1 March 2018

NEW ZEALAND TAX UPDATE
[AS AT 1 MARCH 2018]

1. NZ imposes income tax on a residency/source basis. It taxes residents on total worldwide income. It taxes non-residents on NZ sourced income only.

2. Under domestic legislation, an individual becomes New Zealand tax resident where:

   - they have been personally present in New Zealand for 183 days in ***any*** 365 days; or

   - they have established a *permanent place of abode* (**PPOA**) in New Zealand.

3. The meaning of PPOA has occupied both the Commissioner and the Courts for some time. The Commissioner of Inland (**CIR**) appealed a decision of the High Court, which in turn overruled decisions of the **CIR** and Taxation Revenue Authority that favoured the **CIR**. The Court of Appeal has confirmed the decision of the High Court. The ordinary meaning of "to have a permanent place of abode in New Zealand" is "to have a home in New Zealand". Whilst the taxpayer owned a house in New Zealand, he had not lived in it. It was purely a rental property investment.

4. New Zealand and Hong Kong entered into a Double Tax Agreement [**DTA**] which came into effect on 1 April 2012.

5. The provisions of a **DTA** overrule domestic legislation. It is possible that a person may be deemed a tax resident in New Zealand as well as Hong Kong based on respective domestic legislation. Here the DTA takes precedence. Reference should be made to *Article 4* of the DTA which is in effect a tie-breaker test; the effect of which only one country can succeed in attaching a tax residency tag.

   Unlike New Zealand (which taxes on a global basis), Hong Kong imposes tax on a territorial basis. Thus income earned outside Hong Kong is not taxed. If (unbeknown) one accelerates their New Zealand tax residency (e.g. under the physical presence test)

all worldwide income then becomes taxable in New Zealand. Further, whilst Hong Kong has a progressive resident tax rate (similar to New Zealand), various income splitting, exemption and rebates available in Hong Kong make the average Hong Kong tax rate far less than the marginal tax rate in New Zealand (33%). Thus some planning may be necessary.

6. There is a *forty-eight month* domestic income tax exemption in respect to foreign sourced income (other than employment or services income) available for overseas individuals who become tax resident. The exemption is not available if the person has been an NZ tax resident within the previous 10 years. This is referred to as the *transitional residency* exemption.

7. A company is resident if it is incorporated in New Zealand or its head office, centre of management or the place from which directors exercise control is situated in NZ.

8. The taxation of a trust is determined by the residence of *its* settlors.

9. Foreign sourced income derived by a NZ tax resident is subject to NZ tax at the taxpayer's marginal tax rate. Foreign tax paid is available as a credit up to the equivalent NZ tax imposed. Non-resident withholding tax [**NRWT**] deducted from passive income (interest/dividends/royalties) is generally available in full as a credit. This is provided either by way of a double tax treaty or domestic tax legislation. Imputation credits attached to foreign dividends are not available as a tax credit.

10. NZ adopts a comprehensive international tax regime under which NZ residents are subject to New Zealand tax [in respect to foreign investments] under either the *Foreign Investment Fund* [**FIF**] or *Controlled Foreign Corporation* [**CFC**] regimes. Under the CFC regime, foreign sourced income of a foreign company controlled by NZ shareholders is attributed back to the NZ resident shareholder. However, where a CFC generates active income (as opposed to passive income such as interest), that active income will not be reported for New Zealand taxation purposes; nor attributed to the NZ shareholders of the foreign company.

    Where an NZ resident has an interest in a FIF there is a requirement to calculate and return income attributable to that interest. Thus income is taxed as it is earned.

11. A person has FIF income if inter alia that person has rights in a

foreign company, rights under a life insurance policy issued by a non-resident and such rights/entitlement are not otherwise exempted or fall within the CFC regime.

12. Pensions and annuity benefits are taxed as received. Certain lump sum withdrawals from foreign superannuation schemes no longer come under the FIF regime. First of all there is a four year window (non-taxable) which is in addition to the transitional residency exemption. Outside of the four year window, the receipt of lump sum payments will be based on the length of residence of the person in NZ.

13. Dividends derived by a NZ resident individual from a foreign company (not subject to FIF rules) are subject to NZ income tax on the gross dividend. Credit is available for foreign tax paid up to the equivalent New Zealand tax. Reference needs to be made to any double tax agreement for any variation to the above. Insofar as NZ/HK is concerned, *Article 10* deals with dividends.

