ABACONDA MANAGEMENT GROUP

NEW ZEALAND LOOK-THROUGH COMPANIES

ESSENTIAL GUIDE FOR INTERNATIONAL INVESTORS

2011

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New Zealand Look-Through Companies are a pass-through entity, meaning that the incomes or losses of the company are effectively "passed through" to its shareholders. This unique trait creates an excellent tax planning and international business structuring opportunity for overseas residents, as non-New Zealand incomes arising for the company will not be assessable in New Zealand, and will be passed to the foreign shareholders.

Introduction

New Zealand Look-Through Companies (LTC) are the latest business entity introduced into law by the New Zealand government, allowing for tax-free foreign incomes for non-residents.

The government's plan to instate New Zealand LTCs into legislation was revealed on May 20th 2010, in the annual budgetary plan announcement. The necessary regulations were approved and amended, and the entities were promptly codified into New Zealand law, with LTCs coming into existence on April 1st 2011.

LTCs are a pass-through entity, meaning that the incomes or losses of the company are effectively "passed through" to its shareholders. This unique trait creates an excellent tax planning and international business structuring opportunity for overseas residents, as non-New Zealand incomes arising for the company will not be assessable in New Zealand, and will be passed to the foreign shareholders. The New Zealand LTC is the perfect business structure for international investors, wealthy individuals, or multinational businesses looking for a New Zealand-resident entity with no New Zealand tax obligations.

As New Zealand Look-Through Companies are such a recent development for the international tax planning industry, there are still many questions being asked about possible implementation and creation and maintenance of LTCs. This brochure is aimed at being an introduction to LTCs, to guide readers to potential uses for LTCs.

What is a New Zealand Look-Through Companies?

An LTC is a New Zealand company which has elected to pass-through its incomes to shareholders, and is registered as such with the New Zealand Inland Revenue Department. For the most part, an LTC is a regular New Zealand Limited Liability Company. However, under New Zealand regulations the LTC will also be required to:

- be a New Zealand resident for the purposes of tax; and
- have five or less look-through counted owners; and

- have only individuals or trustees shareholders.

There are no restrictions on how, when or where the LTC may conduct its businesses, outside of the obvious adherence to the laws of the jurisdiction it operates. In effect, this means that LTCs are seen in the same light as New Zealand Limited Liability companies, which are repeatedly used for international businesses and tax planning.

LTC are a pass-through entity, meaning that the company itself does not face income taxation, and all of its profits are passed through to the shareholders, in proportion to the number of shares they hold. As the incomes or losses are distributed, they are added to the shareholder's personal income, and taxed accordingly.

As a general conclusion, for the purposes of international tax planning, the shareholders of New Zealand LTCs are not liable to face New Zealand tax obligations on incomes derived overseas and passed-through the New Zealand LTC (Income Tax Act 2007 (BD1, 5,c)).

The shareholders of an existing New Zealand company must all agree for the company to become an LTC, and an appropriate resolution must be passed. The company may then complete an LTC election form, and file it with the IRD

Establishing a New Zealand Look-Through Company

Establishing an LTC follows the same process as forming a New Zealand Limited Liability Company, with the added step of electing to become an LTC.

The shareholders of an existing New Zealand company must all agree for the company to become an LTC, and an appropriate resolution must be passed. The company may then complete an LTC election form, and file it with the IRD. At the moment the IRD requires 3-6 weeks to process an application.

- For an existing and already trading company, the election form must be submitted prior to the start of the financial year in which the business intends to operate as an LTC.
- A new company may elect to operate as an LTC from the onset, and must supply the IRD with an election form prior to the due date for its first income tax return. If the election form is completed and the status is processed in time, the company will be an LTC for all of its trading since its formation.
- Companies which had previously declared themselves as non-active, may become an LTC by filing an LTC election form and a Non-active company reactivation form, prior to the tax return due date for their first active year.

