



Morison KSi

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March 2019

Doing Business Guide New Zealand



About This Guide

This guide has been produced by the Morison KSi New Zealand member firm for the benefit of their clients and associate offices worldwide who are interested in doing business in New Zealand.

Its main purpose is to provide a broad overview of the various things that should be considered by organisations when setting up business in New Zealand.

The information provided cannot be exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend anyone considering doing business in New Zealand or looking to the area as an opportunity for expansion should seek professional advice before making any business or investment decision.

While every effort has been made to ensure the accuracy of the information contained in this guide, no responsibility is accepted for its accuracy or completeness.

The information in this guide is up to date as at the edition date.

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Introduction

Why New Zealand?

Given its stable and globally competitive economy, and efficient tax regime, New Zealand is a highly attractive country to do business in.

In recent surveys, New Zealand has consistently ranked as one of the best countries to do business in. New Zealand is recognised as the most business-friendly environment in the world: the *Doing Business 2019*¹ report by the World Bank ranks New Zealand 1st out of 190 countries for the best place in the world to do business. It is also ranked as the easiest place in the world to start a business.

New Zealand's location is a great base for doing business in the Asia Pacific region and globally. It has many free trade agreements in place with major economies around the world, along with closer economic partnerships and economic co-operation agreements. New Zealand has excellent transport and distribution links.

New Zealand is well known for being a friendly place and given its climate, beautiful landscape and great living conditions, is a fantastic place to live and prosper.

It is a country that is very welcoming of investors.

Geography

New Zealand is situated in the South Pacific Ocean, 1,600 km southeast of Australia. The country consists of two large islands, the North Island (115,000 km²) and South Island (151,000 km²), together with a number of smaller islands, some close to its shores and others hundreds of kilometres away.

The population of New Zealand is almost 4.8 million. The capital city is Wellington, but the largest city

by population and geographic area is Auckland. The dominant cultural groups are of European, Maori and Asian descent. Other smaller groups include Pacific Islanders and many other ethnicities, which has resulted in an ethnically diverse population.

English is the everyday language spoken in New Zealand; Maori is the other official language.

Political system

New Zealand is an independent member of the British Commonwealth. Queen Elizabeth II is the Head of State, her representative in New Zealand being the Governor General.

Parliament is the governing body of New Zealand. Parliament is composed of a single legislative chamber consisting of the House of Representatives, which generally has 120 members. The House is elected for a maximum 3-year term using a mixed member proportional (MMP) system. MMP is a form of proportional representation where voters each cast a party vote to choose the political party, and an electorate vote to choose which individual from their electorate they want to be their Member of Parliament.

Education, social welfare services, police, and fire control are under the control of the central government. Territorial councils administer local and community services such as water supply and rubbish collection.

Legal system

The New Zealand legal system is based on the English common law system. The judicial system comprises three main tiers: the lower District Courts, the upper High Courts, and the Court of Appeal, with a further and ultimate appeal to the Supreme Court. Until the establishment of the

1. http://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf

Supreme Court (in January 2004), New Zealand's highest Court of Appeal was the UK Privy Council. Although there are a number of specialised tribunals and courts (such as the Environment Court and the Taxation Review Authority) that have judicial functions, in almost all cases their decisions can be subject to appeal to a higher court.

The economy

New Zealand is a free market economy that competes globally. Its inflation rate is one of the lowest in the industrial world.

New Zealand's gross domestic product (GDP) was NZ\$ 289 billion for the year ended March 2018. In the recent World Bank *Doing Business* survey², New Zealand was ranked as the best country in terms of ease of doing business in the world. New Zealand has also been ranked the 1st least corrupt country, by Transparency International in its *Corruption Perceptions Index 2017*³.

New Zealand has a range of manufacturing and service sectors, which complements a very efficient agricultural sector. The economy is heavily trade-orientated, with the agricultural, horticultural, forestry, mining, energy and fishing sectors playing an important role in the export sector and in employment. Overall, the dairy sector continues to account for the New Zealand's largest export earnings.

New Zealand's dependence on trade means that it is sometimes vulnerable to fluctuations in commodity prices and to its trading partners' economic performance. Despite this, New Zealand is a low-risk place to do business, due to the long-term stability of its economy and political climate.

New Zealand has worldwide trading relations, its most important trading

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partners being Australia, China, Japan, Singapore, the UK and the USA.

New Zealand has a very close trading relationship with Australia, governed by the Australia– New Zealand Closer Economic Relations Trade Agreement (CER), which has removed most restrictions on trade between the two countries. CER includes undertakings to ensure that New Zealand is guaranteed access to the Australian market in a number of industries and to ensure that trade develops under conditions of fair competition.

Foreign investment is welcomed and the government is keen to promote economic development, business, and employment growth, as illustrated by the government's Grown and Innovation Framework, which aims to return New Zealand to the top half of the OECD in terms of GDP per capita.

New Zealand has a freely floating exchange rate that typically fluctuates in line with currencies of its major trading partners, especially Australia, Japan and the USA.

New Zealand does not operate any foreign exchange controls or restrictions on either inward or outward flow of funds, nor is there any requirement to report the transfer of funds.

2. <http://www.doingbusiness.org/en/rankings>

3. <https://www.transparency.org.nz/2017-corruption-perceptions-index-ranks-new-zealand-number-one/>

Business Structures

A foreign investor may conduct business in New Zealand under the entities described below.

Sole proprietorship

A sole proprietor is an individual, therefore no separate legal entity is involved. The business is operated by the individual through the individual. As no distinction is made between the business assets and the personal assets of the individual, the individual is personally liable in all aspects of the business. There is no system in New Zealand of registering a business name except the reservation of a company name. Accordingly, there are no special steps required to become a sole proprietor.

Partnership

Partnerships are defined in the Partnership Act 1908 as the relation that exists between persons who carry on a business in common with a view to profit. A partnership is not a separate legal entity. Partners are jointly and severally liable for the partnership's debts and have unlimited liability. Individual partners are taxed on their share of partnership income at their individual tax rates.

Limited partnership

A limited partnership is a separate legal entity that provides the protection of limited liability for its limited partners, but is taxed in the same way as a traditional partnership. A limited partnership must be registered and have a partnership agreement, at least one general partner and one separate limited partner. The general partner is liable for all the debts and liabilities of the partnership, while the limited partner's liability is limited by their contribution to the partnership and is also prohibited

from taking part in the management of the partnership.

Trust

A business may be carried on by a trust. A trust can be set up whereby the trustee (or trustees) owns the business assets and carries on the business on behalf of the beneficiaries of the trust. A trust does not have separate legal existence like a company. All transactions in respect of the trust are undertaken by the trustees. A trust is, however, required to file a tax return; and in certain circumstances, the trustee is required to pay tax.

Joint venture

A joint venture is an arrangement between two or more entities who contribute resources for a specific purpose, usually for a limited duration. A joint venture will not be jointly and severally liable unless the nature of the joint venture so prescribes. A joint venture is itself not subject to tax and is not required to file an income tax return, unless it elects to be treated as a partnership for income tax purposes. A joint venture is a separate taxable entity for GST purposes and must file GST returns on its own account. For more information on GST, see the section on Taxation.

Look-through company

The look-through company regime was introduced from 1 April 2011 and effectively replaced the qualifying company and loss-attributing company regimes (however, existing qualifying companies can continue). A look-through company is transparent for tax purposes. Income and expenses pass through to the owners and are taxed at the owner's marginal tax rate. To

become a look-through company, the following requirements must be met:

- The entity has separate legal existence separate from its members
- The entity is resident in New Zealand for tax purposes
- The entity has five or fewer owners
- All owners have look-through interests
- A valid election is filed with the Inland Revenue.

Company

Companies in New Zealand are governed by the Companies Act 1993. A company is a separate legal entity capable of holding assets in its own name. Company shareholders' liability may be either limited or unlimited, and normally companies are registered with shareholder liability limited to the share issue price. To become incorporated under the Companies Act 1993, the only requirements are:

- A name
- One or more shares
- One or more shareholders
- One or more directors, of whom at least one director must either
 - live in New Zealand; or
 - live in an enforcement country and be a director who is registered in that enforcement country (currently, Australia is the only enforcement country per Regulation 12 of the Companies Act 1993 Regulations 1994)
- A registered office and address for service.

Branch of an overseas company

Before conducting business in New Zealand, overseas companies must 'reserve' their name with the Registrar of Companies. An overseas company must then register with the Registrar of Companies within 10 working days of commencing business. Registration includes filing:

- A certified copy of its certificate of incorporation and articles and/or constitution
- A list of its directors and the name of a person in New Zealand authorised to accept process notices on its behalf.

The overseas company may also be required to obtain the Overseas Investment Office's prior consent.

There is no requirement that New Zealand directors sit on the board of an overseas company.

A branch is not a separate legal entity from the overseas company.

Overseas companies must prepare separate audited financial statements for their New Zealand branch and file these, together with separate financial statements for their worldwide operations, with the Registrar of Companies.

Subsidiary

As with a branch, the company name must be reserved and the relevant administrative documentation must be registered with the Registrar of Companies. Once the name has been approved and reserved with the Registrar, the following incorporation documents must be filed:

- Consent to act as a director, and a certificate for each director confirming that they are not disqualified from acting

- Consent of the shareholder (for each shareholder)
- The notice reserving the company's name
- A copy of the constitution, if the company is to have one.

Applications to the Registrar must also include:

- The name and residential address of each director
- Similar details for the proposed shareholders, and the number of shares to be issued respectively to them
- Details of the registered office and address for service of documents, both of which must be in New Zealand.

A New Zealand company must have at least one New Zealand resident director. There is one exception to this, in that person can also be a person resident in Australia where that person is also a director of an Australian company.

Shareholders of companies incorporated in New Zealand automatically receive limited liability.

Starting a business

Once an operating structure is chosen, a few other matters must be addressed.

Naming the business

With tens of thousands of businesses operating in New Zealand, it is quite possible that your preferred choice could already be in use or contain banned words or phrases. There are two places to check if you can use your intended business name: The Companies Office, or the Intellectual Property Office of New Zealand (IPONZ).

The Companies Office

It is possible to reserve a business name on the companies register for 20 days; during this time, it is impossible for others to reserve the same or a similar name. Reserving a company name costs (at the time of print) NZ\$ 11.50 and can be done online. That name only becomes permanently secured once the company is registered. The Companies Office is also the place to find government restrictions on the types of names you can use. Visit www.business.govt.nz/companies/.

IPONZ

This is the organisation where copyright, patents and trademarks on original commercial assets – including business names – are registered. The IPONZ database can be used to determine whether a preferred business name is already being used as a commercial asset. IPONZ is also where logos and any unique combination of words and images that make up a business brand can be registered as a trade mark, thus preventing others from copying it. Visit www.iponz.govt.nz.

Note: Unlike companies, sole traders and partnerships don't have any protection over their business names. However, they can apply for a trade mark from IPONZ for their brand or logo to give them exclusive rights to use it in a unique way.

Registering your business

Register with the Inland Revenue Department

All businesses in New Zealand are required to register with IRD for tax purposes. Businesses operating under a sole trader and partnership structure can lodge the business's income under the owner's personal IRD number. Partnerships must have

their own IRD number. To get an IRD number, a New Zealand bank account is also typically required. Visit www.ird.govt.nz.

Register with the Companies Office

In addition to registering with the IRD, companies are required to be incorporated with the Companies Office. While companies require an IRD number, rather than going through the IRD this can typically be obtained through the Companies Office when a company is registered for incorporation. This can be done online at the Companies Office website (www.business.govt.nz/companies/).

