

NEW ZEALAND TRUSTS AND INTERNATIONAL TAX PLANNING



In the last decade, New Zealand has become an attractive option for the international financial planning community, specifically in regards to high-net worth clients.

The December of 1988 saw a deliberate change on policy by the New Zealand Government, with the expressed interest of ensuring New Zealand's competitiveness in the financial arena and the direct attraction of foreign investors. As such, New Zealand is now able to offer a genuine zero tax regime in certain circumstances and for specific business structures.

With regards to this, New Zealand Foreign Trust could be of particular interest for the international business community and for investors interested in New Zealand.

Despite recent years' publications, New Zealand is not a tax haven or offshore jurisdiction, it never has been nor is it planning to be. New Zealand is a developed Western country and a member of the Commonwealth of Nations, United Nations, World Bank, World Trade Organization, Organization for Economic Co-operation and Development, International Monetary Fund, Asia Pacific Economic Cooperation. New Zealand participating in a number of free trade agreements, of which the most important are the China-New Zealand Free Trade Agreement (the only comprehensive free trade agreement China has entered into with a developed country) and Closer Economic Relations with Australia. It does not face any blacklisting or sanctions by any international regulatory or fiscal bodies.

What is a New Zealand Foreign Trust?

In the simplest terms, a New Zealand Foreign Trust is a legal arrangement whereby a non-New Zealand Settlor may transfer assets, capital etc. to the management of a New Zealand resident Trustee, for the benefit of non-New Zealand Beneficiaries.

Based on Common Law, New Zealand Foreign Trusts are recognized by the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, and provide utilization of most Double Taxation Agreements signed by New Zealand.

A New Zealand Foreign Trust may hold property, trade or operate a business and, by Law, is separated from the Settlor and the Beneficiary.

The relevant provisions in the New Zealand Income Tax Act 2004 are as follows:

- A trust settled by a non-New Zealand resident Settlor with a New Zealand resident Trustee is a "foreign trust" under Section OB 1 of the Act which provides that a "foreign trust":

"means a trust to which both the following apply:

....(b) on each date on which a distribution is made from it, no settler of it has been resident in New Zealand at any time since the later of (i) 17 December 1987; and (ii) the date on which a settlement was first made under its terms."

- A New Zealand resident Trustee may be an individual or a corporate body. However, in most cases the trustee is represented by a Corporate Trustee with at least one New Zealand director. A trust may have any numbers of trustees.

A New Zealand Resident Corporate Trustee of the New Zealand Foreign Trust

According to the regulations applied from 1 October 2006 onwards, in relation to the resident foreign trustee, a "resident foreign trustee" is a person who:

- acts as the trustee of a foreign trust; and
- is a resident of NZ, within the meaning of section OE 1 or section OE2 of the Income Tax Act 2004.

The Trustee must not only be a New Zealand resident but must effectively carry out its functions in New Zealand.

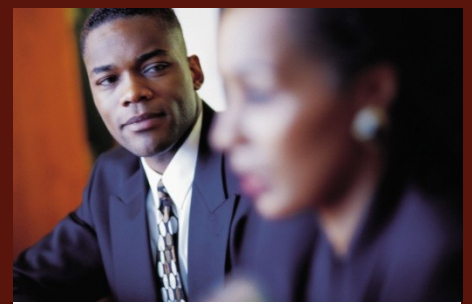
To maximize trust asset security the usage of a Corporate Trustee could be the preferred option.

Such a Trustee Company can be formed by a non-New Zealand resident and be wholly foreign owned, but, at least one of the Trustee Company directors has to be a New Zealand Resident Director.

A Trustee Company is required to file annual returns with the Inland Revenue Department and pay New Zealand taxes on its own operational income. Depending on circumstances, a Trustee Company may have certain filing obligation with the New Zealand Companies Office.

A Trustee Company must comply with New Zealand law, with particular relevance in:

- the activity of the New Zealand Resident Trustee may be restricted by the New Zealand source rules,
- settlement of assets on the Foreign Trust must be carried out outside of New Zealand,
- in terms of New Zealand's Financial Transactions Reporting Act 1996 'know-your-client' and reporting obligations apply to a New Zealand Resident Trustee.



What is the primary benefit of a New Zealand Foreign Trust?

1. New Zealand Foreign Trust is that all of its non-New Zealand sourced incomes are not liable for any tax payments, and are effectively considered "tax neutral".
2. Based on its Financial Statements, the New Zealand Foreign Trust can freely distribute capital, assets, etc, to its Beneficiaries in any jurisdictions.
3. While appointing Trustees for the New Zealand Foreign Trust, the Settlor can delegate different roles to different Trustees. In some situations, some Settlers may choose to be one of the Trustees in the Trust.
4. New Zealand Foreign Trust can be used as independent business entities, for trading activity, investment, property and asset holding.
5. A New Zealand resident corporate Trustee may stand as a frontline representative in any commercial operation on behalf of the Trust. In some situations, the Settlor may choose appoint his own corporate New Zealand resident Trustee.

Taxation of a New Zealand Foreign Trust

Non-New Zealand sourced income derived by the trust through the Trustee Company (acting as trustee on behalf of the trust) is not taxable in New Zealand.

Non-New Zealand resident beneficiaries are not subject to New Zealand tax on non-New Zealand source income distributed from the Trust.

In addition, there are no capital gains taxes, inheritance taxes or forced heirship in the New Zealand taxation legislation.

However, any income earned by the NZ Foreign Trust within New Zealand, is subject to New Zealand taxation. Additionally, if the Trustee Company receives a fixed fee for acting as the Trustee, then the company will need to pay tax on that income.

Be aware that there are a number of qualifications to the above statements, but they do generalize the main taxation concepts of the New Zealand Foreign Trust.

The New Zealand Foreign Trust may be used on its own or in conjunction with one of New Zealand's International Double Tax Agreements. In this case, if the withholding tax has been paid in the country of origin on dividends, interest and royalties received, no further taxes payable are due. The net investment income can be transferred to any other destination from New Zealand without taxes.

It must be taken into account that, in the view of New Zealand Law, a trust with the primary purpose of the obtaining of a tax benefit is considered to be an artificial arrangement.

New Zealand Foreign Trust Structure

The Settlor – is the person/corporate entity, who establishes the Trust by putting assets to settle in the Trust. The Settlor for a New Zealand Foreign Trust must be a Non-New Zealand Resident.

The Trustee – is the New Zealand resident Trustee Company (or New Zealand resident person). The Trustee Company acts for the Trust and derives its income by managing Trust's assets and investments, or by conducting business on behalf of the Trust. All such income is attributable to the Trust, and non-New Zealand sourced incomes are not taxable in New Zealand.

The Appointor – is a nominated person, a Non-New Zealand Resident has the power, under the Trust Deed, to remove and replace the Trustee(s).

The Beneficiary – the individual/corporate entity that are a Non-Residents of New Zealand.

In other words, New Zealand Foreign Trust is a legal arrangement governed by New Zealand legislation, entered into by a non-resident Settlor and a New Zealand resident Trustee for the benefit of a non-resident Beneficiary, specified by the Settlor. There can be any number of Settlers and Beneficiaries, all who must be non-residents of New Zealand. There can be any number of Trustees and at least one of them must be a resident of New Zealand (private or corporate).

All assets and investments settled into the Trust usually held through the Trustee Company. The income derived by the Trust could be accumulated within the Trust or distributed to its Beneficiaries. It's possible for the Trustee Company to carry on any business and any transactions on behalf of the Trust, providing that proper authorization is completed by the Trust, and in most cases the Trustee Company will receive fixed fee for acting as a Trustee.



New Zealand

New Zealand is an island nation located 2000 kilometers south-east of Australia. It is comprised of two primary landmasses, known as the North and South Islands, and a significant number of smaller islands. The largest city in New Zealand is Auckland, in the top half of the North Island, while the capital, Wellington, lies in the Southern tip of the northern island. The land mass of New Zealand consists of 368,680 square kilometers, making it the 75th biggest nation in the world and covers 0.18% of the world's surface.

