New Zealand

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1. Types of tax

1.1 Inheritance tax

New Zealand abolished estate tax with effect for persons dying on or after 17 December 1992 and currently has no form of estate duty, inheritance tax or capital transfer tax.

1.2 Gift tax

Gift tax has been abolished for gifts made on or after 1 October 2011.

1.3 Real estate transfer tax

New Zealand has no form of real estate transfer tax.

1.4 Endowment tax

New Zealand has no form of endowment tax.

1.5 Transfer duty

New Zealand has no form of transfer duty.

1.6 Net wealth tax

New Zealand has no net wealth tax.

1.7 Income tax

Income tax liabilities may arise in relation to assets that are gifted, which transfer to executors or administrators on an individual's death, which are distributed to beneficiaries under a will or the intestacy rules, or which are distributed by trustees. The general rule deems the assets to have been disposed of and acquired at market value, which may result in income tax liabilities in relation to assets within the tax base, although exclusions and rollover relief may apply in some circumstances where transferees are spouses, civil union or *de facto* partners or close relatives. Rollover relief generally applies in relation to assets that are transferred under relationship property agreements or court orders.

1.8 Goods and services tax

Goods and services tax (GST) is similar to a value-added tax (VAT) and is imposed on supplies of goods or services in New Zealand by persons who are formally GST-registered or who are liable to be so registered (because the level of their supplies of a GST-taxable nature in the current and preceding 11 months has exceeded NZ$60,000 or is expected to exceed that amount over the current and subsequent 11 months). GST may also be levied on goods imported into New Zealand, regardless of the GST status of the importer, and may apply by way of a reverse charge in relation to imported services in some circumstances.

GST-exempt activities include supplies of financial services (although some may be zero-rated in certain circumstances, which enables suppliers to claim-related GST input tax credits), supplies of certain fine metals and certain supplies of residential dwelling accommodation (other than in relation to commercial dwellings) and related land.

2. Who is liable?

Income tax

New Zealand residents are generally subject to income tax on their worldwide income and may be taxed on attributed income in relation to interests in controlled foreign companies or foreign investment funds. Nonresidents are subject to income tax only on New Zealand-sourced income. Transitional resident individuals (please see below) may be exempt from New Zealand income tax for a four-year period (sometimes slightly longer) on foreign-sourced and attributed income other than foreign-sourced employment or services income.

New Zealand-sourced income may arise, for instance, when:

- A business is carried on wholly or partly in New Zealand.
- Contracts are made or wholly or partly performed in New Zealand.
- Employment income is earned in New Zealand.
- Income is derived by the owner of land in New Zealand.
- Income is derived from shares in or membership of New Zealand-resident companies.
- Income is derived from the disposal of depreciable or revenue account property situated in New Zealand.

The New Zealand income tax treatment of trusts (and the estates of deceased individuals) can be complex (please see further below). The treatment of income derived through trusts and of distributions (other than of current year income) generally depends on whether any New Zealand residents have made any settlements on the trusts and whether there is New Zealand-sourced income.

Double tax treaties may modify the above treatment for individuals (and other entities) to whom they apply.

GST

Any business entity or individual who makes supplies of goods or services of a GST-taxable nature in New Zealand may choose to register for GST or may be liable to register if the value of their annual supplies exceeds NZ$60,000 (as outlined above).

Supplies made to associated persons for less than market value are generally treated as being made at open market value, with GST-registered suppliers liable to return GST at the appropriate fraction (currently 3/23 for standard-rated supplies) of that value. Such deemed supplies may impact on a supplier's liability to register for GST. Exceptions may apply if recipients are already GST-registered and would be able to claim input tax credits for any GST charged or if they would be applying items acquired for no consideration for the purpose of making GST-taxable supplies from the time of acquisition, which may be the case, for instance, in respect of assets distributed to beneficiaries by trusts or deceased estates.