Register for goods and services tax

Businesses must register for GST (via the IRD) once they reach (or expect to reach in the next 12 months) an annual turnover of more than NZ\$ 60,000. Once registered, the business collects GST for the government on the goods and services it sells, and can then claim GST back on the goods and services bought for the business. Businesses with a turnover under NZ\$ 60,000 may choose to register voluntarily. See the section on Taxation to find out more about GST.

Register to become an employer

When a business starts employing staff, they must register as an employer with the IRD. Upon registering, the business is typically asked whether they also wish to register for fringe benefit tax (FBT) and the employer superannuation contribution tax (ESCT). See the sections on Taxation and Labour and Personnel to find out more about these. Businesses that only hire contractors are not required to register as an employer unless the type of work undertaken by the contractor falls under the schedular payments regulations.

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Registering for licences, consents and permits

New Zealand's regional councils and other regulatory bodies can also impact upon the running and set-up of a business. For example, 'work from home' businesses, cafés and bakeries first have to obtain a licence from their regional council. The local councils are also responsible for regulating health and safety standards for all business and building permits. They should therefore always be the first point of contact before starting the business. Some industries also have to abide by a specialist regulatory authority that regulates product and service standards, the use of environmental resources, and anything else that might concern public safety by ensuring that businesses adhere to the relevant standards and codes of practice. Visit <http://www.business.govt.nz/laws-and-regulations/regulatory-authorities>. www.hayesknight.co.nz

Labour and Personnel

Labour relations in New Zealand are governed by various legislation, the primary statute being the Employment Relations Act 2000. This Act places emphasis on collectivism, although union membership is voluntary. The main features of the Act are:

- Employers must comply with requirements including those regarding hiring, union rights, collective bargaining and strikes and lockouts
- All employment agreements must be recorded in writing
- Good faith is to be exercised in the process of bargaining collective employment agreements, requiring the parties to:
 - not mislead or deceive each other
 - be active and constructive
 - be responsive and communicative in their employment relationship.

If an employer proposes a restructure or sale of the business, then they have a duty (of good faith) to give each affected employee information about the relevant proposal and an opportunity for that employee to provide feedback or comment on the proposal before any decision is made.

Although union membership is not compulsory, unions have specific rights of access to workplaces. Employers must recognise that the union represents their employees.

Unions

In New Zealand, union membership is voluntary; but if an employee wants to be involved in a collective agreement and to bargain collectively, they must be a member of a union. Union representatives have specific rights of access to workplaces and can represent

their members' individual rights at mediations and court proceedings. Employers cannot unreasonably refuse union access, even for purposes of recruitment.

90-day trial period

Small employers (i.e. businesses with <20 employees) are able to engage new employees on a trial period of up to 90 days, provided this is recorded in the signed employment agreement. During this 90-day period, the employee can be dismissed and cannot raise a personal grievance on the grounds of unjustified dismissal. While an employer is not required to provide written reasons for an employee's dismissal, there is an expectation that an employer, acting in good faith, would inform the employee as to why they have been dismissed.

KiwiSaver

The KiwiSaver scheme is a voluntary work-based savings initiative aimed at helping New Zealanders with their long-term saving for retirement. KiwiSaver came into effect in July 2007.

KiwiSaver is said to be work-based for two reasons: employers are expected to provide information about KiwiSaver to their employees, and KiwiSaver contributions come directly out of an employee's pay.

Contributions can be deducted from the employees pay at the rate of 3%, 4% or 8%. Employees nominate the rate of their employee deductions. The chosen rate can be change at any time.

Where an employee has elected into a KiwiSaver scheme, employers are also required to contribute the equivalent of 3% of their employee's gross salary or wages to their employee's KiwiSaver account or complying fund.

A complying superannuation fund is a section within a registered superannuation scheme that has been approved by the Financial Markets Authority as having met certain criteria similar to KiwiSaver. Employers are obligated to calculate ESCT on any employer cash contributions made to a registered superannuation scheme for an employee.

KiwiSaver employer contributions are paid with PAYE, while any contributions made to an employee's complying funds will still need to be paid directly to the applicable scheme.

It is worth noting that KiwiSaver schemes are managed by private sector companies called KiwiSaver providers, of which there are several to choose from. KiwiSaver is therefore not guaranteed by the government.

For more information about KiwiSaver, visit www.ird.govt.nz/kiwisaver/employers/.

Deductions from pay

Employers are required to withhold tax from wage and salary payments and return this to the Inland Revenue Department (the PAYE regime). The rate of withholding depends upon the relevant employee's individual tax rate. The employer must also withhold the employee's Accident Compensation Corporation earners levy and may be required to make other withholdings.

If the employee is a member of a KiwiSaver retirement savings scheme, the employer will be required to withhold the employee's contribution (usually 3% of gross pay) and will be required to make a compulsory employer contribution (a minimum 3% of the employee's gross pay).

Further deductions from pay may be required to be withheld depending on the employee's circumstances (e.g. repayments of student loans).

Fringe benefits

The fringe benefit regime is designed to impose tax on the employer in respect of non-cash benefits provided to employees by reason of past, present or future employment. Fringe benefit tax (FBT) is generally payable in quarterly instalments by employers on the value of fringe benefits provided to employees and shareholder employees. The value of fringe benefits is not included in the employee's gross income amount.

Employers with PAYE and ESCT deductions not in excess of NZ\$ 500,000 per annum can pay FBT on an annual basis.

Occupational health and safety

The main purpose of Health and Safety at Work Act 2015 is to provide for a balanced framework to secure the health and safety of workers in the workplace by eliminating or minimising risks arising from work, so protecting workers and other persons against harm to their health, safety and welfare.

Employers have a general duty to ensure workplace safety.

The Act allows for premises to be inspected and improvement and prohibition notices may be issued to stop activities. Failure to comply with the Act is a criminal offence, with fines of up to NZ\$ 3 million and/or 5 years' imprisonment.

Workers' compensation

Under New Zealand domestic law, there is no right to sue for

damages for accidental injury. Instead, New Zealand's Accident Compensation Corporation (ACC) operates a comprehensive scheme focusing on the needs of the injured person. The system removes the need to determine liability before compensation is provided to accident victims.

Both employers and employees are required to contribute to the scheme, so as to cover work and non-work accidents. The employer's account is funded by an annual levy imposed on the employers and self-employed people. The employee's or earner's levy is collected under the PAYE system.

Holidays and leave

In New Zealand, this is governed by the Holidays Act 2003, which outlines minimum legal entitlements as summarised below.

Annual holidays

All employees are entitled to ≥4 weeks' paid holidays a year. This entitlement comes into effect on their first and subsequent anniversaries after starting work with an employer. Annual holidays can be taken at any time agreed between the employer and the employee. All employees must be given the opportunity to take at least two of the 4 weeks' holidays consecutively, if they wish.

Public holidays

All employees are entitled to a paid day off on a public holiday if it would otherwise be a working day. Public holidays are separate from and additional to annual holidays. For more information on paying employees who work on public holidays and alternate holidays for working public holidays, visit www.dol.govt.nz.

Sick leave

For most employees, there is a minimum provision of 5 days' paid sick leave a year after the first 6 months of continuous employment and an additional 5 days' sick leave after each subsequent 12-month period. Exceptions are covered under 'The Effect of Various Work Patterns' in the Holidays Act 2003.

New Zealand employers are entitled to ask for proof of sickness or injury at any time. If the employee has been away from work for <3 days, then the employer must reimburse the employee for the cost of obtaining the proof (e.g. doctor's visit). If the employee has been away for ≥3 consecutive days, then they meet the costs.

Bereavement leave

On the death of an immediate family member, employees are entitled to up to 3 days' paid leave. Where there is more than one bereavement, the employee is entitled to 3 days' bereavement leave in respect of each death.

In the event of a death outside the immediate family that causes a person to suffer bereavement, up to 1 day's paid leave may be taken if the employer accepts that the employee has suffered bereavement. For more information, visit www.dol.govt.nz.

Parental leave

The Parental Leave and Employment Protection Act 1987 provides for both parents to take specified periods of parental leave (unpaid) on the birth or adoption of a child. Since 1 July 2018, government-funded paid parental leave entitles primary caregivers to receive up to 22 weeks' paid leave. This will increase to 26 weeks from 1 July 2020.

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The maximum level of payment is NZ\$ 564.38 per week before tax.

Employees are entitled to either their gross weekly rate of pay (before tax) or NZ\$ 564.38, whichever is lower. For more information on parental leave, visit www.dol.govt.nz.

For public holidays, alternative holidays, sick leave and bereavement leave, an employee is entitled to either their relevant daily pay or average daily pay.

International Mobility

Visa requirements

New Zealand has a reasonably open-door immigration policy, particularly for skilled migrants and for entrepreneurs with the resources and capital to contribute to the economy by setting up a business in New Zealand.

If you are not a New Zealand/Australian national, you will need a visa to work in New Zealand. Visa types include:

- Temporary work visa
- Long-term business visa
- Residence visa.

Applicants for any visa must be of good character and hold a valid passport that expires ≥ 3 months after the proposed date of departure.

Temporary WORK VISA

Work visas are time-limited and can be issued for a period of up to 3 years. To qualify, foreign nationals must have a job offer:

- For an occupation on the skills shortage list; or
- From a New Zealand employer who
 - is accredited or has approval to recruit foreign workers; or
 - can prove there are no suitable New Zealand applicants for the job.

An applicant may also be eligible when coming here for a specific purpose that will be of benefit to New Zealand.

Employees of a business which is relocating to New Zealand can also apply for a work permit and, later, for residence under the 'Employee of a Relocating Company' category,

if they do not meet any other criteria for residence.

Long-term business visa

Individuals wanting to establish their own business, or to buy a minimum 25% stake in an existing business, can apply for a long-term business visa or permit. As well as satisfying English language, health and character requirements, applicants must have:

- Sufficient funds to support their business, themselves and their family
- A sound business plan, with realistic financial forecasts, that shows how the grant of the visa will be of benefit to New Zealand by
 - creating new employment opportunities;
 - saving a failed or failing company;
 - improving exports; or
 - introducing new (or expanding on existing) business concepts, technologies, services or products.
- Relevant business experience or other expertise, including occupational registration where appropriate
- A good record: no business failures in the previous 5 years, and never any involvement in business fraud or wrongdoing.

The long-term business permit is issued initially for 9 months, but will be extended to 3 years provided the holder has started the business within the initial visa period.

Two years after establishing the business, the applicant may begin an application for residence under the entrepreneur category.

Residence visa

The main paths to New Zealand residence are through the following categories:

- Skilled migrant
- Investor
- Entrepreneur
- Family.

Skilled migrant category

The skilled migrant category operates on a points system with points awarded for qualifications, work experience, age, whether the person has a job offer, and other settlement factors. In addition, applicants must satisfy health, character and English language proficiency standards. Only those who meet the appropriate criteria are invited to apply for residence.

Investor category

There are two investor categories:

- Investor 1 category (Investor Plus)
 - Requires an investment of NZ\$ 10 million for 3 years
 - No age restriction or English language requirement
 - Must stay in the country for 44 days in each of the last 2 years of a 3-year investment period, or 88 days over the 3-year investment period.
- Investor 2 category (Investor)
 - Requires an investment of NZ\$ 3 million for 4 years
 - The applicant must be aged <65 years, have ≥3 years' business experience and have some English language skills
 - Must stay in the country ≥146 days in each of the last 3 years of the 4-year period.

"Persons who have a successful business and who have decided that they wish to live in New Zealand permanently can apply directly for a residence permit under the entrepreneur category"

Entrepreneur category

Persons who have a successful business and who have decided that they wish to live in New Zealand permanently can apply directly for a residence permit under the entrepreneur category. This also requires a minimum capital investment of NZ \$100,000 (excluding working capital) or NZ \$500,000, depending on the category applied for.

