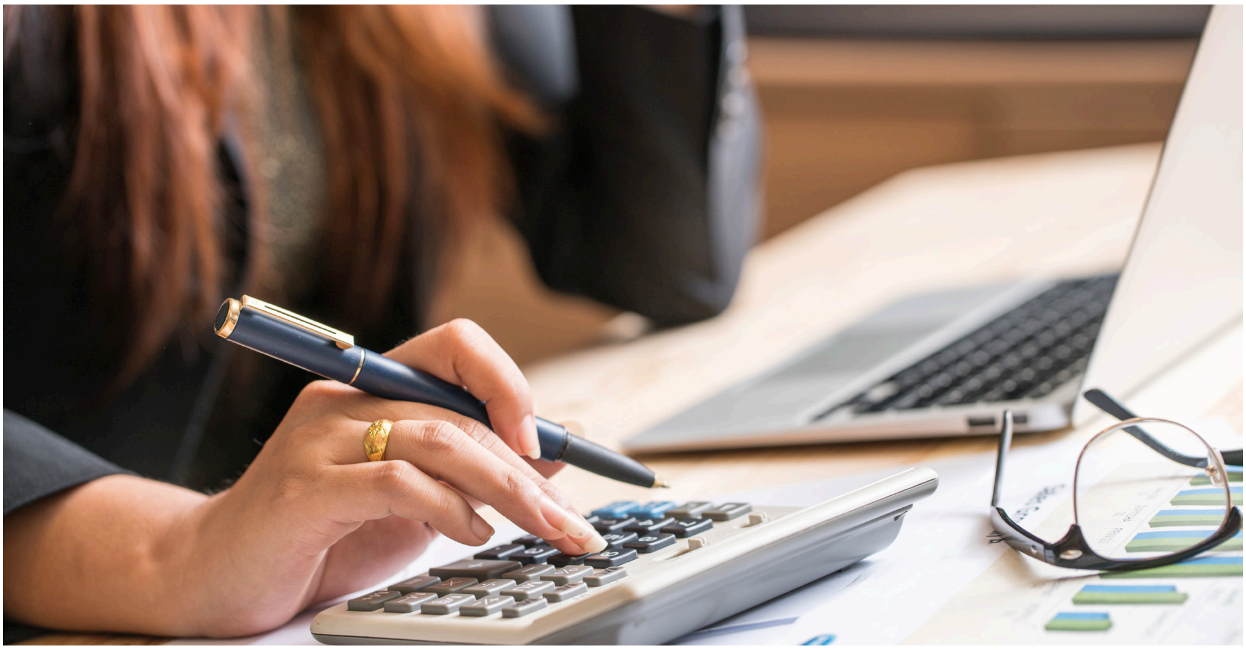
- all entities on the NZX;
- all entities which qualify under the definition of a large entity (with some exceptions);
- all entities which are issuers like insurance companies.

There are further specific requirements which require entities to have their accounts audited, and include charitable organisations (if their constitution/trust deeds specify) as well as entities that are partly funded by the Government or public coffers.

The filing requirements of lodging audited financial statements with the Registrar of Companies have been reduced and are now:

- 4 months from balance date for entities covered by the Financial Markets Conduct Act (FMC reporting entities); and
- 5 months from balance date for non-FMC reporting entities.

Taxation



Overview

New Zealand has a broad base tax system. The taxation of individuals (other than those who are self-employed) is straightforward, with almost all income derived by such individuals being subject to the deduction of withholding tax at source. The taxation of companies and self-employed individuals can be complex.

New Zealand taxes all resident individuals on their worldwide income; however, an exemption is available to people coming to live in New Zealand on or after 1 April 2006 for the first time or after an extended absence. This transitional resident exemption lasts for four years after migration and covers most types of foreign income.

The New Zealand tax base incorporates the following direct and indirect taxes:

- income tax
- goods and services tax
- import tariffs and miscellaneous excise duties

Income tax

For companies and individuals defined as resident in New Zealand, income tax is imposed on all world-wide income. Companies and individuals not resident in New Zealand are subject to tax only on income derived from New Zealand, although the provisions of an applicable double tax agreement may reduce this tax liability.

The tax rate for companies both resident and non-resident is 28%.

A company is regarded as resident in New Zealand if it is incorporated in New Zealand, it has its head office in New Zealand, it has its centre of management in New Zealand, or control of the company by its directors is exercised in New Zealand.

In cases of companies, taxable income generally corresponds with accounting gross profits or loss. However, adjustments are commonly required in relation to the timing of income and expenditure, depreciation, bad debts, legal expenses, and provisions and reserves.

