international@afigec.com

COMPANY FORMATION IN NEW ZEALAND

MAIN FORMS OF COMPANY/BUSINESS IN NEW ZEALAND

New Zealand (NZ) has a number of business structures available to both residents and non-residents alike, the most commonly used being the limited liability company. Alternatives are the sole trader model, partnerships (both limited and unlimited) and trusts.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

The primary tax issue to consider when incorporating a NZ company, is the requirement for the entity to then pay income tax on worldwide income, although this exposure may be reduced to taxation on NZ sourced income only via the application of a double tax treaty agreement (DTA).

The standard income tax year in NZ ends on 31 March, although approval for off-March balance dates may be sought, particularly where there is a desire to align the NZ entities balance date with an offshore parents, for example.

A company must file an annual return of income to the Inland Revenue Department (IRD) by 7th July each year, unless the company utilises a registered tax agent, in which case the due date for filing may be extended to the 31st March of the following year.

The NZ company tax rate is presently a flat 28%. In this regard, NZ has a full imputation system, which essentially acts to reduce exposure to double taxation when shareholders receive dividends from the company. The imputation system usually only benefits NZ resident shareholders however, as most foreign jurisdictions do not recognise the imputation credit as a foreign tax credit claimable against any domestic taxes payable on the dividend received by their resident. Consequently care is required when establishing a presence in NZ, to ensure that the structure to be used provides the best return for any non-resident investors.

Most NZ companies are provisional tax taxpayers, which require the company to pay income tax in advance of the actual liability for the income year being determined. Payments are made on the 28th August, 15th January and 7th May, with any residual payment, referred to as terminal tax, due for payment on the following 7th April.

NZ has a non-resident withholding tax (NRWT) regime, which for a company usually creates an obligation to deduct a withholding tax from any dividends paid to non-resident shareholders. The standard NRWT rate on dividends is 33%, although that rate may be reduced by the provisions of an applicable DTA, including to a 0% rate where the company has fully imputed the dividend.

Losses incurred by a NZ company can usually be carried forward to the next income year or offset against profits of company's within the same tax group, which requires 66% common ownership. There are shareholder ownership continuity requirements with respect to tax losses and imputation credits, which if not met will result in the forfeiture of carried forward balances.

NZ has a value added consumption tax known as Goods and Services Tax (GST) which is imposed at the rate of 15% on supplies of goods and services consumed in New Zealand. A business must register for GST if it has annual taxable supplies (turnover) of NZ$60,000 or more. GST returns are required to be filed to the IRD either monthly, two monthly or six monthly (subject to defined criteria). Any GST payable is usually due on the 28th day of the month following the end of the relevant taxable period.

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LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

The Registrar of Companies (commonly known as the NZ Companies Office) is responsible for overseeing and ensuring compliance with NZ company legislation by all companies (both domestic and foreign) registered as carrying on business in NZ.

To incorporate a NZ company, the desired company name must first be reserved (and approved by the Registrar) and the relevant incorporation documents must be completed and registered. A NZ company must have a NZ registered office and address for service, and the company must have at least one director who ordinarily resides in NZ or alternatively at least one Australian resident director who is also a director of an Australian company.

Once a NZ company has been incorporated, it has certain on-going filing obligations with the Registrar, which include the filing of an annual return. The annual return is essentially a confirmation that all current information surrounding the company held by the Registrar is up to date, although depending on the size or nature of the company's ownership, it may also require the filing of audited financial statements.

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

New Zealand is a multi-ethnic country, comprising around 68% of people of European descent, 15% Maori (tangata whenua, the indigenous people), 10% Asian and 7% Pacific peoples. This ethnic diversity is projected to increase, with the Asian population in particular increasing to 14% over the next 15 years.

Business is generally conducted in English; however, some businesses which are substantially owned by Maori may use Maori in their day to day dealings with other Maori speakers. These businesses commonly produce their publications in both English and Maori. Government Departments also publish in both these official languages and other commonly used languages such as Mandarin, Hindi, or Samoan. Many recent immigrants, of course, still operate in their first language where they can.

There are generally no cultural concerns that need to be taken into account in terms of the establishment of a company in NZ itself. However naturally the reason a NZ presence is being established and the likely business to be undertaken in NZ by the company may have cultural implications for which specialist advice may need to be sought at some point in the future.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

The Overseas Investment Office must consent to an acquisition by an "overseas person" of "sensitive land", "significant business assets" or fishing quota. "Sensitive land" includes non-urban land with areas greater than 5 hectares. "Significant business assets" includes 25% or more of a business where the consideration paid for the New Zealand part of the investment exceeds NZ$100 million.