Family category

Applicants may be able to apply for residence based on their family connections in New Zealand. The main options are:

- **Partner:** Living with a New Zealand resident or citizen creates an opportunity to apply for residence on partnership grounds in some circumstances.
- **Parent:** The parents of a New Zealand citizen or resident may be eligible to apply for residence if they have an equal or greater number of children living permanently in New Zealand than in any other country. There is, however, a limit to these and Immigration New Zealand is not currently looking for expressions of interest, until further notice.

Taxation System

Income tax is imposed under the Income Tax Act 2007. Generally, residents in New Zealand are taxed on their worldwide income, with a credit available in most circumstances for foreign taxes paid. Non-residents are only taxed on income derived from a New Zealand source, although the liability may be reduced under a double taxation agreement.

The tax year runs from 1 April to 31 March. Taxpayers must apply to the IRD for permission to adopt an alternative balance date.

Income for tax purposes is widely defined and includes business trading profits and most forms of return on investment. New Zealand does not have a comprehensive capital gains tax regime (although note that a CGT regime is currently being considered and there is a high probability this will be brought into legislation in the coming years). There are, however, specific provisions that effectively tax capital gains on certain transactions. These transactions include:

- Profits from the sale of land in certain circumstances
- Certain royalty payments
- Profits from the sale of any personal property acquired with the purpose of sale or pursuant to a profit-making scheme
- Gains from any 'financial arrangements' (e.g. loans or deposits) under the accrual regime.

Taxation of individuals

Individuals are resident in New Zealand for income tax purposes if they

- have a permanent place of abode in New Zealand, whether

or not they have such an abode outside New Zealand; or

- are physically present in New Zealand for >183 days in aggregate within any 12-month period.

If an individual is resident in New Zealand and is also a resident under the domestic laws of a country with which New Zealand has a double tax agreement, the 'tie-breaker' provision in that agreement will determine where the individual is resident for the purposes of applying the agreement for the relief of double taxation.

A 4-year domestic income tax exemption for foreign-sourced income (excluding employment or services income) is available for overseas individuals who become New Zealand tax residents (referred to as the 'transitional resident' exemption). The exemption does not apply if the individual has been a New Zealand tax resident within the last 10 years.

Current income tax rates for individuals are shown in Table 1.

Table 1. Current income tax rates for individuals.

Annual income bracket (NZ\$)	Tax rate
0–14,000	10.5%
14,001–48,000	17.15%
48,001–70,000	30%
>70,001	33%

Taxation of companies

Companies are treated as New Zealand tax residents if they meet any of the following criteria:

- They are incorporated in New Zealand
- They have their head office situated in New Zealand
- They have their centre of management in New Zealand

- Control of the company by their directors is exercised in New Zealand, whether or not decision-making by their directors is confined to New Zealand.

Similarly, tie-breaker provisions apply for the purpose of double tax agreements.

Currently, resident and non-resident companies are subject to a flat tax rate of 28%.

The dividend imputation system allows New Zealand resident companies to pass on to their shareholders credits for the New Zealand income tax paid by the company. The credits attach to dividends paid and taxable bonus issues, including bonus shares in lieu.

New Zealand-resident companies must maintain an imputation credit account. This is a memorandum account that records tax paid and the allocation of credits to shareholders. Where resident individual shareholders receive dividends with imputation credits attached, they may offset these credits against their personal tax liability. Resident corporate shareholders may also offset credits against their tax liability except where the dividend is exempt from income tax. Non-resident shareholders cannot benefit from imputation credits under the foreign investor tax credit regime, but can mitigate withholding tax on dividends.

Most inter-company dividends are taxable. However, dividends may not be taxable to a shareholder when that shareholder is also a company and is a member of the same wholly owned group of companies as the payer of the dividends.

Taxation of trusts

The trustees of a trust generally are treated as a taxpayer. Income

derived by the trustees will either be 'trustee income' or 'beneficiary income', depending on whether or when it is distributed to a beneficiary. Trustee income is taxed at 33%. Beneficiary income is taxed at the recipient beneficiary's marginal tax rate. However, distributions to beneficiaries who are minors are taxed at a 33% rate in most instances.

Distributions to beneficiaries of things other than beneficiary income can also be subject to tax. This will depend on the classification of the trust in relation to that distribution. For instance, if the trust is a 'non-complying trust', distributions of accumulated trustee income and capital gains to a beneficiary are taxed at a rate of 45%. There are complex rules to determine the clarification of the trust and the source of the distribution.

Taxation of partnerships and limited partnerships

A partnership and limited partnership are not in themselves liable for income tax. However, they are required to file a tax return for information purposes. It is the individual partners in a partnership who will be taxed on their share of partnership income at their individual tax rates. Losses incurred by the partnership will also be passed through directly to partners. There are no restrictions based on residence and the number of entitlements of the flow through tax treatment under the partnership rules. However, limited partners in limited partnerships can be restricted with regard to the amount of losses they can utilise.

Goods and services tax

GST is a consumption tax imposed on the supply of goods and services in New Zealand, and on

imported goods. Although the tax is generally levied at the standard rate (currently 15%), some supplies are taxed at a nil rate (zero-rated) and a small number of specified supplies are exempt from the tax. All commodities, with the exception of money, are subject to GST.

GST is not a tax on business profits or turnover but on consumption of goods and services, and is ultimately paid by the consumer or end user. The tax is paid at each step along the chain of ownership, until the goods or services reach the end user. Registered businesses and other organisations account for the GST they have collected, and claim a credit for the GST on business inputs, including capital items such as plant and equipment that they have paid. Through the operation of this credit offset system, a net figure is returned by registered entities in their GST returns that must be lodged at monthly, 2-monthly or 6-monthly intervals. Businesses must register for GST where their annual turnover exceeds NZ\$ 60,000.

Zero-rated supplies

As GST is confined to consumption of goods and services in New Zealand, certain export transactions are zero-rated. Zero-rated supplies include:

- Exported goods
- Supply of goods situated out of New Zealand
- Exported services such as international transportation and freight, services performed outside New Zealand and certain services supplied to non-residents.

In addition, transactions involving land between two GST registered persons can generally be zero-rated.

Exempt supplies

There are a limited number of exemptions from GST:

- Financial and banking services (extensively defined)
- Supplies by charities and other non-profit organisations of goods and services received as donations
- Residential property rentals and the associated sale or lease of freehold or leasehold residential property
- Sale of precious metals, e.g. gold or silver as a commodity. The exemption does not apply to the manufacture and sale of jewellery and other collectables.

Gift duty

Gift duty was abolished from 1 October 2011.

Excise duty

Excise duty, in addition to GST, is imposed on certain goods manufactured in New Zealand, being beer, wine, alcohol, tobacco products and fuels.

Customs duty

Customs duty refers to a number of imports, including:

- Excise duty and excise-equivalent duty payable on a variety of goods such as alcohol and tobacco
- Duty imposed on certain imports under the Tariff Act 1988
- Anti-dumping and countervailing duties that can be imposed where it is considered that goods are being 'dumped' in New Zealand or they have been subsidised by a foreign government, respectively

- GST imposed on imports.

The New Zealand Customs Service collects these duties. The rate of duty payable is determined by the classification of the goods under the Customs and Excise Act 1996.

Stamp duty

Stamp duty has been abolished in New Zealand since 20 May 2009.

Estate duty

No estate or death duties are payable in New Zealand.

Transfer pricing and thin capitalisation

New Zealand's transfer pricing rules attempt to protect the New Zealand tax base by ensuring that cross-border transactions are priced on an arm's-length basis. New Zealand also has thin capitalisation rules that disallow certain interest deductions for a foreign-owned New Zealand group, depending on their debt/equity ratio.

As with most other developed countries, New Zealand has a comprehensive international tax regime.

Banking and Finance

Raising capital in New Zealand

The most common types of funding available for business development and growth are summarised below.

- **Personal equity, friends and family:** A high proportion of businesses are funded by the business owner's own equity (capital), i.e. savings and/or a loan or mortgage raised against the owner's home. Further capital can be raised from friends and family. Personal equity can also include the cash flow or savings that have built up in a business. While cost-effective funding is available, this often takes an extended period of time to build up.
- **Banks** are the second most common source of funding for business development. This funding can take various forms, such as short-term funding (for instance, an overdraft) to meet immediate commitments, or longer-term funding for capital items (such as plant and machinery).
- **Angel investors** are people prepared to invest in a promising business venture, often at a relatively early stage of the business life cycle. The investor typically requires some equity (ownership) in the business to offset their investment risk and expects at least a 30% return on their money.
See www.bizangels.co.nz or www.angelassociation.co.nz.
- **Venture capitalists** are investment companies or fund managers that provide cash in return for part-ownership of a business. They are typically only interested in investments that exceed NZ\$ 1 million due to the time and cost associated with due diligence procedures. They may also expect to take an active

management role, which explains why their return expectations are higher (30–50% per annum) on their investment.
See www.vcapital.com.

Banking

The bank manages monetary policy to maintain price stability, promotes the maintenance of a sound and efficient financial system, and supplies New Zealand's banknotes and coins.

All 26 banks operating in New Zealand must be registered with the Reserve Bank of New Zealand and are required by law to disclose their financial condition each quarter. The banks with the largest presence are:

- ANZ Bank New Zealand Ltd
- ASB Bank Limited
- Bank of New Zealand
- Westpac New Zealand Limited
- Kiwibank Limited

Kiwibank Limited is owned and operated through New Zealand's national postal operator, NZ Post.

The rest are owned by larger Australian banks.

The 21 other registered banks are:

- Australia and New Zealand Banking Group*
- Bank of Baroda (New Zealand)
- Bank of China Limited*
- Bank of China (New Zealand)
- Bank of India (New Zealand)
- China Construction Bank Corporation*
- China Construction Bank (New Zealand) Limited
- Citibank NA*
- Commonwealth Bank of Australia*

- Heartland Bank
- Industrial and Commercial Bank of China (New Zealand) Limited
- JP Morgan Chase Bank*
- Kookmin Bank
- Coöperatieve Rabobank U.A. trading as Rabobank Nederland*
- Rabobank New Zealand
- Southland Building Society
- MUFG Bank, Ltd*
- The Co-operative Bank
- The Hongkong and Shanghai Banking Corporation HSBC*
- TSB Bank Limited
- Westpac Banking Corporation*

*Branches of overseas-incorporated banks.

Capital markets

New Zealand has a small but well-developed capital market, on which securities are actively traded. The New Zealand Exchange (NZX) is the only registered securities exchange and regulates three primary markets:

- New Zealand Stock Market (NZSX), the premier equities market for large and established enterprises. To list on the NZSX market the company must, among other things, have an appropriately qualified board of directors, ≥ 500 shareholders who hold $\geq 25\%$ of the class of securities between them, and comply fully with NZX disclosure and other requirements. NZX also recommends that such companies have annual revenue of at least NZ\$ 50 million.
- New Zealand Alternative Market (NZAX), for fast-growing small and medium enterprises (SMEs) looking for additional sources of capital. To list on the NZAX market the company

must, among other things, have ≥ 50 shareholders. NZAX also recommends that such companies have annual turnover of between NZ\$ 5 and 50 million.

- New Zealand Debt Market (NZDX), for corporate and government bonds, fixed-income and other debt securities.

The primary regulators of New Zealand's capital markets are the Financial Markets Authority (FMA), NZX and the Takeovers Panel.

