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New Zealand: Law & Practice and Trends & Developments

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NEW ZEALAND

Law and Practice

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Contents

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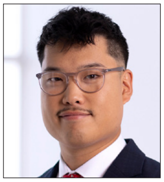

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1. Types of Business Entities, Their Residence and Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

Companies are generally the most common business structure in New Zealand. This is due to the simplicity of operation and governance, limited liability for shareholders and the business community's familiarity with companies.

However, the choice of legal entity and funding structure is often based on a combination of commercial and tax-related factors, such as:

- whether limited liability is provided;
- ease of contracting;
- the ability to raise capital;
- the tax preferences of investors; or
- applicable tax rates.

In addition to companies, general partnerships and limited partnerships are often used for co-investment transactions and in certain sectors, such as project-based joint ventures and significant investment in infrastructure assets. Smaller businesses may utilise a sole proprietor model or a company.

Companies

A limited liability company incorporated in New Zealand under the Companies Act 1993 (NZ) (Companies Act) is a legal entity in its own right and has a legal existence separate from that of its shareholders. In general, subject to the company's constitution, a shareholder of a company has liability limited to the amount of that shareholder's capital contribution.

A New Zealand incorporated company is taxed as a separate legal entity from its shareholders at a flat rate of 28%. New Zealand has an imputation system whereby tax paid at the corporate level can be *"imputed"* to shareholders by attaching credits to dividends.

General and Limited Partnerships

Both general partnerships and limited partnerships are commonly adopted business structures in New Zealand. A limited partnership is a separate legal person under New Zealand law, whereas a general partnership is not.

The liability of partners is unlimited for a general partnership, with each partner being jointly liable with the other partners for the debts and obligations of the partnership business.

A limited partnership requires at least one general partner and one limited partner. A limited partnership's general partners have unlimited liability. Each general partner is jointly and severally liable with the limited partnership itself and the other general partners for any unpaid liabilities of the limited partnership.

A limited partner of a limited partnership is not liable for the unpaid liabilities of the limited partnership, provided that the partner does not take part in the management of the limited partnership.

A partnership (general or limited) is not taxed as a separate legal entity. Instead, partnerships are fiscally transparent for New Zealand income tax purposes.

While transparent for income tax purposes, a limited partnership is legally a separate entity from its limited partners. It is therefore often an attractive business or investment vehicle from a commercial perspective, given the dual benefit of limitation of liability for investors and income tax transparency. From a tax perspective, a limited partnership allows investors to attend to their own tax position and provides a favourable option for investors with special tax characteristics (such as non-residents or entities taxed at a rate lower than the 28% company rate). Limited partnerships also facilitate access to tax losses for investors that might otherwise be *"trapped"* in a corporate structure.

It should be noted that partnerships are not transparent for New Zealand goods and services tax (GST) purposes.

Sole Proprietorships

A sole proprietorship is a business operated by an individual in their own legal capacity. As a sole proprietorship is not a separate legal entity, the owner has unlimited liability and is therefore personally liable for all debts of the business. This also means that any income derived by the sole proprietorship will be taxed in the hands of the proprietor in accordance with their marginal individual tax rate.

Look-Through Companies

A look-through company (LTC) is a standard New Zealand company that has elected to be transparent for income tax purposes. Accordingly, while an LTC is a separate legal entity under the Companies Act, for income tax purposes it is treated like a partnership and is fiscally transparent. This enables a small business to trade with limited liability but to have profits and losses taxed directly to the owners.

Income tax transparency means that the company's shareholders must pay tax on the LTC's profits directly, but similarly can offset the LTC's expenses or losses against their other income. Because of this favourable tax treatment, a company can only elect to be an LTC if, amongst other things, it has no more than five shareholders, who must be either natural persons, trustees or other LTCs.

1.2 Transparent Entities

The three types of transparent entities commonly used in New Zealand business are:

- general partnerships;
- limited partnerships; and
- LTCs.

General partnerships are a key type of transparent entity commonly used for certain businesses in New Zealand. The transparent nature allows for income to be taxed in accordance with each partner's own tax profile and avoids the extra layer of tax if (for example) a company was used instead. Partnerships are commonly used by professional services firms and in the agriculture and horticulture industries.

Limited partnerships are frequently used in New Zealand in a commercial context, particularly for co-investment arrangements (including private equity) and for development or infrastructure projects that possess a significant element of risk and are capital intensive. This is primarily because the limited partnership structure provides for the limitation of liability but is fiscally transparent for income tax purposes. This largely enables investors or limited partners to attend to their own tax affairs, having regard to their own particular commercial circumstances.

LTCs are fiscally transparent companies that are designed as a policy matter to reduce the impact of tax on a decision for a small business to incorporate. LTCs are similar to limited partnerships in the sense that liability is limited for owners or investors, and income tax is dealt with on *"flow-through"* basis. However, the LTC rules are targeted more towards closely held companies and are seen as being particularly useful for small start-up businesses, where it is considered likely that the new company will initially make a loss.

1.3 Determining Residence of Incorporated Businesses

Companies

Under the Income Tax Act 2007 (NZ) (Income Tax Act), a company will be deemed to be a New Zealand tax resident if:

- it is incorporated in New Zealand;
- its head office is in New Zealand;
- its head of management is in New Zealand; or
- its directors, in their capacity as directors, exercise control of the company in New Zealand (even if directors' decision-making also occurs outside New Zealand).

Where a company is deemed to be a tax resident in both New Zealand and another country with which New Zealand has a double tax agreement (DTA), the residence of the company will be established in accordance with the relevant DTA. New Zealand's DTAs generally contain a tie-breaker test to make this determination (in most cases being the *"place of effective management"* test). DTAs subject to the OECD Multilateral Convention to Implement Tax Treaty Related Measures To Prevent Base Erosion and Profit Shifting (MLI) do not contain a conventional tie-breaker test, with the residence of a dual resident entity instead being determined via mutual agreement between the competing jurisdictions.

General and Limited Partnerships

As partnerships are not separate taxpayers for income tax purposes, a partnership cannot of itself be *"resident"* or *"non-resident"* for New Zealand income tax purposes. Instead, the tax residence of the partners is determinative for ascertaining the New Zealand income tax liabilities of the partners. Each partner is separately assessed and there is no joint partnership assessment (although a joint return is filed for administrative purposes).

Where a partner is an individual, that individual will be deemed to be a New Zealand tax resident if they satisfy the residency tests for an individual (outlined below). Where a partner is a company, tax residency is determined using the residency tests for a company (outlined above).

Certain DTAs to which New Zealand is a party (including DTAs that are subject to the MLI) have provisions that specify when income derived by, or through, a fiscally transparent person may qualify for treaty benefits.

Sole Proprietorships

As income derived from a sole proprietorship is taxed in the hands of the individual, it is the residency status of the individual which is relevant. Generally, an individual will be deemed to be a New Zealand tax resident if they:

- have *"permanent place of abode"* in New Zealand; or
- are personally present in New Zealand for more than 183 days in total in a 12-month period.

Look-Through Companies

LTCs are transparent and akin to partnerships for income tax purposes. This means it is the tax residence of the owners or shareholders which is determinative for the purposes of ascertaining the New Zealand tax liability.

1.4 Tax Rates

Companies

Companies are taxed at a flat rate of 28%. New Zealand does not have variable corporate tax rates for corporates with particular levels of assets or turnover.

New Zealand's imputation credit regime means that income tax paid at the company level may be *"imputed"* to shareholders by attaching credits to dividends. The imputation rules derive from the tax policy that a company is taxed as a proxy for its shareholders. The rules address the double taxation that would otherwise occur when profits earned by a company are taxed and those profits are then subsequently used by the company to pay taxable dividends to shareholders.

General and Limited Partnerships

Partnerships are treated as transparent for income tax purposes, meaning income derived by a partnership flows through to its partners (in proportion to their partnership interests). Therefore, the income tax rate for income derived by a partnership will be determined in accordance with how each partner is taxed in its own right. For this reason, partnership structures are often used where investors have different tax profiles (for example, non-residents not subject to tax under a DTA, or tax-exempt or lower tax entities).

Sole Proprietorships

As income derived from a sole proprietorship is taxed directly to the individual, the income tax rate will depend on the individual's marginal tax rate. Individuals are subject to taxation at progressive marginal tax rates, with the prevailing maximum rate being 39% (for income in excess of NZD180,000).

Look-Through Companies

LTCs are treated akin to partnerships for income tax purposes. This means that the income tax rate for income derived by an LTC will be determined in accordance with how each shareholder is taxed in its own right.

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation for Taxable Profits

For companies, New Zealand income tax is levied on taxable income, being a company's net income minus any available tax losses.

Net income is determined by subtracting annual total deductions from annual gross income. Available tax losses may comprise any tax losses of the company carried forward from prior income years or tax losses able to be offset from other companies in the same corporate group. The resulting net amount is the taxable income.

Common with other jurisdictions, this may differ from a taxpayer's accounting or financial reporting profit as adjustments may be required for exempt or excluded income and non-deductible expenses. However, financial reporting standards are relevant for certain rules in the Income Tax Act regarding the recognition of income or expenditure, including New Zealand's financial arrangements rules applicable to debt instruments (amongst other financial arrangements).

In general, income will be allocated to the income year in which the amount is derived. However, specific provisions or timing rules of the Income Tax Act may require the adoption of a particular method for recognising the derivation of income and expenditure.

2.2 Special Incentives for Technology Investments

Research and Development

The Income Tax Act contains rules providing for research and development (R&D) tax credits. The legislative policy is to provide a tax credit as an incentive to a person for performing or contracting for the performance of activities to create new knowledge or new or improved processes, services or goods.

A 15% tax credit in respect of eligible R&D expenditure is available to businesses undertaking eligible R&D activities in New Zealand. The relevant expenditure must have a sufficient connection with the prescribed R&D activity, and must be *"required for"* and *"integral to"* such activity.

A person who is entitled to an R&D tax credit must file an R&D supplementary return for a tax year. Where an R&D tax credit is available, it can be used to satisfy a person's income tax liability.

To the extent they have remaining R&D tax credits after the satisfaction of their income tax liability, a person may be able to obtain a refund of the credit in certain cases, or can otherwise carry the credits forward to a subsequent income year. Where a company is seeking to carry forward R&D tax credits, it must satisfy the 49% shareholder continuity requirements that are essentially equivalent to those restricting the ability to carry forward tax losses. In addition to the shareholder continuity requirement, as is the case with tax losses where a continuity breach occurs, the R&D tax credits may nevertheless be carried forward if there is no major change for a period in the nature of the business activities of the company following the breach.

2.3 Other Special Incentives

New Zealand does not have any other special tax incentives for corporate investment in particular industries or business sectors, nor for particular classes of taxpayers.

2.4 Basic Rules on Loss Relief

Carrying Tax Losses Forward

Under the Income Tax Act, a company may carry forward any unused tax losses to a subsequent income year if certain shareholding continuity tests are satisfied. A tax loss may be carried forward and offset against net income in a subsequent income year if at least 49% of the company's voting interests (or market value interests) are held by the same persons. Market value interests are essentially a person's total market value of shares and share options in a company, and become relevant where substantive control or economic interests in a company may not be fully represented by voting interests.

Despite a breach of this ownership continuity test, a company may still be eligible to carry forward its unused tax losses in circumstances where there has been no major change in the nature of the business activities carried on by the company. This alternative test was introduced in 2020 as part of the government's COVID-19 relief measures. Despite the introduction of this alternative *"business continuity"* test, value is seldom attributed to tax losses in the M&A context where the transaction would result in a breach of the ownership continuity test. This is because of the largely subjective and untested nature of the *"business continuity"* test.

A company's unused tax losses may also be made available to another company in circumstances where a group of persons holds common voting interests (or market value interests) of at least 66% in respect of each company over the applicable *"continuity period"*.

Carry Back of Tax Losses

As part of the COVID-19 relief measures, the government also enacted a temporary loss carry back scheme for the 2020 and 2021 years. However, this is no longer applicable and New Zealand does not have any general rules that allow for the carrying back of income tax losses.

2.5 Imposed Limits on Deduction of Interest

As a general rule, the Income Tax Act allows most companies (other than qualifying companies and LTCs) to deduct interest expenditure regardless of whether it is incurred in deriving assessable income or relates to capital expenditure.

New Zealand has a global interest deductibility test for companies, such that there is no requirement for a nexus with the derivation of gross income. The purpose of this global approach to interest deductibility is that the use of the particular funds borrowed should be irrelevant to the question of deductibility – a deduction is available anyway. Interest deductions for corporates are limited under New Zealand's interest deductibility rules, not by reference to the use of the borrowed funds, but via the detailed thin capitalisation and transfer pricing regimes.

This ability for companies to automatically deduct interest does not, however, extend to interest expenditure that is related to certain mixed-use assets.

The deductibility of interest expenditure that is incurred in relation to residential rental properties was previously limited, but this will be fully restored by April 2025.

2.6 Basic Rules on Consolidated Tax Grouping

Two or more companies that have 100% common ownership may elect into New Zealand's consolidated group regime, under which companies that form a consolidated group are treated as a single entity for tax purposes and are jointly and severally liable for the entire group's tax. If an election is made, it is not mandatory for all companies that are 100% commonly owned to be members of the consolidated group; the consolidated group will comprise only those companies that elect to be members of the group.

Subject to certain requirements, companies within a wholly owned group may also elect to form an imputation group, under which the imputation regime applies to the companies on a group basis. It should be noted that imputation groups may consist of entirely New Zealand companies, entirely Australian companies, or a mixture of both.

There is also a similar regime for New Zealand GST. Two or more companies that have 66% common ownership may also register for GST as a group. The group will be treated as a single entity for GST purposes and must choose one GST-registered member to be its representative.

2.7 Capital Gains Taxation

New Zealand does not have a comprehensive capital gains tax regime. However, there are deeming rules that may apply to treat certain receipts as income that would otherwise conventionally be regarded as capital in nature (including, for example, in relation to various real estate transactions).

One such rule is the so-called *"bright-line test"* applicable to the sale of certain residential property. A gain made in circumstances where a residential property (other than a person's principal residence) is bought and sold within the bright-line period is deemed to be income even if it would otherwise be a capital gain. The bright-line period has recently been reduced to two years (from the previous period of ten years).

For New Zealand tax purposes, any capital gains derived by a company are generally only able to be distributed to shareholders in a tax-free form if the relevant company is liquidated. The risk otherwise is that the distribution is treated as a taxable dividend.

With no general tax on capital receipts, New Zealand also limits the deductibility of capital expenditure. The distinction between capital and revenue expenditure is primarily determined through tests developed under case law.

2.8 Other Taxes Payable by an Incorporated Business

In addition to its income tax regime, New Zealand also imposes a broad-based value-added tax on the supply of all goods and services in New Zealand, referred to as GST, at the rate of 15%. Certain transactions (including exported goods and services and sales of land between GST registered persons) are zero-rated for GST purposes. Supplies of financial services and residential accommodation are treated as exempt supplies and are therefore not subject to GST.

New Zealand does not have stamp duty or any other transaction taxes.

2.9 Incorporated Businesses and Notable Taxes

Although companies in New Zealand will not be subject to any other notable New Zealand taxes (other than income tax and GST), there are certain specific regimes that apply within this framework. These include the employment tax collection regimes (pay as you earn) and the fringe benefit tax that applies in respect of non-cash benefits provided to employees. These regimes require separate registration and impose reporting and withholding or tax payment obligations on employers.

3. Division of Tax Base Between Corporations and Non-Corporate Businesses

3.1 Closely Held Local Businesses

Most businesses in New Zealand adopt the form of a company. According to the New Zealand Companies Office, there were more than 733,000 incorporated companies in New Zealand as of 31 December 2024. Companies that meet certain requirements (including having no more than five shareholders) may elect into the LTC rules to enable tax transparency.

3.2 Individual Rates and Corporate Rates

There is a difference in New Zealand between the corporate tax rate (28%) and the top marginal individual tax rate (39%).

Individual professionals are entitled to determine the trading structure of their business, including whether to use a company or to trade as a partnership or in their own name. However, in doing so, such individuals must consider the general anti-avoidance provision found in New Zealand's Income Tax Act (see **7.1 Overarching Anti-Avoidance Provisions**). This is an issue that has been considered by the courts, and case law outlines how New Zealand's general anti-avoidance provision should be interpreted in light of individual professionals structuring their businesses to gain a tax advantage.

If an arrangement to derive income utilising a company structure has tax avoidance as its purpose or effect, it will be considered void as against the Commissioner, who may act to counteract any tax advantage obtained from or under such an arrangement.

New Zealand also has a specific anti-avoidance provision which, subject to certain thresholds, operates to attribute income from personal services to a person in circumstances where an associated entity of that person contracts with a third party to provide services and those services are performed by that person. Essentially, this is designed to ensure that the relevant person cannot interpose a company between themselves and the third party with which they are contracting to reduce their tax liability.

3.3 Accumulating Earnings for Investment Purposes

There are no specific rules in the Income Tax Act that prevent the accumulation of earnings by closely held companies for investment purposes or otherwise.

3.4 Sales of Shares by Individuals in Closely Held Corporations

Receipt of Dividends

New Zealand's Income Tax Act provides that a dividend paid by a New Zealand resident company to an individual is income of that individual, which means that any dividend derived by an individual will be taxed at that individual's marginal tax rate (as discussed in **1.4 Tax Rates**). This tax may be imposed and collected via New Zealand's resident withholding tax rules.

New Zealand has an imputation regime that is designed to eliminate the double taxation of corporate earnings that are subsequently distributed to a company's shareholders. Imputation credits arise when a company pays tax on its income at 28%. The company can then attach up to NZD0.28 of imputation credits to each NZD0.72 of cash dividend it pays to its shareholders, to avoid double taxation. The shareholder can then use these imputation credits to offset their tax liability.

This means that, where a dividend is fully imputed, the company's earnings (being taxed at the company level and then again in the hands of the shareholder) will ultimately be taxed at the shareholder's personal marginal tax rate. A dividend of NZD100 (being NZD72 cash and NZD28 imputation credits) may give rise to an individual tax liability of NZD39, which the individual can satisfy to the extent of NZD28 using the imputation credits.

Gain on Sale of Shares

Shares held by an individual shareholder in a closely held company will generally be held on capital account, which means that the sale of those shares will give rise to a non-taxable capital gain. However, in certain circumstances (for example, where a shareholder is in the business of dealing in shares or acquired the shares for the dominant purpose of disposal), any gains made on the sale of shares may be deemed to be income and taxed accordingly at the shareholder's marginal tax rate.

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

New Zealand makes no distinction as to how individuals are taxed on dividends from closely held companies or publicly traded companies. The same can be said regarding gains made on the sale of shares (see **3.4 Sales of Shares by Individuals in Closely Held Corporations**).

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

New Zealand has the following withholding taxes that apply to returns on inbound investment.

Interest

Subject to certain exceptions, interest that is paid to non-residents will generally be subject to withholding tax at 15%, although this may be reduced to 10% under an applicable DTA.

New Zealand does not have a general exemption from interest withholding tax for widely held debt. There is, however, an option for borrowers to reduce the withholding tax rate on interest paid to non-resident lenders to 0% by making certain registrations and paying a levy (known as the approved issuer levy, or AIL). A borrower will generally be eligible for this in respect of interest paid to a lender that is not associated with the borrower. The AIL regime is intended to reduce the burden on New Zealand borrowers of having to *"gross up"* interest paid to non-resident lenders for New Zealand non-resident withholding tax.

The AIL applies at the rate of 2% of the gross amount of interest paid. It is payable by the borrower and is imposed as a levy rather than as a tax. Accordingly, it is unlikely to be creditable against foreign tax payable by the lender on its New Zealand interest income.

Dividends

Dividends paid to non-residents are generally subject to non-resident withholding tax at a rate of 15% (to the extent fully imputed) or 30%, subject to the availability of tax treaty relief. However, the rate of non-resident withholding tax for such dividends may be reduced to 0% where the dividend is fully imputed and where the recipient has a 10% or greater direct voting interest in the payer.