Individual tax rates for residents and non-residents are:

- income up to NZ$14,000 (10.5%)
- income which is more than NZ$14,000 but not more than NZ$48,000 (17.5%)
- income which is more than NZ$48,000 but not more than NZ$70,000 (30.0%)
- income in excess of NZ$70,000 (33.0%)

Treatment of tax losses

If a resident company or a New Zealand branch of a non-resident company incurs a tax loss, that loss can be carried forward to offset future New Zealand taxable income, provided a certain level of shareholder continuity is maintained. The required level is at least 49% common ownership from the time the tax loss is incurred to the time it is offset.

Losses may be shared between group companies where there is at least 66% common ownership between the companies at all times from the time the loss is incurred to the time the loss is offset.

Double tax agreements

New Zealand has double tax agreements in place with most countries with which it trades to reduce instances of double taxation.

A unilateral foreign tax credit is generally available to New Zealand residents for foreign income tax imposed on income derived from countries or territories outside New Zealand.

Dividends

Dividends paid by resident companies to shareholders are taxable. However, dividends paid between wholly owned resident companies are generally exempt. To avoid double payment of tax, imputation credits and certain other credits may be attached to dividends paid by resident companies. An imputation credit represents a portion of the tax paid by the company and is only recognised in New Zealand.

Transfer pricing and thin capitalisation

New Zealand's transfer pricing regime seeks to ensure that almost all cross-border transactions are priced on an arm's length transaction. New Zealand also has thin capitalisation rules which, broadly speaking; operate to disallow deductibility for interest paid on debt to the extent that a foreign owned New Zealand group has a debt to equity ratio greater than 60%.

Goods and services tax

Goods and Services Tax (GST) is a consumption tax chargeable on the supply of most goods and services in New Zealand at a rate of 15%. GST registered taxpayers supplying goods and services in the course of carrying on a taxable activity must charge GST, even if the recipient is not the final consumer.

Generally, a GST registered taxpayer can obtain a credit for the GST charged on goods and services they acquire. In this way, the burden of GST is passed along a chain of GST registered suppliers until it reaches the final consumer

Subject to certain exceptions, the principal exemptions from GST are for financial services like the lending of money and transactions in shares, services performed as an employee and residential rental accommodation.

Non-residents providing remote services to New Zealand customers need to register for GST if their taxable supplies to New Zealand customers exceeds $60,000 in any 12 month period.

Other taxes

New Zealand uses tariffs as the principal form of protection from imports.

Rates are the main source of local government revenue and these are calculated as a percentage of the value of land and or capital values.

Under New Zealand's universal no-fault accidental compensation regime, levies are charged to employers, the rate depending on the nature of the employers' business activity. Self-employed persons also pay these levies.

There is no stamp duty in New Zealand.

There is no capital gains tax in New Zealand. However, in certain defined circumstances the proceeds derived from the sale of real or personal property (including shares) is subject to income tax. If residential property is sold within two years of purchase the gain on sale will be taxable with certain exceptions such as the vendor's main residence. This was extended to five years on 29 March 2018.

Fringe Benefit Tax (FBT) is payable by employers on the value of most non-cash benefits provided to their employees, for example motor vehicles, low interest loans. The FBT rate depends on the marginal tax rate of the employee.

There are no estate or death duties payable in New Zealand.

Allowances

Depreciation

Depreciation can be claimed in respect of the capital assets of a business taxpayer, in calculating the taxpayers' income tax liability. For tax purposes, depreciation is calculated in accordance with prescribed scale rates determined by the Commissioner of Inland Revenue and applied on a diminishing value or straight line. However, not all fixed assets can be depreciated – land is a common example.

In most circumstances a business can choose between the diminishing value and straight line methods of calculating depreciation. The same method does not have to be used for all assets, but whatever method is chosen for an asset, it must be for the full year.

Buildings with a useful life of 50 years or more, cannot be depreciated.

Investment allowance

New Zealand welcomes and encourages overseas investment. However, it does not offer subsidies or tax incentives to encourage investment. Government policy is to keep the fundamentals of the economy sound in the belief that these will give serious investors more confidence than incentives, subsidies or grants.

Tax credits

This area has been covered elsewhere where applicable.

Employment

Social security /Unemployment taxes

There is no compulsory Social Security or Superannuation in New Zealand however there is a voluntary savings scheme called KiwiSaver which is outlined below. Some companies run private schemes for their employees. A specified superannuation contribution is any contribution to a superannuation fund that an employer makes for the employees' benefit.

Any contribution an employer makes to a superannuation fund for the benefit of an employee is liable for Employer Superannuation Contribution Tax (ESCT) and is discussed further below.

Kiwi saver & ESCT

Kiwisaver is a voluntary savings scheme which started on 1 July 2007 and is open to all employees aged between 18 and 65 in a permanent job. The employee can choose whether to contribute 3%, 4% or 8% the gross wage.