Regulation of foreign investments in New Zealand

New Zealand's regulations governing foreign investment are liberal by international standards. There are no rules on the maximum level of equity interest a foreign investor may take in a New Zealand enterprise, except with respect to ownership of domestic fishing quotas, Telecom and Air New Zealand.

The Overseas Investment Commission (OIC) is a statutory body with responsibility for approving certain classes of investment proposals by prospective overseas investors.

There are no restrictions on the movement of funds in or out of New Zealand, including the repatriation of profits. No additional performance measures are imposed on foreign-owned enterprises. An application to the OIC must be made by non-residents planning to invest more than NZ\$ 100 million establishing a business, or to purchase an equity share of $>25\%$ in a New Zealand company worth more than NZ\$ 100 million. OIC approval is also required to invest in some land over 5 hectares, islands, and any foreshore or reserve land over 0.4 hectares.

Clearance considerations for acquisitions other than those of a sensitive nature include:

- The prospective investor's relevant business experience
- Confirmation that it is their own capital at risk
- Absence of a criminal record that would disqualify the prospective investor from obtaining permanent residence in New Zealand.

It is rare for investment applications to be declined.

The Fisheries Act 1996 contains specific restrictions on overseas investment in fishing. Only a resident may own a fishing quota (entitlement to take fish).

Bank accounts

Foreign-owned businesses should allow plenty of time for the opening of a bank account, which has become a slower and more complex process as a result of legislation to combat money laundering and other banking regulations.

Legislation against money laundering and the financing of terrorism

New legislation to combat money laundering and the financing of terrorism took effect in New Zealand on 30 June 2013. The Anti-Money Laundering and Countering Financing of Terrorism Act 2009, a mouthful referred to as the AML/CFT Act by most users, is significant legislation that imposes requirements on many different types of entities.

This Act applies to 'reporting entities', defined by the types of transactions they undertake. The type of transactions list has been drafted very broadly and casts the

"Foreign-owned businesses should allow plenty of time for the opening of a bank account, which has become a slower and more complex process as a result of legislation to combat money laundering and other banking regulations"

net very wide, meaning that a large number of entities will be captured by this legislation.

If caught by the Act, entities need to implement comprehensive policies and procedures to assess and cover potential risk. They must demonstrate that they are complying with the Act and regulations, and will need to report to the relevant statutory supervisors.

Reporting Requirements

Reporting and audit requirements

Under the Companies Act 1993 and the Financial Reporting Act 2013, every company must keep accounting records that:

- Correctly record and explain company transactions
- Will at any time enable the company's financial position to be determined with reasonable accuracy
- Will enable the directors to ensure that the financial statements are prepared in accordance with the provisions of the Financial Reporting Act, 2013
- Will enable the financial statements to be readily and properly audited for companies that are required to file financial statements annually with the Companies Registrar.

Further provisions of the Companies Act specify particular types of accounting records to be kept; that they are to be kept in English, and retained for a period of ≥ 7 years from the year they were filed.

Financial statements must be supplied to shareholders at least every calendar year and must comply with statutory disclosure requirements, including an overriding requirement to:

- Present a 'true and fair view' of the company's financial position at the date of accounts, and of its operations for the period up to that date
- Comply with Generally Accepted Accounting Practice (GAAP) for companies that are required to file financial statements annually with the Companies Registrar.

The Financial Reporting Act 2013 is the umbrella legislation regarding financial reporting requirements in New Zealand. It defines generally accepted accounting practice as applicable financial reporting standards as issued by the external reporting board, the government's accounting, audit and assurance standard setter.

Requirement to prepare company financial statements

The requirement for companies to prepare general-purpose financial statements will apply to:

- Overseas company and New Zealand subsidiaries of a body corporate incorporated outside of New Zealand if the total assets of the company and its subsidiaries were more than NZ\$ 20 million, or if total revenue was more than NZ \$10 million per year (assessed over the two preceding accounting periods)
- Some large companies that carry on business in New Zealand. 'Large' is defined as assets exceeding NZ\$ 60 million, or revenue exceeding NZ\$ 30 million (assessed over the two preceding accounting periods)
- Companies with ≥ 10 shareholders unless, through a 95% majority vote, the company opts out of compliance
- Companies with < 10 shareholders if shareholders who hold $\geq 5\%$ of the voting shares require the company to comply.

In addition:

- Financial statements must be prepared in accordance with GAAP within 4 months of the balance date for Financial Markets Conduct (FMC) reporting entities, and 5 months from the balance date for large entities

- Parent entity financial statements are not required if group financial statements are prepared
- In respect of the Companies Act, Section 211 required disclosures in annual reports; the threshold has been reduced. Shareholders who hold $\geq 95\%$ of the voting rights will be able to agree to exclude information from the annual report; previously, unanimous agreement was required.

Requirement to audit company financial statements

The audit requirement applies to the same companies as noted above, and the same opt-in/ opt-out provisions apply.

In addition:

- Large companies (other than those that are required to register their financial statements) can opt out of the audit requirement through a 95% majority vote
- Audits must be carried out in accordance with auditing and assurance standards (but the Registrar can recognise overseas standards)
- An auditor is required to be appointed only if the financial statements or group financial statements of the company are required to be audited.

Auditors of companies are required to be chartered accountants holding a valid certificate of public practice. Auditors of FMC entities, essentially any entity offering debt or equity securities to the general public, are required to be audited by a licensed auditor from a registered audit firm. The licensing and firm registration is regulated by the Financial Markets Authority.

Requirement to register company financial statements

The registration requirement for overseas companies is restricted to large overseas companies and large companies with 25% overseas ownership.

In addition, any company that is a subsidiary of an overseas entity, and that is required to prepare financial statements, must register its financial statements.

Large overseas companies and large companies controlled by overseas interests must provide a copy of their financial statements and auditor's report to the Registrar of Companies within 5 months of the balance date.

Each year, every company must file an annual return of directors, shareholders and other matters with the Registrar of Companies.