The withholding tax rates for dividends described above are generally capped at 15% in the case of persons resident in a country with which New Zealand has a DTA. Lower dividend withholding tax rates (typically 5% or in some cases 0%) apply under certain of New Zealand's DTAs, including those with Australia, Canada, China, Hong Kong, Japan, Mexico, Samoa, Singapore, Turkey, the United States and Vietnam. The lower rates are available for dividends paid to a shareholder that is a company meeting relevant minimum ownership requirements and certain other criteria.

Royalties

For royalties paid to non-residents, the rate of withholding tax imposed under domestic law is also 15%. Again, however, this rate may be reduced to 10% under an applicable DTA. In some of New Zealand's more recently negotiated DTAs, the rate in respect of royalties may be further reduced to 5%.

4.2 Primary Tax Treaty Countries

The framework of New Zealand's DTAs generally follows that of the OECD Model Tax Convention.

New Zealand currently has 41 DTAs in force, covering almost all of its major trading partners (including but not limited to Australia, China, Hong Kong, the United States and the United Kingdom). These bilateral tax treaties seek to reduce tax impediments to cross-border trade and investment, and to assist tax administration. New Zealand is also in negotiations with certain other jurisdictions to implement DTAs that will further broaden New Zealand's DTA network.

New Zealand is party to a variety of tax information exchange agreements to facilitate the exchange of tax-related information with countries where no DTA is applicable.

The ratification of the OECD MLI also strengthens New Zealand's position when it comes to international taxation, by modifying New Zealand's existing tax treaties.

4.3 Use of Treaty Country Entities by Non-Treaty Country Residents

The OECD MLI entered into force in New Zealand on 1 October 2018 and introduces an anti-abuse rule called the *"principal purpose test"* into many of New Zealand's DTAs. This test is found in Article 7 of the MLI and acts to deny the benefits of a DTA where one of the principal purposes of using a treaty country entity by a non-treaty country resident is to obtain the benefits of the tax treaty.

4.4 Transfer Pricing Issues

The most significant transfer pricing issues for inbound investors operating through a local corporation are generally the pricing around the inbound sale of goods and interest costs on related party debt. According to New Zealand's Inland Revenue, the most common multinational business form encountered in New Zealand is foreign-owned wholesale distributors or those that purchase and on-sell goods without significant transformation.

4.5 Related-Party Limited Risk Distribution Arrangements

While no transfer pricing dispute has yet progressed through the courts in New Zealand, there have been instances where Inland Revenue has challenged the use of related-party limited risk distribution arrangements for the local sale of goods or provision of services.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

New Zealand adopted changes to its transfer pricing regime in 2018 to better align with the OECD's transfer pricing guidelines. These amendments included the adoption of restricted transfer pricing in relation to inbound debt.

4.7 International Transfer Pricing Disputes

While no transfer pricing dispute has progressed through the New Zealand courts, it is an area of increasing interest to Inland Revenue, and transfer pricing matters are actively investigated and challenged. This is due to the material risk to the New Zealand revenue base and due, in particular, to the monetary amounts that are often involved in cross-border transactions between related parties.

The mutual agreement procedure (MAP) will generally be utilised as part of a transfer pricing dispute with Inland Revenue, and transfer pricing matters are typically resolved under the MAP. This is a key reason why no transfer pricing dispute has yet progressed to the courts.

5. Key Features of Taxation of Non-Local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims Are Settled

A taxpayer may be party to two or more cross-border arrangements regarded as involving non-arm's length pricing, and one of those arrangements may be adjusted as part of a transfer pricing dispute (whether pursuant to a settlement or otherwise). In those circumstances, the taxpayer may be permitted a compensating adjustment in relation to the other cross-border arrangements.

In broad terms, where the consideration under a transfer pricing arrangement is adjusted, a taxpayer may be entitled to relief in the form of a compensating adjustment in relation to *"compensating arrangement"* where:

- the same parties are involved in the transfer pricing arrangement and the relevant compensating arrangement;
- the transfer pricing arrangement and the compensating arrangement involve the same type of goods, services, money, other intangible property or anything else, or there is a link between the pricing under the two arrangements; and
- the adjustment under the transfer pricing arrangement takes place in the same income year or in the year immediately before or after that income year.

For the purposes of calculating the taxpayer's income tax liability, the actual amount either paid or received by the taxpayer under the compensating arrangement is able to be substituted with an arm's length amount.

5.2 Taxation Differences Between Local Branches and Local Subsidiaries of Non-Local Corporations

A non-resident company may have a taxable presence in New Zealand by carrying on business in New Zealand either through a fixed establishment (or *"branch"*) or by incorporating a local subsidiary.

If operating through a New Zealand branch, a non-resident company will only be subject to New Zealand income tax on any income that is deemed to have a New Zealand source.

Conversely, a New Zealand incorporated subsidiary of a non-resident company will be considered a New Zealand tax resident and will therefore be subject to New Zealand income tax on its worldwide income.

5.3 Capital Gains of Non-Residents

Unlike many other OECD countries, New Zealand has no comprehensive capital gains tax regime. However, the definition or concept of income for New Zealand tax purposes does include profits and gains from certain transactions that would conventionally be regarded as capital in nature (see **2.7 Capital Gains Taxation**). This treatment is consistent for both residents and non-residents.

Any gain derived from the sale of shares in a New Zealand company by a non-resident would be taxed under New Zealand law only where the gain is regarded as income (and not a capital gain) that is sourced in New Zealand. In any event, DTA relief may be available depending on the jurisdiction of residence of the non-resident and the nature of the shares being sold.

5.4 Change of Control Provisions

The indirect change of control of a New Zealand company should not of itself trigger an income tax charge or liability for duties but may affect that company's ability to carry forward tax losses and imputation credits. The carry forward of tax losses and imputation credits has a shareholder continuity requirement of 49% and 66% respectively (see **2.4 Basic Rules on Loss Relief**).

While a company's direct shareholding may not change, the voting interests (and market value interests) held by a corporate shareholder are subject to *"look-through"* rule when determining shareholder continuity, and are treated as being held by the shareholders of the corporate shareholder. The effect of the look-through rule is that corporate chains of ownership are traced through to the ultimate shareholders.

5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates

As a general principle, no specific formulas are used to determine the income of foreign-owned local affiliates selling goods or providing services in New Zealand.

5.6 Deductions for Payments by Local Affiliates

There is no standard applied in allowing a deduction for payments by New Zealand companies for management and administrative expenses. This includes local affiliates of multinational groups paying for intra-group services. However, such transactions are subject to the arm's length principle under New Zealand's transfer pricing regime.