On the death of a GST-registered individual, their executor or administrator is generally regarded as carrying on their GST-taxable activity as a specified agent. He or she must notify the Commissioner of Inland Revenue, make GST returns and account for GST on relevant assets sold or supplied to beneficiaries.

Situation of property — income tax

The income tax legislation does not specify where property is situated for the purposes of the source rules. Common law principles may therefore apply so that land and tangible personal assets will generally be treated as situated according to their physical location, and company shares may be treated as situated where the share register is kept.

Situation of supplies — GST

Supplies of goods and services are treated as made in New Zealand for GST purposes if they are made by New Zealand residents (as defined for GST purposes). Supplies made by nonresidents are generally regarded as made outside New Zealand unless they relate to goods that are in New Zealand at the relevant time or services that are physically performed by someone in New Zealand. Notwithstanding the general rule, nonresident suppliers and GST-registered recipients may generally agree to treat supplies as made in New Zealand, which may enable the supplier to register for GST and claim input tax credits for GST levied on importation of goods and other costs under the general rules. (From 1 April 2014 nonresident suppliers can also register for GST and claim input tax credits if they meet certain other criteria.)

2.1 Residency

Income tax

Individuals are considered resident in New Zealand for income tax purposes if they meet either of the following conditions:

- They have a permanent place of abode in New Zealand, regardless of whether they also have a permanent place of abode in another country.
- They are physically present in New Zealand for more than 183 days in any 12-month period.

Transitional residents

Individuals who first arrive and become resident in New Zealand after 1 April 2006, or who have been nonresident for at least 10 years before returning to New Zealand after that date, may choose to be treated as transitional residents, in which case they may be exempt from New Zealand income tax on certain foreign-sourced and attributed income for the first four years (possibly up to four and a half years in some circumstances) of their New Zealand residence. The transitional resident exemption does not apply to foreign-sourced employment or services income derived during the transitional residence period and is available only once.

Trusts (including estates of deceased individuals)

Trust income is subject to New Zealand income tax if it is sourced in New Zealand or if it is derived by beneficiaries who are New Zealand resident or by trustees where there is a settlor (generally any person who provides some benefit to the trust) who is New Zealand resident. Please see further below.

GST

The concept of residence may also be relevant for GST purposes, particularly in relation to whether supplies are regarded as made in New Zealand. The GST concept of residence is based on the income tax concept but is extended to also cover others to the extent they carry on any activities through related fixed or permanent places in New Zealand. Unincorporated bodies are treated as New Zealand resident for GST purposes if their center of administrative management is in New Zealand.

3. Rates

Income tax

The current rates of income tax applicable for resident, nonresident and transitional resident individuals are as follows:

Income bracket	Year ending 31 March 2012 (2011–12 income year) and subsequent income years
NZ$0–NZ$14,000	10.5%
NZ$14,001–NZ$48,000	17.5%
NZ$48,001–NZ$70,000	30%
Over NZ$70,000	33%

Income derived through trusts (including the estates of deceased individuals) is taxable at adult beneficiaries' individual rates if treated as beneficiary income, generally at 33% if treated as beneficiary income of minor beneficiaries or at 33% if treated as trustee income. The income tax treatment of other distributions depends on the residence of the beneficiaries and how trusts are categorized for New Zealand income tax purposes at the times distributions are made. Trusts can be categorized as:

- Complying trusts in which there are no taxes on such distributions.
- Foreign trusts in which distributions are generally taxable at beneficiaries' individual rates. Distributions of realized capital gains and amounts settled on the trust as corpus may be distributed tax free, but are generally subject to ordering rules.
- Non-complying trusts in which distributions are taxable at 45% except for distributions of amounts settled on the trust as corpus which may be distributed tax free, but which are generally subject to ordering rules.

As outlined below, the New Zealand income tax treatment of trusts is complex.