Other entities

Large partnerships

Large partnerships must prepare financial information in accordance with GAAP. This information must be audited unless the partnership opts out of compliance by passing a resolution by partners who together have contributed $\geq 95\%$ of the capital.

Charities

Charities that have successfully registered with the Charities Commission are not subject to income taxation in New Zealand. They will be required to prepare financial information in accordance with GAAP, as appropriate for charities.

The External Reporting Board governs accounting standards for

the different tiers of Public Benefit Entities (PBE), which will include registered charities. These PBE accounting standards are based on International Public Sector Accounting Standards and modified as appropriate for the New Zealand environment and size of entity.

Securities law

In New Zealand the Financial Markets Conduct Act 2013 (“FMC”) has a primary objective to facilitate capital market activity to help businesses grow, and promote confident and informed participation in the financial markets. The FMC seeks to do this by changing the way in which information on investment products is presented.

Where an offer of securities is ‘regulated’ a product disclosure statement (“PDS”) must be prepared. The PDS is intended to be a fairly streamlined document focusing on the substance of the investment rather than form. The FMC states when investments can be offered without a PDS, which allows for a more limited disclosure of information to an investor.

Competition law

The Commerce Act 1986 is the key competition statute. It aims to promote competition and prohibits:

- Agreements that have the purpose or effect of substantially lessening competition
- Price fixing
- Taking advantage of market power to exclude competition
- Resale price maintenance
- Business acquisitions that are likely to have the effect of substantially lessening competition.

Consumer protection

In New Zealand, consumers are protected by two primary pieces of legislation: the Fair Trading Act 1986, and the Consumer Guarantees Act 1993. However, unlike some countries, in New Zealand there is no power to stop repeat offenders from trading.

The Fair Trading Act 1986 aims to protect consumers against misleading or deceptive behaviour. The Act is enforced by the Commerce Commission and gives consumers direct rights of action. Anyone providing goods or services needs to be aware of the Act.

The Consumer Guarantees Act 1993 ensures that certain guarantees are in place around goods and services to protect New Zealand consumers. The Act also offers remedies (damages and the right to cancel a contract) should goods and services not live up to these guarantees.

It is worth noting that the Act does not apply to dealings of a business-to-business nature and that most commercial contracts specifically acknowledge this. The Act only applies to persons buying goods or services for the purposes of household or domestic use.

Agencies Providing Assistance

There are many government organisations in New Zealand that seek to assist businesses to set up and operate in New Zealand.

New Zealand Trade and Enterprise –

www.nzte.govt.nz/

NZTE is New Zealand's international business development agency. They exist for one purpose – to grow your business internationally, bigger, better, faster.

Business.govt.nz –

www.business.govt.nz/

Business.govt.nz makes it easier for small business in New Zealand to understand and comply with government, and succeed. They do this by packaging content and advice from across government into tools and resources designed with small business in mind. They work closely with small businesses across New Zealand, government agencies, and private sector businesses and organisations, to understand small-business pain points and how to address them in the most effective way.

Business.govt.nz is part of the Ministry of Business, Innovation and Employment (MBIE) and is focused on achieving the government's Better for Business objectives.

Ministry of Business, Innovation and Employment –

www.mbie.govt.nz/

The MBIE is the government's leading business-facing agency. Its contribution to improving the well-being of New Zealanders is summarised in its mission statement: 'to grow New Zealand for all'.

New Zealand Story – www.nzstory.govt.nz/

For New Zealand exporters looking for support in communicating their distinctly kiwi attributes to the world.

Immigration New Zealand –

www.immigration.govt.nz/new-zealand-visas/options/start-a-business-or-invest/i-want-to-invest-or-do-business-in-nz.

Immigration New Zealand works with international organisations and industry partners to improve border security and make immigration easier. They also lead government strategy designed to help migrants settle in New Zealand.

New Zealand Now – www.newzealandnow.govt.nz/investing-in-nz/investment-options/starting-a-business

This resource contains information to assist businesses on how to start up a business New Zealand.

New Zealand Companies Office –

www.companiesoffice.govt.nz/

A resource for those operating a company. The Companies Office website is used to incorporate Companies and file of annual returns. You can also search for New Zealand companies, directors and shareholders and view various incorporation documents.

Investing in Auckland – www.aucklandnz.com/business-and-investment

An insight into Auckland, New Zealand's biggest city.

New Zealand Foreign Affairs and Trade –

www.mfat.govt.nz/

MFAT negotiates and defends access to overseas markets, and helps our exporters to be successful and contribute to international solutions. MFAT contributes to solutions for climate change, and helps form global agreements to protect fragile environments. MFAT manages New Zealand Development Assistance, which invests in sustainable development in the Pacific and beyond.

Grants and Incentives

New Zealand Trade and Enterprise (NZTE) is the government department responsible for helping New Zealand businesses grow and compete internationally via a range of services, programmes and information.

- NZTE Capability Development Vouchers can be used to access subsidised services (up to 50%) that will help build management capability within the business, which in turn may accelerate the growth of your business. These services are primarily delivered through one-on-one coaching or workshops.
- Ministry of Science and Innovation (MSI) Research and Development. Business R&D is a key driver of innovation, business success and economic growth. Therefore a range of MSI services are available to help businesses grow through all stages of R&D. Funding can range from NZ\$ 1,000 to over NZ\$ 1 million.
- Industry Capability Network (ICN). The Industry Capability Network (ICN) exists to help local businesses get involved with major projects in New Zealand and Australia. ICN New Zealand also helps the New Zealand businesses it works with to become more capable and build relationships that will take them into other international markets.
- The Manufacturing+ Programme offers selected high-growth businesses the opportunity to participate in Manufacturing+ workshops to help them achieve peak performance. Some businesses may also be eligible for more intensive in-house training sessions to help them embed Manufacturing+ principles into their business.

For more information on NZTE and how they assist New Zealand businesses, visit www.nzte.govt.nz.



The Next Step

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