Maintaining a New Zealand Look-Through Company

A company retains its LTC status for the duration of its life, unless the shareholders revoke the election to be an LTC, or the company is disqualified from being an LTC. Changes in shareholding do not require the company to re-file its LTC election, as long as the revised shareholdings do not disqualify the company from holding the LTC status.

As all the shareholders of a company are required to agree to the LTC status, even if one shareholder files a revocation of look-through company election form, then the company will lose its LTC status.

The LTC must file an Income Tax Return with the IRD annually, to indicate the total amount of income and deductions for the company for the income year, along with the incomes for each owner, and a summary of owners' deductions. After the end of each fiscal year the LTC must also submit to the IRD its Financial Statements, which must be provided before June 7th (or before March 31st the following year, if the company utilizes tax extensions granted to its Tax Agent). As the LTC is not taxed at a company level, the shareholders must make indication of their LTC incomes and losses on their own individual tax returns.

Practical aspects of utilizing a New Zealand Look-Through Company

The Look-Through Company is a flow-through entity, meaning that for tax purposes, the incomes of the company are treated as the incomes of its shareholders. This type of entity is also often referred to as *pass-through entities* or *fiscally transparent entities*. The New Zealand LTC allows for a unique international tax planning and wealth management opportunity. In essence, a New Zealand LTC which conducts its activities outside of New Zealand, and has overseas individual (or trustee) shareholders, will not be taxed on its overseas incomes in New Zealand, and all of the company's incomes will be transferred to the shareholders in full, and free of New Zealand taxes.

In essence, a New Zealand LTC which conducts its activities outside of New Zealand, and has overseas individual (or trustee) shareholders, will not be taxed on its overseas incomes in New Zealand, and all of the company's incomes will be transferred to the shareholders in full, and free of New Zealand taxes.

There are no restrictions on the business that an LTC may conduct, outside the typical requirements for compliance with international and New Zealand laws. The LTC is treated similarly to a regular New Zealand company, and may open bank accounts in New Zealand or internationally. As the LTC must comply with the New Zealand tax residents status, it could also enjoy the benefits of the Double Taxation Treaties signed by New Zealand.

Example of use of a New Zealand Look-Through Company

The use of an LTC can be better illustrated well via an example.

Four non-New Zealander individuals decide to form a New Zealand LTC, in order to trade in consumer electronics. The LTC intends for the goods to be brought from a manufacturer in

China, and sold across North America. The company is started with each shareholder holding one quarter of the shares.

The shareholders are tax residents of the British Virgin Islands, Mauritius, Russia and Germany.

Upon formation, the company files an LTC election form, and starts carrying out its intended business. Firstly, a loan is taken to finance the activities, with all shareholders now being jointly and equally responsible for the liability.

Upon the completion of its first year of trading, the company sees a net profit of USD 200 000. The earnings will be dispersed between the shareholders, at the proportion of their shareholdings, with USD 50 000 flowing through to each shareholder. The incomes will not be faced with tax liabilities in New Zealand – not on corporate level, nor on personal level. Each shareholder will be responsible for declaring their part of the income on their individual tax returns in their country of residence, and will be liable to pay their marginal tax rate to their national tax authority.

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- The BVI shareholder will see a 0 percent rate on the income, paying USD 0 in taxes.
- The Russian shareholder will face the country's 13 percent flat-rate personal income tax rate, paying USD 6 500.
- The Mauritius shareholder will be subjected to a tax rate of 15 percent, owing USD 7 500.
- The German taxpayer will face the country's progressive tax rates, and will be liable for approximately USD 10 800 in additional taxation, assuming no other incomes in Germany or across the world.

How we can help

New Zealand LTC is relatively new entity, and it is widely recommended that establishing and maintaining an LTC be assisted by professionals. We are always happy to provide additional information and practical assistance at very competitive rates in regards to New Zealand Look-Through Companies, both in New Zealand and internationally.

Please feel free to contact us with any questions or queries that you might have regarding New Zealand Look-Through Companies.