5.7 Constraints on Related-Party Borrowing

Related-party borrowing by a foreign-owned New Zealand company is subject to New Zealand's thin capitalisation and transfer pricing regimes. These rules essentially determine the extent to which interest paid on such borrowings may be deductible for New Zealand tax purposes, having regard to the relative amount of New Zealand borrowing (in the case of thin capitalisation) or the pricing of the borrowing (in the case of transfer pricing). It is also necessary to consider New Zealand's hybrid mismatch rules in the context of related-party borrowing and whether a deduction is fully available for interest costs.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations

Companies resident in New Zealand are subject to New Zealand income tax on their worldwide income. The main exception to that principle is an exemption that applies to dividends received by a New Zealand resident company from a foreign company.

Generally, where a New Zealand resident company derives assessable income from a foreign source in a country that has a DTA with New Zealand, that foreign income should not be subject to foreign income tax (provided that the New Zealand resident company does not have a permanent establishment in that country to which the foreign income is attributable). Interest, dividends and royalties that have a foreign source and that are derived by a New Zealand resident company may be subject to foreign income tax, but this will generally be limited under an applicable DTA.

Where a New Zealand resident company derives assessable income from a foreign source that is subject to foreign income tax, it may be entitled to a foreign tax credit for any foreign income tax paid on that income.

6.2 Non-Deductible Local Expenses

The Income Tax Act provides that a person is denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving exempt income.

6.3 Taxation on Dividends From Foreign Subsidiaries

The general position is that dividends received from foreign companies are treated as exempt income of New Zealand resident companies and are therefore not taxable. This rule is subject to certain exceptions, including where dividends are derived by *"portfolio investment entity"* (essentially a collective investment vehicle).

6.4 Use of Intangibles by Non-Local Subsidiaries

Intangible assets developed by New Zealand companies are able to be used by non-resident subsidiaries without the latter incurring local corporate tax. However, a royalty or other charge would typically be paid by the non-resident subsidiary to the New Zealand-based owner of the asset. The use of the intangible asset may be subject to New Zealand's transfer pricing regime if the consideration provided by the non-resident subsidiary is not in accordance with the arm's length principle.

6.5 Taxation of Income of Non-Local Subsidiaries Under Controlled Foreign Corporation-Type Rules

New Zealand has a comprehensive controlled foreign company (CFC) regime, under which income may be attributed to New Zealand resident shareholders in respect of their interests in non-local subsidiaries. The CFC rules apply to New Zealand residents holding an income interest of at least 10% in a CFC (essentially being a foreign company controlled by five or fewer persons resident in New Zealand).

Attributed CFC income of a person is taxable income and may arise irrespective of any dividends paid by the non-local subsidiary.

No attribution of income will generally be required if the CFC passes an *"active"* business test. A CFC will pass the active business test and be a non-attributing active CFC if it has attributable income that is less than 5% of its total income. In broad terms, attributable income comprises *"passive"* income, such as rent, royalties, certain dividends and interest. For these purposes, the relevant income amounts are measured using either financial accounting or tax measures of income.

The position is different for non-local branches of New Zealand companies, given that a branch is strictly a part of the same legal entity. No attribution of income therefore occurs under the CFC rules (as there is no separate foreign company controlled by New Zealand residents).

6.6 Rules Related to the Substance of Non-Local Affiliates

The New Zealand CFC rules do not make any distinction based on the substance of the non-local affiliate.

6.7 Taxation on Gain on the Sale of Shares in Non-Local Affiliates

New Zealand does not have a comprehensive capital gains tax regime. However, the definition or concept of income does include profits and gains from certain transactions that would conventionally be regarded as capital in nature (see **2.7 Capital Gains Taxation**).

Shares held by a New Zealand company in a non-local affiliate would typically be held as a capital asset, as the shares form part of the structure of the corporate group. Any gain derived on a disposal of those shares should accordingly not give rise to a New Zealand income tax liability (as being attributable to the realisation of a capital asset).

7. Anti-Avoidance

7.1 Overarching Anti-Avoidance Provisions

The Income Tax Act contains a general anti-avoidance provision, which provides that a tax avoidance arrangement will be voided against the Commissioner for income tax purposes. *"tax avoidance arrangement"* is defined as an arrangement that has tax avoidance as its sole purpose or effect, or as one of its purposes or effects if the tax avoidance purpose or effect is not merely incidental.

Pursuant to relevant New Zealand case law in this area, the key question is essentially whether an arrangement, viewed in a commercially and economically realistic way, makes use of a specific legislative provision in a manner that is consistent with Parliament's purpose. If it does, the arrangement will not, by reason of that use, be a tax avoidance arrangement.

The Income Tax Act also empowers the New Zealand Commissioner to counteract any tax advantage that a person obtains from or under such an arrangement by way of reconstruction.

In addition to the general anti-avoidance provision, the Income Tax Act contains a range of specific anti-avoidance provisions that relate to the application of particular provisions in the Act and particular transactions or arrangements.

8. Audit Cycles

8.1 Regular Routine Audit Cycle

New Zealand Inland Revenue does not have a regular or routine audit cycle. Commencement of an audit may arise under several different circumstances, including:

- the review of a particular transaction or return;
- a focus by Inland Revenue on an industry or activity; or
- random selection and initiation of an audit.

However, large enterprises in New Zealand are subject to periodic and ongoing risk assessments by Inland Revenue, which may give rise to an audit.

In recent years, Inland Revenue has taken a notably reduced approach to audit investigations due to resourcing being deployed elsewhere to administer COVID-19 measures and Inland Revenue's own business transformation. However, Inland Revenue has now indicated that audit and investigation activity will likely increase, and the new government has also agreed to increase funding for Inland Revenue to expand its audit capability.

9. BEPS

9.1 Recommended Changes

New Zealand's Inland Revenue is responsible for the development of the BEPS action plan in New Zealand and has generally supported the OECD's initiative of a co-ordinated, global solution to the BEPS problem, the Two-Pillar Solution and the recommended BEPS package of 15 actions.

In terms of BEPS recommended changes that have already been implemented in New Zealand, many were enacted in June 2018 as part of the Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018, as follows.

- Interest limitation: rules were introduced regarding certain related-party loans between

a non-resident lender and a New Zealand resident borrower. A restricted transfer pricing approach may be required, which looks to credit ratings of borrowers at high risk of BEPS and the typical characteristics of third-party debt.
- Hybrids: comprehensive hybrid mismatch rules were introduced to neutralise the effects of hybrid mismatch arrangements. These rules are based on OECD recommendations, with appropriate modifications to accommodate the New Zealand tax environment.
- Transfer pricing: New Zealand's transfer pricing legislation was amended to align with the 2017 OECD transfer pricing guidelines and to strengthen Inland Revenue's ability to monitor and enforce the new transfer pricing rules.
- Permanent establishment: New Zealand introduced a new anti-avoidance rule for large multinationals (with over EUR750 million of consolidated global turnover) using a corporate structure intended to avoid having a permanent establishment (PE) in New Zealand. This rule operates on a complementary basis to the OECD's widened *"PE"* definition under the MLI.
- Other measures: rules were also introduced in relation to certain administrative matters, such as additional powers for Inland Revenue to request information from large multinational groups for the purposes of a tax investigation of that group.

In addition, country-by-country reporting has been implemented in accordance with OECD recommendations. This applies only to a select number of corporate groups headquartered in New Zealand, and each year Inland Revenue provides those groups with the relevant templates and guidance notes from the OECD.

As discussed in **4.2 Primary Tax Treaty Countries**, New Zealand has signed and ratified the MLI in an effort to prospectively modify its existing DTAs.

More recently, the OECD Pillar Two Global Anti-Base Erosion (GloBE) tax rules have been implemented in New Zealand. The GloBE rules are incorporated into New Zealand law by reference to the OECD Model Rules, commentary and published administrative guidance.

Both the *"Income Inclusion Rule"* (applying when a New Zealand-based multinational has undertaxed income in another country) and the *"Undertaxed Profits Rule"* (UTPR – the back-up rule where multinationals operate in countries that do not implement the GloBE rules) took effect in New Zealand from 1 January 2025. The *"Domestic Income Inclusion Rule"* (DIIR) for in-scope New Zealand-headquartered groups (applying when a New Zealand-based multinational enterprise has undertaxed income in New Zealand) will commence from 1 January 2026. A later date has been deemed acceptable for the DIIR, as the Transitional UTPR Safe Harbour means that a New Zealand-headquartered enterprise should not be subject to another country's UTPR until at least 1 January 2026.

9.2 Government Attitudes

The New Zealand government has generally adopted a positive attitude to the implementation of BEPS and remains committed to ensuring that highly digitalised multinational enterprises that derive material amounts of income from New Zealand are liable for their *"fair share"* of New Zealand tax.

New Zealand continues to work towards the implementation of Pillar Two, but the implementation of Pillar One remains less certain. New

Zealand's Inland Revenue has confirmed that New Zealand will exercise its discretion not to adopt the aspects of Pillar One formerly referred to as *"Amount B"* (being an optional simplified and streamlined transfer pricing approach). As a result, New Zealand's existing transfer pricing rules and current practice will continue to apply notwithstanding the introduction of this approach in other jurisdictions.

"Amount A" of the OECD's Pillar One has yet to be finalised, and New Zealand continues to monitor progress. However, New Zealand introduced a Bill in August 2023 providing for a comprehensive Digital Services Tax (DST) as an alternative to Amount A. This Bill has not progressed any further through the House. The DST was proposed to come into effect on 1 January 2025 at the earliest, with the ability to be deferred for a further five years to allow for further progress to be made at the OECD level. The DST is intended to act as *"backstop"* and will become operative only if satisfactory progress is not made towards implementing the OECD multilateral solution.

In relation to Pillar Two, as noted in **9.1 Recommended Changes**, New Zealand has implemented the Pillar Two initiatives and the OECD GloBE rules.

9.3 Profile of International Tax

International tax measures have a relatively high public profile in New Zealand, given the country's geographical location and dependence on international trade. New Zealand is, and has historically been, a net importer of capital and therefore depends on robust international tax rules in relation to inbound capital investment in particular. The implementation of BEPS recommendations has generally been regarded as being consistent with that sentiment.

9.4 Competitive Tax Policy Objective

Like many other jurisdictions, New Zealand has a desire to ensure that its tax policy is competitive internationally. As noted in **9.3 Profile of International Tax**, New Zealand has a high dependence on inbound capital so it is important that the relevant tax settings are competitive, in order to attract investment and maximise growth. However, at the same time, there is a desire for the New Zealand tax system to be robust and a general view that New Zealand is likely to be better off if it focuses on where it has a competitive advantage rather than introducing specific incentives. In relation to BEPS, the New Zealand government has noted that, while New Zealand is starting from a good position relative to many other OECD countries, taking further steps to address BEPS is an important priority.

9.5 Features of the Competitive Tax System

No key features of the New Zealand tax system have been identified as being at risk or vulnerable as a result of BEPS pressures.

9.6 Proposals for Dealing With Hybrid Instruments

In 2018, New Zealand enacted a comprehensive set of rules regarding hybrid and branch mismatches. These rules incorporate the core aspects of the recommendations in the OECD reports regarding hybrid and branch mismatches of 2015 and 2017, with certain modifications for the New Zealand context.

9.7 Territorial Tax Regime

New Zealand does not have a territorial tax regime whereby tax is paid on New Zealand sourced income only. As a general principle, New Zealand taxes its residents on their worldwide income.

9.8 Controlled Foreign Corporation Proposals

This is not applicable in New Zealand.

9.9 Anti-Avoidance Rules

The implementation of BEPS measures in New Zealand has also meant an increased focus on the use of tax treaties to facilitate tax avoidance. New Zealand has introduced a new anti-avoidance rule for large multinationals using a corporate structure intended to avoid having a permanent establishment in New Zealand. In addition, through the MLI, there has been a focus on *"treaty shopping"* by multinationals and the ability for New Zealand to deny treaty benefits to companies that are using treaties to avoid tax.

9.10 Transfer Pricing Changes

New Zealand has made changes to its transfer pricing rules in response to the OECD BEPS initiatives. Rather than radically changing the rules, the amendments as a result of BEPS are generally seen as strengthening the application of those rules by adopting economic substance and reconstruction provisions (consistent with the OECD's transfer pricing guidelines). As a result, in certain cases the legal form may be disregarded where it does not align with economic substance, and transactions that would not be entered into by parties acting at arm's length can similarly be disregarded or reconstructed.

9.11 Transparency and Country-by-Country Reporting

As an administrative matter, New Zealand's Inland Revenue had an existing practice of requiring New Zealand-headquartered multinationals groups to file *"country-by-country"* report. This applied to groups with annual consolidated group revenue of EUR750 million or more in the previous financial year and for all income years beginning on or after 1 January 2016.

However, as part of the wide-ranging BEPS initiatives introduced in 2018, a specific legislative provision was introduced that requires country-by-country reports to be filed. The codification of this requirement was considered to be useful in the context of the BEPS reforms as it provided an explicit signal to the affected multinationals and other countries of New Zealand's commitment to country-by-country reporting.

9.12 Taxation of Digital Economy Businesses

New Zealand has two GST regimes targeting digital economy businesses operating largely from outside New Zealand in relation to:

- low-value imported goods; and
- cross-border remote services and intangibles.

Collection of GST on Low-Value Imported Goods

In 2019, New Zealand introduced measures to require non-resident suppliers to register and return GST on low-value imported goods that are supplied to New Zealand-resident customers. Low-value goods are physical goods valued at NZD1,000 or less.