All new employees are automatically enrolled and must opt out if they do not want to be a part of the scheme. There are restrictions and conditions as to when the amounts may be withdrawn, but you can choose to take a temporary break from saving, known as a contributions holiday.

The Government matches an employee's contribution by up to $521.43 each year. To get the full member tax credit automatically the employee needs to contribute at least $1,042.86 a year, the employer contributions and government contributions do not count towards this.

If the employee contributes less than $1,042.86 they have the opportunity to make a voluntary contribution to top up their Kiwisaver contribution and ensure the full member tax credit payment from the Government is received.

Employers play an important role in KiwiSaver by deducting the KiwiSaver contributions from the employees pay while also being required to make a compulsory employer contribution equal to 3% of the gross wage for each employee that participates in the KiwiSaver scheme.

Employer contributions are subject to ESCT that must be deducted from all employer superannuation cash contributions at a progressive tax rate, which is based on the marginal individual tax rates of each employee.

The ESCT will not place a financial burden on the employer but will reduce the net contribution that the employee receives from their employer into their KiwiSaver or complying fund account.

Recently the New Zealand and Australian governments have agreed to allow Australian individuals to transfer their superannuation funds to New Zealand if they permanently immigrate to New Zealand.

Employment of foreign personnel

In order to employ foreign nationals in New Zealand for periods up to a maximum of three years, a number of criteria must be satisfied. The employee must have job offer for an occupation on the immediate skill shortage list, from a New Zealand employer who has approval to recruit foreign nationals, or where the employer can prove there are no suitable New Zealand workers available for the job.

A specific purpose or event may be available for applicants where their skills or expertise will benefit New Zealand. The following is required:

- The employee must have sufficient funds to pay for accommodation and meals or alternatively these can be guaranteed by the employer;
- The employee must be in good health and of good character;
- The employee must hold a valid passport; and
- Complete an application form and pay the applicable fee.

Medical

Government funding of health services provides eligible people may receive free inpatient and outpatient public hospital services, subsidies on prescription items and a range of support services for people with disabilities in the community. People eligible for the health service are:

- New Zealand citizens
- New Zealand permanent residents
- Work Permit Holders
- Overseas students funded by certain official programs
- Teachers in the Foreign Language Teaching Assistants Scheme.

General practice visits to doctors, pharmaceutical drugs or medicines are generally free for children under thirteen years old but everyone else who is eligible for publicly funded healthcare pays a co-payment. The cost depends on that particular drug.

General dental care for people over 18 years is not funded. Any person in New Zealand can choose any dentist and receive treatment as a private patient.

The Accident Compensation Corporation (ACC) is a Government agency that provides 24-hour, no-fault personal accident cover for New Zealanders, New Zealand residents who are temporarily overseas, and visitors to New Zealand. Individuals also have the choice of covering themselves with medical insurance which is available in various forms and which covers a wide spectrum of illnesses.

Payroll taxes

There are no payroll taxes for employers.

Withholding Taxes

Interest, royalties and dividends

Subject to certain exemptions, resident withholding tax (RWT) is imposed on interest and dividend income paid by one resident to another unless the recipient holds a valid certificate of exemption. The rate of deduction on interest paid to individuals can be elected as 10.5%, 17.5%, 30% or 33% depending on the individuals' income level. Interest paid to companies must be deducted at a rate of 28%. If no tax file number is provided by the individual a rate of 45% will be imposed.

The RWT deducted is credited against the payee's residual income tax liability for the year. All dividends attract RWT of 33%, however this is reduced by the imputation credits attached to the dividend by the payer.

Dividends, interest and royalties paid by New Zealand residents to non-residents are subject to non-resident withholding tax (NRWT).

The rate of NRWT is 30% in respect of dividends (other than fully imputed non-cash dividends, on which the rate is 0%, and fully imputed or DWP credited cash dividends, in which case it is 15%) and 15% in respect of interest and royalties. As noted above, to the extent that the dividends carry imputation credits, the regime may reduce or eliminate NRWT. Further, NRWT is reduced by virtue of most double tax agreements to a maximum of 15% in respect of dividends and 10% in respect of interest and royalties.

Various other withholdings are required from payments such as directors' fees, honoraria, salespersons' commission and non-resident contractors' fees.

This document is provided by DFK Oswin Griffiths Carlton Limited as a general overview of matters to be considered when setting up an overseas business in New Zealand. It is essential to take advice on specific issues. No liability can be accepted for any action taken or not taken arising from the information provided in this publication.

If you are setting up a business in New Zealand, the members of DFK International can help you to achieve this efficiently. You will receive practical advice on business issues, tailored to meet your objectives, from experienced business advisers.

For further information on the services available from the DFK member firms in New Zealand please see overleaf.

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