

LEGISLATION CHANGES TO NEW ZEALAND FOREIGN TRUSTS

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Background

A New Zealand Foreign Trust is modelled on the English style of trust, which requires an offshore resident settlor (for example your client or their representative) with your own or your client's New Zealand company, which can be managed by a corporate trustee. All income sourced offshore through this company (acting as sole trustee on behalf of the trust) is totally tax free, and there are no capital gains, inheritance taxes or forced heirship. Any income earned within New Zealand (example interest from a bank account) is subject to domestic tax. The income, at your client's discretion can either be retained in the trust, or alternatively distributed to your client's named beneficiaries.

New Legislation

The new legislation recently passed, has required since 1st October 2006, either a New Zealand resident unqualified director, or a professional "qualifying" (chartered accountant or lawyer), as either a manager, or a director of a trustee company for a N.Z. Foreign Trust. If the former (unqualified director) is utilized, should there be any omissions including any non compliance with the new legislation by the corporate trustee, then, until the omission is rectified, the trust

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will be taxable on its worldwide income. If this liability arises, and if subsequently a trustee does provide the outstanding records, the liability for tax on worldwide income will cease retrospectively.

The other option is to select as the N.Z. resident manager, or as a director, “a qualifying N.Z. resident trustee” being a professional (chartered accountant or lawyer), being the “safe harbour”, which will result in the trust NOT being at risk of taxation on its worldwide income in the event of any omissions or non compliance. Instead the matter would be dealt with by the disciplinary committee of the professional’s Accountants or Law Society, and punishment for this “qualifying” person will be a fine and or imprisonment.

Under the new legislation, it will be necessary for the New Zealand corporate manager to advise the N.Z. Revenue of the existence of a New Zealand Foreign Trust, the name or other identifying particulars of the trust, names and other contact details of N.Z. trustees, names of any N.Z. trustees who are members of an approved organisation No other information is required (except in the situation where the settlor is an Australian resident, where that fact has to be disclosed). There will be additional minimum records to be held in N.Z. by the N.Z. manager or director, such as a copy of the trust deed, details of settlements made to and distributions made by the trust including names and addresses of the settlors and beneficiaries, a record of the assets and liabilities and all sums of money received and spent by the trust, if the trust carries on business, the charts and codes of accounts, the accounting instruction manuals and the system and programme documentation describing the accounting system. This information is not provided to the N.Z. Revenue, but would have to be disclosed only following a specific request from an offshore Government with whom New Zealand has a double tax treaty, under the sharing of information agreements by these Treaty countries. These provisions result from the Australian Tax Office requests to the N.Z. Government and are to primarily target Australian resident settlors. For practical purposes there is little expectation of active information exchange in respect of individuals resident in jurisdictions other than Australia.

Advantages of New Zealand

New Zealand is recognized as a premium jurisdiction for the following reasons: It provides the all advantages of traditional “offshore” financial centres, but is recognized as a true “onshore” financial centre which is NOT blacklisted by any jurisdiction or authority in the world. It is not perceived by OECD as a harmful tax jurisdiction, and has no connotations as a tax haven. It is a member of the OECD and World Trade Organization.

New Zealand is a member of the British Commonwealth, English is the main language, has a common law system, and the majority of legislation including trust law is founded on English law.

It is not a member of the EU, and is not influenced by the EU Savings Tax Directive and any future developments (should they be extended to apply to companies or trusts).

It is a signatory to the 1922 Hague Convention and can provide Apostilled documentation as well as Notarised documentation.

In today's troubled and unstable times New Zealand is considered a safe location and offers long term security. It has a Westminster style Government and, together with its administration, is stable and competent.

New Zealand has a well developed infrastructure, including a progressive and robust economy, efficient telephone and internet services, competitive and frequent air travel, experienced reliable professionals serving global clients with trust and company requirements which include legal opinions on tax, trust and company matters, and has reliable internet global banking services.

Conclusion

These changes should generally be positive, as the level of compliance or disclosure is not onerous, but the recognition, confirmation, and support by the N.Z. Government of the N.Z. Foreign Trust industry is very encouraging.