14. Where an investor owns less than 10% of a foreign company (referred as a *portfolio investment*), NZ has introduced a *fair dividend rate* [**FDR**] regime to tax foreign dividends. The **FDR** has been set at 5% of the market value [**MV]** in a portfolio investment. Australian listed investments (in general) are excluded from the FDR regime. The FDR is deemed to be the return (including dividend) from the investment in the offshore shares on an annual basis.

    Assume a taxpayer holds offshore shares with a market value [**MV**] of NZ$100k at 1 April 2016. During the year the taxpayer acquires another NZ$20k, which is held at 31 March 2017. During the year ended 31 March 2017, the taxpayer receives a dividend of NZ$3k. Shares have a MV of NZ$121k at 31 March 2017. Under **FDR** the taxpayer would be taxed on NZ$5k (5% of NZ $100k). However, if the taxpayer can show his actual return is less than NZ$5k, he would be taxed on that lesser amount. In the illustration, the taxpayer has received dividends of NZ$3k plus gain of NZ$1k to equal NZ$4k. As a result, tax would be imposed on NZ$4k in the 2017 income year.

15. Unlike much of the Western world, NZ does not have a general capital gains tax [**CGT**]. There are certain transactions however (e.g. property dealers/ developers and traders in equities), where any gain/loss is assessable/deductible.

    In addition, to overcome a perceived problem of *land banking*, Government introduced a two-year bright-line test for residential land acquired on or after 1 October 2015. Profits derived from the same of residential land within the two year period are taxable. There is an exemption for a person's main home. Following the election of the Labour Coalition, a Bill has been introduced into the House that will extend the two year period to five years.

16. Once an NZ expat or immigrant moves to NZ, they will become subject to NZ tax on their worldwide income (subject to the four year exemption).

17. NZ residential property has been a favoured investment option for non-resident investors. Negative gearing allows losses to be offset against current and future assessable income. Gains from the sale of such investment properties are generally not liable to NZ tax.

There is no longer an entitlement to claim depreciation on commercial and residential buildings.

18. Refer attached schedule for current tax rate for individuals, companies and trusts.

19. NZ resident companies and NZ subsidiaries of a foreign company are taxed on net income after allowable deductions.

20. Non-resident withholding tax [**NRWT**] is charged on dividends, interest and royalties remitted from NZ to non-residents. The rate is generally 15% (interest/royalties) and 30% (dividends). In respect to countries with which NZ has a double tax treaty, NRWT is reduced to 15% (dividends) and 10% (interest/royalties).

NRWT is not deducted from the dividend paid where the company attaches full imputation credits and the person hold 10% or more of the shares in the company.

NRWT on interest can be substituted with a 2% approved issuer levy [**AIL**] which is payable by the borrower [the 2% itself is tax deductible]. This is not available where the parties (lender/ borrower) are associated.

21. Investment in a *Portfolio Investment Entity* [**PIE**] allows returns to be taxed at a maximum 28%. Some investors will be taxed as low as 10.5%.

22. An investor, who is not resident in NZ, can receive income that has a zero rate of tax attracted. This recently introduced incentive to attract foreign investment is known as a *notified foreign investor* [**NFI**]. An NFI can invest in a *Portfolio Investment Entity* [**PIE**] via a zero-rate PIE.

23. *Advice/Warning*

Migrants/returning expats do ***need*** to take professional advice prior to moving to NZ. Currently, New Zealand Inland Revenue are accessing New Zealand transactions using foreign credit card accounts. If the holder of those accounts has not filed a tax return, an enquiry letter results. In a number of cases, migrants/ returning expats have received entitlements (e.g. pension/lump sum payments/ dividends/interest), which are not subject to tax in the country of source, but which are liable for tax in New Zealand.

24. What if I do get it wrong?

Where income has not been declared; or expenses wrongly claimed, NZ imposes a costly penalty regime. The resulting additional core tax is then subject to accumulating late payment penalty, accumulating use of money interest and, some instances, shortfall penalties.

A rule of thumb method is that one can treble the amount of core tax to take into account the combination of penalties referred above. A voluntary declaration (in other words one gets to Inland Revenue before they get to you) will generally reduce the impact of shortfall penalties.

Disclaimer:

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Des Trigg CA
TAX CONSULTANT

Mobile: (+6421) 768-967
Website: www.destrigg.co.nz
Email: des@destrigg.co.nz

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Tax Rates

Company	Flat Rate	28.0%
Trustee		33.0%
Individuals	Income to $14,000 pa	10.5%
	$14,0001 - $48,000	17.5%
	$48,001 - $70,000	30.0%
	Over $70,000	33.0%

Nobody pays double tax