To remain consistent with New Zealand's domestic GST regime, non-resident suppliers supplying New Zealand-resident customers with low-value imported goods are only required to register and return GST when the value of these supplies exceeds (or is expected to exceed) NZD60,000 in a 12-month period. In addition, such suppliers are not required to return GST on supplies made to New Zealand GST-registered businesses. It should be noted that suppliers operating through electronic marketplaces can have GST charged on their supplies by the electronic marketplace (despite the supplier itself not reaching the NZD60,000 threshold).

GST on Cross-Border Remote Services and Intangibles

In 2016, New Zealand introduced measures to require certain non-resident suppliers to register and return GST on remote services provided to New Zealand-resident customers. Services where, at the time of the performance of the service, there is no necessary connection between the physical location of the customer and the place where the services are performed will be subject to these rules.

Again, to remain consistent with New Zealand's domestic GST regime, non-resident suppliers supplying New Zealand-resident customers with remote services are only required to register and return GST when the value of these supplies exceeds (or is expected to exceed) NZD60,000 in a 12-month period. Such suppliers are also not required to return GST on supplies made to New Zealand GST-registered businesses.

9.13 Digital Taxation

As noted in **9.2 Government Attitudes**, New Zealand introduced a Bill in August 2023 providing for a comprehensive DST in New Zealand (as an alternative to Amount A under Pillar One). Once in force, the DST would be levied at a rate of 3% on certain revenues derived by large multinationals from specified digital services. Specific revenue thresholds based on global and domestic revenues are proposed to apply.

Although New Zealand's preferred approach is to implement an internationally agreed solution, the introduction of a proposed DST allows New Zealand to quickly take action if the international community cannot make sufficient progress towards a multilateral solution. For this reason, the commencement date of the DST was proposed to be 1 January 2025 at the earliest, with the ability to be deferred for a further five years to allow for further progress to be made at the OECD level. If a multilateral solution at OECD level is reached, the intention is that the DST will be repealed. The Bill has not progressed any further through the House since its introduction.

9.14 Taxation of Offshore IP

New Zealand has not introduced any transfer provisions dealing specifically with the taxation of offshore-based intellectual property. It is legislatively prescribed in New Zealand's transfer pricing rules that those rules are to be applied consistently with the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations – July 2022. In that sense, the guidance on intangible assets and supply arrangements contained in Chapter VI of the OECD Transfer Pricing Guidelines is incorporated into New Zealand law.

The payment of royalties by New Zealand residents for the use of offshore-owned intellectual property is a current focus of Inland Revenue. Licensing arrangements with offshore-based related parties or associates present a risk to the New Zealand tax base if outbound payments are not priced in accordance with the arm's length principle. The transfer of intellectual property out of New Zealand is also a focus of Inland Revenue, particularly where an intellectual property asset is sold and then licensed back to the original owner.

Trends and Developments

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Russell McVeagh is a leading full-service New Zealand law firm and employs approximately 300 staff and partners. The firm is committed to operating on the cutting edge of legal practice, with award-winning lawyers who are internationally recognised for their thought leadership, depth of experience and ability to translate complex legal issues into client success stories. It has particular expertise in banking and finance (including securitisation and financial markets regulation), corporate and commercial (including M&A), tax, competition/antitrust, employment, health and safety, resource management (including energy), litigation, restructuring and insolvency, property and construction, technology and digital, and public law and regulation. The tax team has extensive corporate tax experience and provides advice on a wide variety of issues relating to financing and capital raising, M&A, business establishment and reorganisations, investment products, PPPs and infrastructure investment, employee remuneration packages, customs and excise, transfer pricing, and tax investigations and disputes.

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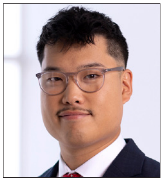

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Corporate Tax in New Zealand: an Introduction

Tax policy as a measure to "rebuild the New Zealand economy"

2024 saw New Zealand's most recently formed coalition government's first full calendar year in office. In what has been labelled by many as an environment of high inflation and rising costs of living, Prime Minister Christopher Luxon's centre-right National Party, along with its coalition partners the New Zealand First Party and ACT Party, have committed to *"rebuilding the New Zealand economy"*, and tax has remained an important topic.

As promised when campaigning for office, the key focus of the National Party was tax relief for the *"squeezed"* middle class through a combination of shifting income tax brackets and use of tax credits. The Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Act 2024 came into effect on 1 April 2024, and a new Bill has since been introduced to give effect to the government's tax commitments. A new Tax and Social Policy Work Programme for Inland Revenue has also been put in place to ensure accountability and transparency in the government's pursuit of fiscal sustainability.

More recently, the New Zealand government has announced a key focus on economic growth, innovation and investment. Relevant measures announced to date include the establishment of *"Invest New Zealand"*, a foreign investment agency aimed at promoting foreign direct investment into New Zealand, and, in relation to tax matters, a consultation regarding New Zealand's foreign investment fund rules relating to the taxation of offshore portfolio equity investments.

Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Act 2024

The Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Act 2024 came into effect on 1 April 2024 and saw a range of changes that set the scene for the new coalition government's attitude towards New Zealand's tax policy.

The Act was the new government's first opportunity to bring in some of the measures it had campaigned on, including:

- restoring interest deductibility for residential investment properties;
- reducing the applicable term of the *"bright-line test"* (a quasi-capital gains tax, being a test which brings gains from the sale of residential property that would otherwise be on capital account within the tax net) from ten years to two years;
- removing depreciation deductions for commercial and industrial buildings; and
- increasing the trustee tax rate from 33% to 39%, to align with the top marginal tax rate for individuals in New Zealand.

Other measures that came into effect in 2024

Outside of the Act, an extension of New Zealand's GST rules also came into effect from 1 April 2024, such that operators of electronic marketplaces are now required to collect and return GST at the standard rate of 15% on supplies of certain *"listed services"* (including ride-sharing and ride-hailing, delivery services for beverages or food or taxable accommodation provided through electronic marketplaces such as Uber and Airbnb) that are performed, provided or received in New Zealand. This is an extension of previous rules that applied to marketplace operators involved in the supply of remote services and low-value imported goods to New Zealand residents.

A new duty was also imposed on offshore online casino operators to ensure that they are being taxed appropriately for services offered in New Zealand, with effect from 1 July 2024. This duty applies in addition to New Zealand's existing GST on remote services regime, to which online casino operators were already subject.

Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill

Following the enactment of the Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Act 2024, the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill was introduced in August 2024. This Bill proposes several measures aimed at delivering the government's key promise to improve New Zealand's economic conditions.

Emergency response measures

The centrepiece of the recent Bill proposes a streamlined way to provide timely tax relief following emergency events. The proposal looks to build certain tax relief measures into primary legislation, any of which could be activated by Order in Council. This would ensure the system is better prepared for emergencies, provide for a more efficient government tax response and give affected taxpayers more certainty at an earlier point in time.

Based on previous emergency events, the generic measures proposed by the Bill that may be activated by Order in Council following the declaration of an emergency event include:

- taxation rollover relief (including for revenue account property, depreciable property and amortisable land improvements);
- income spreading provisions for forced livestock sales;
- capped employer payments and fringe benefits; and
- information sharing for specific events and the ability to remit use of money interest.

Existing definitions of *"emergency"* and the declarations of an emergency under other legislation would be relied upon, rather than creating a new definition specifically for income tax purposes. As such, a definition of *"emergency event"* as an emergency in accordance with the Civil Defence Emergency Management Act 2002 and declared an emergency under that Act would be inserted into tax legislation. This would mean that the tax relief measures proposed in the Bill could be given effect if either a state of national emergency or a state of local emergency is declared under the Civil Defence Emergency Management Act.

Crypto-asset reporting framework

The global market for crypto-assets has grown rapidly in recent years, and this has resulted in the development of new investment products and payment practices. Given the characteristics of the technology that underlies crypto-assets, tax administrators have faced unique challenges from a tax compliance perspective because of the limited visibility over income derived from these crypto-assets compared to income derived from more traditional sources.

The OECD and G20 have led various global tax initiatives over the years, and in 2022 they released model rules for the Crypto-Asset Reporting Framework (CARF). The CARF is a standardised framework that provides for the collection and automatic exchange of information on crypto-assets, and requires *"reporting crypto-asset service providers"* to provide tax authorities with information on crypto-asset transactions in an effort to improve tax transparency over crypto-asset activities.

In May 2024, Inland Revenue released a regulatory impact statement that discussed the CARF and considered other options to improve tax compliance in the crypto-asset space in New Zealand. The options put forward included:

- taking no action;
- implementing the OECD CARF;
- designing and implementing a bespoke set of rules; and
- implementing an annual disclosure regime.

After discussing the advantages and disadvantages of each approach, the preferred approach put forward by the Minister of Revenue was to implement the OECD CARF. As a result of this, the CARF has been included in the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill and, if enacted, will be given legislative effect in New Zealand from the 2026/27 tax year.

Like other international information-sharing initiatives that New Zealand has adopted into domestic legislation, the CARF is proposed to be incorporated into New Zealand law by reference to the OECD CARF, rather than full transportation. This means that any changes made to the CARF at the OECD level will also flow through into New Zealand law, unless explicitly blocked by an Order in Council.

Under the CARF, reporting crypto-asset service providers will be required to collect and report information to tax authorities about the activities of crypto-asset users on their platforms, including aggregate level data on all relevant crypto-asset transactions. These service providers must retain records of any information obtained under the CARF for a period of at least seven years to allow Inland Revenue to reassess the crypto-asset users if necessary. Crypto-asset users will also be required to provide information to the service providers if that information is required by the service providers to comply with the CAR. Penalties will be imposed to address non-compliance.

Tax and Social Policy Work Programme

The government's Tax and Social Policy Work Programme released in November 2024 provides further insight into the government's areas of focus in the tax policy area. By looking into a range of policy issues that will simplify tax, reduce compliance costs and address integrity risks, the government aims to *"rebuild the economy"* and *"improve fiscal sustainability"* through the following six strategic workstreams:

- economic growth and productivity;
- integrity in the tax system;
- modernising the tax system;
- strengthening international connections;
- social policy; and
- other agency work.

Each workstream contains a range of items. Some of the proposals in the Work Programme have already been proposed through the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill, but there remains a long list of items that still require attention.

New double tax agreements

In pursuit of its desire to strengthen its international connections, New Zealand has continued to take steps to update and broaden its network

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of double tax agreements (DTAs), and is currently negotiating a number of DTAs and Protocols with new and existing counterparty jurisdictions.

Following on from the recent signing of the DTA with the Slovak Republic and the second protocol to the DTA with Austria, New Zealand is currently negotiating with Croatia, Hungary, Portugal, Slovenia and Iceland in an effort to maximise the benefits of New Zealand's free trade agreement with the European Union and further broaden its international relations through its DTA network. Replacement DTAs with the United Kingdom and Australia are also under negotiation, as well as an updated Protocol with South Korea.

The Second Protocol updating the DTA and First Protocol with Belgium is signed but is not yet in force, alongside tax information agreements with both Bermuda and Saint Kitts and Nevis. These will enter into force once the relevant countries have completed the necessary domestic procedures.

Current FIF proposals for migrants

New Zealand's foreign investment fund (FIF) rules govern the taxation of portfolio equity interests held by New Zealand residents in offshore companies. The rules seek to tax investments of 10% or less in foreign companies, and aim to ensure that there is no New Zealand tax advantage from investing offshore when compared to investing domestically. There is a concern that the FIF rules may currently discourage non-residents who hold material portfolio interests in foreign companies from migrating to New Zealand. This is because, under the FIF rules, those interests may give rise to deemed taxable income on an annual basis, rather than taxing on a realisation basis.

In response to these concerns, New Zealand's Inland Revenue released an officials' issues paper (Issues Paper) outlining a proposal to amend the FIF rules for migrants. The Issues Paper canvasses the three following options for changing the FIF rules, which would be additional to the existing FIF methods so that migrants would not be forced to use them.

- Adjusting the attributable FIF income method: the attributable FIF income method is an existing method for calculating a person's FIF income and can only be chosen by a person with an income interest of 10% or more in a FIF and where sufficient financial information can be supplied to Inland Revenue. Under these rules, no FIF income arises if the company is an active FIF (generally a FIF of which passive income is less than 5% of gross income). The proposed amendments include a relaxation of the FIF rules by removing the 10% threshold required to access this method. This would resolve cashflow and double taxation issues.
- Revenue account method: the proposed revenue account method would seek to tax FIF interests on revenue account. This would mean that only dividends and any capital gains realised on disposal would be taxed.
- Deferral method: the deferral method would also seek to tax FIF income on a realisation basis. Gains would be taxed upon disposal of the FIF interests based on a deemed 5% per annum return over the period the taxpayer has been in New Zealand. This is essentially a retrospective application of the *"fair dividend rate"* (an existing FIF calculation method under which an investor is taxed on 5% of the market value of a FIF interest annually) and deems an annual 5% return on investment, regardless of whether or not the FIF interest was disposed of at a loss.

The Issues Paper also considers the scope of the proposals and whether they would apply exclusively to migrants or whether any changes to the rules should apply more broadly to existing residents. Given the government's desire to promote economic growth and ensure that New Zealand is an attractive destination for investment and skilled migrants, it will be interesting to see how these proposals are progressed.

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