

NEW ZEALAND TRUSTS: Separation of Trustee Powers



ABACONDA MANAGEMENT GROUP

The Wisdom of New Zealand Business



New Zealand Foreign Trust

Powerful tool for wealth, portfolio, equity, real estate, pension or hedge fund management

New Zealand's reputation as an international trust jurisdiction is currently undergoing a significant upwards shift in popularity, with individuals and business entities across the world coming to realize the distinct benefits of New Zealand trust law.

New Zealand trust legislation provides a unique and effective mechanism that, when appropriately utilized, can provide an efficient vehicle for worldwide wealth, portfolio, equity, real estate or hedge fund management. Quite often in international practice trusts have only one trustee. In a situation with several trustees, the trust laws in most jurisdictions do not allow for the delegation of tasks between the trustees. In some situations this lack of flexibility could quickly become a cumbersome obstacle for intricate business arrangements. However, under New Zealand's legislation, the separation of power and responsibilities between the trustees is allowed by designating predetermined roles to various trustees.

No New Zealand tax liability on overseas incomes

Further, if the trust is established as a New Zealand Foreign Trust (NZFT), then its non-New Zealand sourced incomes will not be taxed in New Zealand.

To qualify as a NZFT, the following conditions must be met:

- § The Settlor must be a non-New Zealand resident.
- § The Beneficiary must be a non-New Zealand resident.
- § The Trustee must be a New Zealand resident (in the cases of a NZFT containing several trustees, at least one trustee must be a New Zealand resident and effectively operate Trust's affairs from within New Zealand).

Separation of Trustee Powers

As we mentioned previously, New Zealand legislation allows for the delegation of specific roles among the trustees. With several trustees, rather than requiring the each trustees to carry out all the duties inherent within the trust, the Trustee Act 1956 allows for the separation of power and responsibilities within the Trust between:

- § Custodian Trustees,
- § Managing Trustees,
- § Advisory Trustees.

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- § INTERNATIONAL WEALTH MANAGEMENT VEHICLE
- § SEPERATION OF TRUSTEE FUNCTIONS
- § TAX EXEMPT ON ALL NON-NEW ZEALAND INCOMES
- § HIGH LEVEL OF CONTROL
- § COMPLETE CONTROL OF TRUST ASSETS

CUSTODIAN TRUSTEE

The Custodian Trustee is responsible for getting in the trust's assets, along with holding and disposing them.

MANAGING TRUSTEE

The Managing Trustee manages the assets of the trust, through binding directives issued to the Custodian Trustee.

ADVISORY TRUSTEE

The Advisory Trustee is charged by the Settlor to oversee the trust, and advise the Managing Trustee on actions and decisions, in the best interest of the Trust.



The **Custodian Trustee** is responsible for getting in and holding the trust assets and disposing of the assets. The Trustee may receive directions from the Managing Trustee and will be **bound to carry out** the directives. However, the Custodian Trustee **cannot be held liable** for any results arising from the directed actions.

The **Managing Trustee** is responsible for management of the Trust's assets, decision over the assets and exercise of power over the assets. The Managing Trustee supersedes the Custodian Trustee in regards to control over the assets. The Managing Trustee **may receive no-binding advice** from the Advisory Trustee, which may be fulfilled, although this is no legal requirement to do so. If the Managing Trustee does choose to act on the advice, **no liability arises** from the subsequent results and acts.

The **Advisory Trustee** is an entity or person, who is entrusted by the Settlor to render advice to the Managing Trustee in the best interests of the Trust.

Additionally, each role may be sub-divided further, allowing, for example, the Trust to have two Custodian Trustees to oversee different sets of assets. Similarly, different (or new) Advisory and Managing Trustees can be delegated to certain projects, funds or assets.

In most cases the Custodian Trustee is chosen to be the New Zealand resident trustee, which also verifies the New Zealand tax exemption status for the particular NZFT managed by that trustee. The Managing and Advisory Trustees could also be New Zealand residents, but for the sake of flexibility, may be located in any other jurisdictions chosen by the Settlor.

The trust regulations, which allow for the specification of trustee roles, have come to be colloquially regarded as a "remote control" provisions and can serve as an indispensable tool for international wealth, portfolio, equity, real estate or hedge fund managers. An appropriately structured NZFT can provide greater flexibility, security and control for the future affairs of the trust and well-being of Trust's Beneficiaries. Additionally, the Settlor(s) can appoint their own entities for the roles of the Custodian Trustee, Managing Trustee or Advisory Trustee, or even take one of the roles themselves.





New Zealand Foreign Trust

- § ASSETS HELD BY CUSTODIAN TRUSTEE
- § CUSTODIAN TRUSTEE DIRECTED BY
MANAGING TRUSTEE
- § MANAGING TRUSTEE ADVISED BY ADVISORY
TRUSTEE
- § ADVISORY TRUSTEE APPOINTED BY SETTLOR

An example

The possibilities are best illustrated via an example, which can highlight the unique trustee responsibility separation feature of a tax-exempt New Zealand Foreign Trust.

A NZFT could be formed, whereby the Custodian Trustee is a New Zealand registered trustee company which is entrusted with a portfolio of real estate investments in Italy.

The Custodian Trustee will take binding directions from the Managing Trustee, a company, for example's sake, from the Isle of Man. This company may be registered by the Settlor or they may choose the professional trustee there.

The Managing Trustee will receive non-binding advice from the Advisory Trustee, who acts with the best interest of the Settlor and Beneficiary in mind. The Advisory Trustee could be a third company, registered, for example, in Switzerland. This company may be registered by the Settlor or they may choose the professional trustee there.

*From an **outsider perspective** the entirety of the real estate portfolio is "owned" by the New Zealand Company. However, the Advisory Trustee still retains full and absolute directional control of the investment, through the Managing Trustee.*

It must be noted that New Zealand legislation does not mandate a maximum number of trustees (although every trust is required to have at least one trustee and NZFT requires at least one resident trustee). A NZFT can operate with any combination of trustee roles, depending on the particular situation.

Further, if the trust is established as a New Zealand Foreign Trust (NZFT), then its non-New Zealand sourced incomes will be treated with tax "neutrality" by New Zealand tax authority on **all of its non-New Zealand sourced incomes**. Further, a non-New Zealand resident beneficiary will not be taxed on distributions received from such a trust.

Additionally, New Zealand does not have any inheritance taxes, wealth levies, capital gains taxes, stamp duties, or consumption taxes (on overseas income), or any taxes on transfer of fund and assets to and from the trust. There is also no set minimum amount that must be held by the trust and Settlor can add any amount of funds to the Trust at any moment. There are also no legal requirements on the amount or timings of distributions to the beneficiary.

The disclosure requirement for NZFT is very limited and only the Trust's name, date of Deed and the residential Trustee's name must be disclosed to the New Zealand Inland Revenue Department.

No taxes on non-New Zealand income

High level of Control and Protection

Worldwide coverage

Flexible structure

The information and examples provided here are indicative only and must not be treated as professional advice.

NZFTs are not required to be established exactly as described here and can be tailored to best suit a particular situation.

We would be happy to provide you with further information on NZFTs, and discuss your particular trust requirements along with how we could assist you in establishing the optimal trust structure for your business.



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