GST

The standard rate of GST is 15%. Zero rating applies to a number of types of supplies, particularly in relation to exports, international transportation, business-to-business supplies of financial services in certain circumstances and supplies that include land between GST-registered persons (for supplies from 1 April 2011).

4. Exemptions and reliefs

Income tax

As outlined above, transitional residents may be exempt from income tax on foreign-sourced and attributed income for a period of four years (slightly longer in some circumstances) after they first become resident in New Zealand, although this exemption does not apply to foreign-sourced employment or services income derived during that period.

Charitable purpose trusts and organizations may be wholly exempt from income tax if they are registered under the Charities Act 2005 (or, in limited circumstances, if the Commissioner of Inland Revenue approves a nonresident body for these purposes). If they derive income directly or indirectly from business activities, rather than solely from passive investments or carrying out their charitable purposes, the exemption will not apply or may be limited if they carry on their charitable purposes outside New Zealand or if those with some control over the business can procure or influence certain personal benefits or advantages.

5. Filing procedures

Income tax

The standard New Zealand income tax year runs from 1 April to 31 March of the following calendar year, although taxpayers may seek the Commissioner of Inland Revenue's approval of nonstandard balance dates in certain circumstances (such as the date of death for continuing deceased estate returns).

Taxpayers with 31 March balance dates must generally file returns of income by the following 7 July unless they obtain a specific extension or are on a tax agency list, in which case filing extensions to the following 31 March may be available.

Taxpayers may need to make advance payments of provisional tax, generally in the fifth, ninth and thirteenth months following the beginning of their income years if their preceding year's residual income tax liability (after source deductions, withholding taxes, imputation and foreign tax credits) exceeded NZ$2,500. Interest may be imposed if provisional tax paid at each installment date is less than the appropriate fraction of the final residual income tax liability for the year. Any terminal tax balance is generally payable by 7 February of the year following balance date unless taxpayers are on a tax agency list, in which case the time for paying terminal tax is extended by two months.

GST

GST return periods may cover six-month periods (annual GST-taxable turnover below NZ$500,000), two-monthly periods (generally applicable for annual GST-taxable turnover between NZ$500,000 and NZ$24 million) or a one-month period (required if annual GST-taxable turnover exceeds NZ$24 million or if taxpayers elect). Returns and payment of any net GST output tax liability (after deducting any relevant input tax credits on supplies acquired) must generally be filed by the 28th of the following month except for the periods ending 30 November (due by 15 January) and 31 March (due by 7 May).

6. Assessments and valuations

Income tax and GST

New Zealand has a formal self-assessment regime for income tax and GST purposes, with taxpayers effectively making their own assessments when taking tax positions by filing (or not filing) relevant returns. Such self-assessments may be reviewed and amended by the Commissioner of Inland Revenue at any time, although amendments that increase income tax or GST liabilities must generally be made within a four-year period (from the end of the tax year in which an income tax return is filed; from the end of the GST return period in which a GST return is filed). No such time limit applies for income tax purposes if returns are fraudulent or wilfully misleading or do not mention income of a particular nature or from a particular source. No such time limit applies for GST purposes if the Commissioner of Inland Revenue considers taxpayers have knowingly or fraudulently failed to disclose all material facts.

Shortfall penalties may be imposed and interest charged by the Commissioner of Inland Revenue in relation to errors that result in shortfalls of income tax or GST compared with the positions taken by taxpayers in their returns.

7. Trusts, foundations and private purpose funds

Trusts

Trusts are well-established and recognized under New Zealand law, and trusts are commonly used for asset protection and succession planning purposes. The terms of discretionary trusts can provide considerable flexibility as to income and capital entitlements and distributions while retaining significant influence or control by those who initiate or settle the trust. Assets held on trust for others are generally not regarded as part of the estate of a deceased that may be subject to claims under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949. The maximum length of time a trust (other than certain public or charitable trusts) may continue is generally limited by the Perpetuities Act 1964, which allows periods up to 80 years to be specified.

The settlement of property on a trust could previously be subject to gift duty (on the same basis as dispositions of property to any other person or entity could constitute dutiable gifts up to 30 September 2011) and is likely to have New Zealand income tax implications. Distributions to beneficiaries in terms of a trust were not regarded as constituting dutiable gifts, and resettlements may or may not have involved dutiable gifts (up to 30 September 2011), depending on the beneficiaries and terms of each of the trusts involved.

There may be income tax and GST implications if trust assets are distributed in-kind.

In some circumstances, settlements of property to be held on trust or other property transfers or payments may be challenged and reversed if transferors subsequently become bankrupt or if the transfers are intended to defeat the rights of spouses/partners under the Property (Relationships) Act 1976.

New Zealand's Law Commission has recently carried out a comprehensive review of New Zealand's trust law, and its recommendations are being considered by the Government.

Income tax treatment of trusts

The New Zealand income tax treatment of trusts can be complex, particularly if there are any cross-border elements, whether in terms of assets, settlors, trustees or beneficiaries. Unit trusts are generally treated as companies for income tax purposes, but trusts in a family context are not normally unit trusts.

In very summary terms, New Zealand seeks to tax income derived through trusts (other than unit trusts) if it is sourced in New Zealand, if settlements on the trust have been made directly or indirectly by New Zealand tax residents or if beneficiaries receiving or being credited with distributions are tax resident in New Zealand. The New Zealand income tax treatment of trusts is therefore not necessarily determined by the place where the trust was established or by the residence of the trustees.

Current year taxable income may be taxed in the trustees' hands (at 33%) or as beneficiary income (at adult beneficiaries' personal tax rates or, generally, at 33% in relation to minor beneficiaries under 16) if the income vests in or is paid to, credited or applied for beneficiaries within prescribed time frames.

For income tax purposes, the concepts of settlor and settlement are defined broadly and may generally include any person who has transferred value or provided services or financial assistance to the trust without receiving equivalent market value consideration in return. In some circumstances, for instance, beneficiaries with trust current account credit balances may arguably be regarded as settlors for New Zealand income tax purposes.

Categorization of trusts under the income tax rules as complying, foreign or non-complying affects the income tax treatment of distributions (other than of current year taxable income) to beneficiaries, with the most advantageous treatment (no further income tax liability) applying to distributions (other than of current year income) from complying trusts. Distributions from foreign trusts may be tax free if they are of realized capital gains or of corpus while the only tax-free distributions from non-complying trusts are those of corpus. The concept of corpus is defined narrowly for New Zealand income tax purposes. Distributions from foreign and non-complying trusts are generally subject to ordering rules and may result in double taxation without effective relief under double tax treaties.

Where foreign trusts have New Zealand resident trustees but no New Zealand settlors, assets, income or beneficiaries, and would therefore not normally need to file New Zealand income tax returns, specific information about the trusts must be maintained in New Zealand and disclosed to the Commissioner of Inland Revenue.

Foundations

Trusts are commonly used to establish foundations for charitable or other nonprofit purposes. If such trusts are registered under the Charities Act 2005 or otherwise approved as donee organizations for income tax purposes, settlements or donations to them may provide income tax credits for resident individual donors or tax deductions for company donors (subject to their having sufficient taxable income).

The income of trusts or other bodies that are registered under the Charities Act 2005 is generally exempt from income tax unless it is derived directly or indirectly from business activities and is used for purposes outside New Zealand or persons who can control the business can also influence or determine benefits or advantages for themselves. The net income of other nonprofit organizations is generally taxable, although they may be entitled to a statutory deduction up to NZ$1,000 in addition to deductions for their normal operating costs.

GST may apply to charitable and other nonprofit bodies although there is generally no GST on unconditional gifts or on supplies of donated goods and services.

8. Grants

With regard to estate taxes, there are no specific rules regarding grants in New Zealand.

9. Life insurance

Life insurance proceeds are generally regarded as capital receipts that are not subject to income tax. However, rights (including contingent or discretionary rights) to benefit from foreign life insurance policies may constitute foreign investment fund (FIF) interests in relation to which New Zealand resident holders (other than transitional residents) may be taxable on attributed FIF income.

10. Civil law on succession

10.1 Estate planning

Pre-immigration trusts and transitional residence

If individuals have established trusts or are beneficiaries under trusts established overseas before they move to New Zealand, care is required to ensure such trusts do not become categorized as non-complying trusts by reason of any person who may be regarded as a settlor under the wide New Zealand income tax definition of that term becoming New Zealand tax resident. Settlements made by nominees are generally regarded as made by their principals. One consequence of a settlor becoming tax resident is that all foreign source income of the trust may become taxable in New Zealand (unless treated as current year income of nonresident beneficiaries). A consequence of non-complying trust categorization, for instance, is that distributions to New Zealand residents (other than of current year income) may be taxable at a flat 45% rate, rather than at their lower personal income tax rates.

There are currently transitional residence concessions for income tax purposes for individuals who move to New Zealand and who have never previously been New Zealand tax resident or who have been nonresident for at least 10 years. In general terms, the concessions mean that transitional residents are not taxable in New Zealand on their foreign investment or rental income and are not subject to New Zealand's income tax rules relating to financial arrangements for an initial four-year period. They may also defer making elections to bring any pre-residence foreign trusts into full New Zealand income tax liability on foreign-sourced income during that four-year period (otherwise a one-year election period would generally apply).

Specific advice should be obtained in advance in all cases.

10.2 Succession

Choice of law to govern succession

New Zealand laws should be regarded as potentially applying in any situation where individuals are domiciled or resident in New Zealand at death or where they have assets situated in New Zealand.

New Zealand law provides rules for the succession to individuals' net assets if they die without effective wills that meet Wills Act 2007 requirements. Otherwise adult individuals are generally free to leave their assets by will, as they choose, although their estates may be subject to claims by certain affected relatives and others under specific statutory provisions, such as those contained in the:

- Property (Relationships) Act 1976 (claims by spouses, civil union or *de facto* partners).
- Family Protection Act 1955 (claims for maintenance or support by a limited class of relatives who consider the deceased may not have made adequate provision for them).
- Law Reform (Testamentary Promises) Act 1949 (claims by those who have performed services for the deceased on the basis of promises to reward them by some testamentary provision).

Wills are generally revoked automatically by entry into marriage or civil union unless they are made specifically in contemplation of that event. Dissolutions of marriage or civil unions or formal separation orders generally revoke dispositions in a will to the former spouse or civil union partner.

Application of the New Zealand rules may be affected by the domicile of the deceased person at the date of making any will or at the date of death and on the location and movable or immovable nature of their assets.

10.3 Forced heirship

As outlined above, New Zealand does not impose any forced heirship provisions, although statutory provisions allow relatives and others to make claims against estates in certain circumstances.

10.4 Matrimonial regimes and civil partnerships

Marriage or civil union does not, by itself, alter either spouse's or partner's ability to own or deal with property in his or her own right, but the existence of a marriage, civil union or *de facto* partnership (between members of the same or different sex) may impact on property rights in various ways. Examples include:

