

NEW ZEALAND FOREIGN TRUST

New Zealand as a country has a number of features that make it attractive as the jurisdiction for trusts:

1. It has a stable system of government – a constitutional monarchy with a democratically elected parliament. The Head of State of New Zealand is Queen Elizabeth II.
2. The New Zealand legal system. New Zealand was a British colony and hence its law is derived from the British legal system. New Zealand trust law is derived from the laws of England. Trusts in New Zealand remain creatures of equity rather than rigidly bound by statute. This being said, the main statute applicable to New Zealand trusts is the Trustee Act 1956 and amendments, which was based on the UK statute of the time. Cases decided in other common law jurisdictions are persuasive in New Zealand trust law cases.
3. New Zealand has extremely low levels of corruption. New Zealand regularly features in the top five countries perceived as being non-corrupt.

Under New Zealand's legislation "a foreign trust" is one in which the settler of the trust is not a tax resident of New Zealand. The tax residency of the trustees is not relevant to determine the trust's status as a New Zealand foreign trust.

However, to create a nexus with New Zealand and to ensure that the New Zealand law can be legitimately be used as a jurisdiction of the trust, the trustee and the majority of the trustees are normally tax residents.

The advantages of the New Zealand foreign trust included:

- (a) The trust is only taxed in New Zealand on its New Zealand sourced income;
- (b) Non New Zealand sourced income is not assessed for tax in New Zealand;
- (c) There is no capital gains tax in New Zealand;
- (d) As a member of the OECD it does not appear on any black list of tax havens.

NEW ZEALAND FOREIGN TRUST

The features of New Zealand trust law that make it attractive for use as a trust jurisdiction are as follows:

- (a) There are no licensing requirements for trustees in New Zealand (other than institutional trustees which are established by acts of Parliament).
- (b) Trustees of foreign trusts are classified in New Zealand under two categories. Firstly a “resident foreign trustee” who is simply a trustee who is tax resident in New Zealand. The second category is a “qualifying resident foreign trustee”. Such trustee is a resident foreign trustee who is a member of an approved organization or in the case of a corporate trustee has a director or a person in control of the company who is both a New Zealand tax resident and a member of an approved organization. The approved organizations are at present the New Zealand Law Society and the New Zealand Institute of Chartered Accountants and the Society of Trust Estate Practitioners.
- (c) Until 2007 New Zealand had no registration requirements for foreign trusts. However since 2007 trustees of such trusts are required to disclose, to the New Zealand Inland Revenue Department, the trust name, the date of settlement, or whether the settler is Australian and whether the trustee is a qualifying resident of foreign trustees. Certain records must also be kept in New Zealand, this includes a trust deed, details of settlement and distributions, and financial records. NB the trust deed itself does not need to be filed.

Failure to comply with the disclosure rules can result in the trust losing its favourable tax treatment in New Zealand and the trustee may be subject to penalties. However, if the trustee is a qualifying resident foreign trustee the trustee may be subject to penalties but the trust tax status is not affected.

A New Zealand company owned by New Zealand non-residents can act as a trustee of a New Zealand foreign trust. The company’s foreign ownership would require that the company is subject to an annual audit. The trustee company will not have any trading activities in its own right and therefore the accounts will be prepared on the basis of being “nil”. The audit does not need to be filed with any external organization.

NEW ZEALAND FOREIGN TRUST

- (d) It is possible to take a conservative position with the New Zealand jurisdiction by having effective management and control of the trust carried out by New Zealand resident trustees, with the majority of the directors of the company being New Zealand resident directors. This New Zealand company can then interface with the offshore advisory and custodian trustees, so that the majority of the attendances can take place offshore.

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained.