

New Zealand

Contacts

Auckland

EY Limited
2 Takutai Square
Britomart
Auckland 1010
New Zealand

Darren White
darren.white@nz.ey.com
Mobile: +64 274 899 102

EY Limited
100 Willis Street
Wellington 6011
New Zealand

Craig Riddle
craig.riddle@nz.ey.com
Mobile: +64 274 899 389

EY Limited
Level 4
93 Cambridge Terrace
Christchurch 8013
New Zealand

Carey Wood
carey.wood@nz.ey.com
Mobile: +64 274 899 746

Richard Carey
richard.carey@nz.ey.com
Mobile: +64 274 899 509

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, transfer to executors or administrators on an individual's death, are distributed to beneficiaries under a will or the intestacy rules, or that 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 when 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. As of 1 October 2016, GST is imposed on supplies of digital and other remote services by nonresidents to New Zealand residents (other than GST-registered business customers).

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.

1.9 Review of New Zealand's tax system

The New Zealand Government has established a Tax Working Group to consider options for improvements in the structure, fairness and balance of New Zealand's tax system. This review could see the eventual introduction of new taxes, such as a capital gains tax, although the introduction of an inheritance tax or changes that would apply to the taxation of the family home or the land under it have been excluded from the scope of the Tax Working Group's review. Any significant changes resulting from the review are unlikely to take effect until at least the 2021 tax year.





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.) Certain supplies of digital and other remote services by nonresidents to New Zealand residents are also treated as made in New Zealand for GST purposes.

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. Transitional residents 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 ended 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%



- ▶ 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.

GST

4. Exemptions and reliefs

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

Taxpayers may need to make advance payments of provisional tax, generally in the 5th, 9th and 13th 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 instalment 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 the income tax year-end 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 (this option is generally only available if annual GST taxable turnover is below NZ\$500,000), two-month periods (this is the default option and is 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). A quarterly return period applies to nonresident suppliers of digital and other remote services. 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 willfully 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.

Interest and/or penalties may be imposed where returns are not filed on time or tax is not paid on time. In addition, 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 is likely to have New Zealand income tax implications.

There may be income tax and GST implications if trust assets are distributed in-kind or are made available for use by beneficiaries or associated persons for less than market value.

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.

The New Zealand Government is currently moving to update and improve the general law governing trusts in New Zealand, with a draft Trusts Bill currently going through the legislative process. This bill is intended to modernize and clarify trust law and will replace the Trustee Act 1956 and the Perpetuities Act 1964.





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-sourced 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)



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.

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.

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 affect property rights in various ways. Examples include:

- ## 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 dependents or persons for whom the deceased might reasonably have been expected to make provision.



10.6 Probate

Executors of an individual's will generally must 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 (for instance, money in bank accounts, shares, life insurance policies) which 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.