- Property becoming subject to claims by the other spouse, civil union or *de facto* partner, primarily under the Property (Relationships) Act 1976, to determine their share or provide for them or any children. There is a general presumption of entitlement to an equal share in the family home, family chattels and other relationship property (based on a presumption of equal contributions of all types) unless the relationship has been short (generally involving less than three years' cohabitation) or there are extraordinary circumstances that would mean equal sharing was repugnant to justice. In some circumstances, the courts may order compensation where relationship property has previously been transferred to trusts or controlled companies. Claims may be brought under the Property (Relationships) Act 1976 after the death of one of the spouses, civil union or *de facto* partners, whether or not the deceased left a valid will. The parties to such relationships may generally contract out of the Act's provisions (but cannot do so with the intention of defeating creditors) and agree as to how property will be dealt with, but each party must have appropriate and separate independent legal advice and such agreements must meet certain formal criteria to be valid. Income tax "rollover" concessions may apply where property interests are transferred under Property (Relationships) Act 1976 orders or agreements but may also effectively transfer latent income tax liabilities to transferees.
- Property (possibly including trust settlements) becoming subject to review and orders by the courts under the Family Proceedings Act 1980 (in the event of orders being made affecting the status of a marriage or civil union or effecting its dissolution).
- The ability of spouses or civil union partners to settle their home on both parties under the Joint Family Homes Act 1964, which may provide protection of a limited amount in the event of subsequent bankruptcy.

10.5 Intestacy

The Administration Act 1969 provides rules stipulating who inherits a deceased person's assets if the person dies intestate, or to the extent there is no valid will dealing with particular assets. The Administration Act 1969's intestacy rules provide primarily for set proportions and types of assets to pass to spouses, civil union or *de facto* partners, issue (children or other descendants) and surviving parents, but if there are no individuals in any of those categories, assets may pass to siblings, in default to grandparents, aunts and uncles. If there are no individuals in any of these categories, the assets pass to the Crown, which has discretion to apply them to other dependants or persons for whom the deceased might reasonably have been expected to make provision.

10.6 Probate

Executors of an individual's will must generally apply to the High Court Registry at Wellington for probate to establish their authority to act, deal with the deceased's estate and distribute assets to the beneficiaries in accordance with the will. Probate may not be required for small estates that do not include any interests in land and certain other investments, and bank accounts do not individually exceed NZ$15,000 in value.

Applications for probate are generally made *ex parte* unless someone is contesting the will or there are possible issues as to the validity of the will and should generally be made through New Zealand lawyers to minimize the risk of any possible problems or procedural difficulties.

If there is no will, application should be made to the High Court to appoint an administrator, generally a close relative, to deal with the deceased's estate.

As the New Zealand courts have general jurisdiction over all property in New Zealand, it may be necessary to apply for probate or letters of administration if foreigners die owning New Zealand property. Probate or administration granted in certain foreign jurisdictions (such as those of Commonwealth countries) may be recognized and resealed in New Zealand for these purposes.

11. Estate tax treaties

New Zealand has not concluded any estate tax treaties with foreign states. The provisions of its double tax treaties that deal with income tax may be relevant in relation to New Zealand property interests and income streams owned by deceased individuals and their estates.

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1. Types of tax

The Norwegian unified inheritance and gift tax was terminated on 1 January 2014. The reason for this termination was to relieve the strain on liquidity in cases of generation changes of companies and transfer of family property.

1.1 Inheritance tax

The inheritance and gift tax was replaced with rules of continuity for tax purposes, meaning the heir or beneficiary is to assume the testator or benefactor's tax values and tax positions. The purpose of these rules is to secure latent profits occurring during the testator or benefactor's period of ownership. As the recipient is entitled and obligated to continue the tax values of the assets, such latent profits will become taxable when the recipient sells them.

The rules are neutral regarding transfer of privately operated businesses, registered shares and non-registered shares and assets. Furthermore, the rules are given a general application for assets owned within and outside of business, allowing all tax positions to be transferred with continuity.

Exceptions regarding property

There is an important exception from the continuity rules with regards to transfer of residential property, holiday property and general farms and forestry, under the prerequisite that the testator or benefactor was in a position to sell such property tax-free. This makes the rule neutral for tax and inheritance tax purposes, as the seller is given the opportunity to sell the property without taxation, and transfer the proceeds without inheritance tax.

As such, when the exception applies the recipient will be able to set the tax base of the property to the market value at the time of transfer. Future profits on the property will be taxable unless the recipient himself fulfils the requirements for tax-free profits when selling.