New Zealand Gross Domestic Product per capita is \$30,234, comparable to Hong Kong, Italy and Spain. The total GDP for the nation is USD\$128.1 billion. As a country that exports nearly a quarter of its annual output, New Zealand is heavily dependent on trade. Subsequently New Zealand holds a number of Free-Trade Agreements such as the Trans Pacific Economic Partnership between New Zealand, Singapore, Chile and Brunei, there are talks of Australia, Peru and the United States joining also. Along with Australia, New Zealand holds free trade deals with Vietnam, Thailand, Singapore, Philippines, Myanmar, Malaysia, Laos, Indonesia, Cambodia, Brunei Darussalam, as the nations of The Association of Southeast Asian Nations. New Zealand is also a respected member of APEC.

New Zealand is a developed country in all understandings of the term. The banking, economic and infrastructure system ranks amongst the best in the world. New Zealand has a thorough, complete and tested set of laws relating to its economic system, along with its own perks and unique features like New Zealand Foreign Trusts.



Confidentiality and Record Keeping

Under Section 59B of Taxation (Depreciation, Payment Dates Alignment, FBT and Miscellaneous Provisions) Act 2006, a New Zealand Resident Trustee of a Foreign Trust is required to disclose limited certain information to the Inland Revenue Department (IRD).

Under the requirements, the following information must be disclosed to the IRD within thirty days of the formation of the Trust:

- a) Particulars which can be used in the identification of the trust, e.g. its name and the date of settlement;
- b) The New Zealand resident Trustees' name and contact details;
- c) Residential status of the Settlor in Australia; and
- d) Whether the Trustee lays claim to being a "qualifying resident foreign Trustee", and if yes then:
 - The name of the approved organization of which the Trustee is a member, and
 - In the case that the Trustee is not a natural person, the contact information for the director or other persons who holds membership of an approved organization.

Also, the IRD must be notified to any changes to the above within 30 days of the trustee(s) becoming aware of such changes.

Under current New Zealand legislation it is specified which financial and other records relating to the trust for New Zealand tax purposes have to be kept in New Zealand by the Resident Trustee of Foreign Trusts. The following records must be kept in New Zealand to ascertain the Trust's financial position:

- a) Documentary evidence that proves the creation and constitution of the Trust (e.g. deed or similar);
- b) Details of all settlements and distributions made by or on the Trust, the information must include the date, name and address of the Settlor or recipient;

c) Records of:

- The Trust's assets and liabilities;
- Particulars of all moneys spent or received by the trustee with relation to the Trust, including evidence of the transactions;
- If business is executed by the Trust then detailed descriptions of the accounting systems utilized must also be provided.

Further, Section 143A of Taxation (Depreciation, Payment Dates Alignment, FBT and Miscellaneous Provisions) Act 2006, defines sanctions for non-compliances.

It is required that a New Zealand Resident Trustee complies with the above regulations. If they knowingly do not comply, then the IRD may prosecute the trustee, and in the case of successful conviction, the trustee will be subject to a monetary fine and/or imprisonment. Furthermore, New Zealand income tax will be subjected onto the worldwide income of the trust until the information is provided to the IRD, unless the New Zealand resident trustee is a Qualifying Trustee, in which case, non-compliance penalization will only be imposed on the trustee.

How we can assist you

As your authorized accountants and registered tax agents, Abaconda Management Group's services include:

- Accounting and taxation service
- New Zealand Foreign Trust Formation
- Taking on the role of a New Zealand Resident Trustee of Foreign Trusts.
- Incorporation and administration of a New Zealand Trustee company in the case that the client does not wish for AMG to act as their trustee. In this instance, AMG can provide a non-executive resident director.

How we to form a New Zealand Foreign Trust with Abaconda Management Group.

We would be happy to provide you with New Zealand Foreign Trust formation, administration, accounting and taxation. With the help of our sister company AMG Trustee Services Limited, we can provide you with a fully featured, professional resident trustee services and consultations.

Please be sure that we keep our prices range as one of the most competitive in the industry, with our basic New Zealand Foreign Trust services starting at USD 500.00. We are always happy to provide additional assistance, as necessary, to intermediaries and professional clientele.



Legal Disclaimer

Neither this brochure nor our website provides neither tax, nor legal or accounting advice. Please do not confuse the information given in our brochures, websites and communications with a professional consultation. Further, this brochure should not be construed as a solicitation or offering of company formation or any other service of Abaconda Management Group Ltd.

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