

## New Zealand

### Introduction

#### Our Location Offer

Astounding commercial success has resulted from the right partnerships between overseas capital and New Zealand businesses. From marine navigation to blockbuster films, New Zealand's culture of innovation and excellence delivers results.

The first nation to the sunrise, New Zealand provides a home for hundreds of international corporations, and attracts a highly educated and multilingual labour force with a culture of innovation. New Zealand's success in attracting foreign investment is obvious: during 2008/09 the flow of foreign investment grew by 4.4%.

As an investment destination, New Zealand offers:

- \* a safe and secure environment;
- \* economic and political stability;
- \* economy open to trade and investment;
- \* abundant natural resources: water, arable land and energy;
- \* a place free from corruption;
- \* extensive free-trade agreements; and
- \* active government support for investment.

New Zealand's stable economy makes it ideal for long-term international competitiveness. The privatisation of utilities and state services has created one of the world's most efficient, competition-friendly economies. A free and independent press ensures corporate and government decision-making is transparent and fair.

This openness and competitiveness extends to international companies doing business in New Zealand. The country ranks second in the world for ease of doing business, according to the World Bank index, 2010.

New Zealand's close trade and legal relationship with Australia gives businesses operating from New Zealand duty free access to a population of 22.3 million.

Free trade relationships, including those with People's Republic of China, Singapore and Thailand, significantly increase the size of the New Zealand consumer market.

Key infrastructure in New Zealand is modern and provided at internationally competitive prices. International comparisons show that New Zealand is one of the most connected among global economies: it is ranked 9th worldwide in number of internet users per capita (Global Competitiveness Yearbook, 2010) and 16th most globalised country out of 72 surveyed by AT Kearney (AT Kearney / Foreign Policy Globalisation Index, 2007).

New Zealanders and guests of the country enjoy an exceptional quality of life, with the country renowned for its tourism assets. Auckland, the country's largest city, is 4th in the Mercer Quality of Living 2010 and 12th in the Mercer Eco-Cities ranking 2010. Wellington, the capital, is 12th on quality of living and 5th as an eco-city, in the same surveys.

The New Zealand Government actively supports an environment that enables international investors to relocate, and/or collaborate with New Zealand companies. New Zealand Trade and Enterprise, the Government's economic development agency, has a specialist investment team that provides support for international investors.

#### Introduction to investment regime

New Zealanders are used to foreign investment being an important part of the economic landscape. Foreign investment is crucial to the continued success of New Zealand, providing scope for higher rates of economic activity and employment than could be achieved from domestic levels of savings. Foreign direct investment also provides access to new technology, international management expertise and overseas markets.

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Consequently, New Zealand takes a very open stance to foreign investment, encouraging and facilitating it.

Some investment is screened to ensure that the proposal aligns with the economic development objectives of New Zealand, but this in practice applies only to a small percentage of investments. The responsibility for the screening process lies with the Overseas Investment Office.

New Zealand facilitates investment through its economic development agency, New Zealand Trade and Enterprise, where a team of dedicated investment specialists provide support and incentives to investment in New Zealand.

### Investment priority plan/equivalent policy

New Zealand has a number of existing areas of competitive advantage, where the country has a strong international position. Dairy, meat, forestry, minerals, boat-building are examples of such areas. Emerging areas of advantage are clean technology, animal-based therapeutics, digital entertainment content, and aquaculture.

The strategy for investment promotion, delivered by the investment team of New Zealand Trade and Enterprise, regularly reviews the identified range of core domestic sectors that have compelling and sustainable competitive advantage and where it is believed investment will help New Zealand develop strong industries that will contribute significantly to New Zealand's economy.

While foreign investment is encouraged across the board, and incentive programmes do not have a sector bias, proactive promotion and facilitation of investment by Government is focussed on only a few industries at a time. The medium term plan is to focus on the following areas within New Zealand:

- \* Food and Beverage - Dairy, Meat, Aquaculture, Horticulture, Functional Foods
- \* Biotechnology - Animal-Based Therapeutics, Agricultural Biotechnology
- \* Resources and Minerals - Oil & Gas, Minerals, Forestry & Wood Processing, Aviation
- \* Infrastructure - Utilities, ICT, Clean Technology, Public-Private Partnerships
- \* Capital Markets - Venture Capital, Angel Funding, Private Equity

### More information

New Zealand Trade and Enterprise - Investment team: <http://www.investmentnz.govt.nz>

Overseas Investment Office: <http://www.linz.govt.nz/overseas-investment/index.aspx>

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

New Zealand maintains an open stance towards overseas investment. Foreign Direct Investment (FDI) is regarded as making a positive contribution to New Zealand through increased jobs, capital and access to export markets. New Zealand's approach is to target FDI screening in a few areas of critical interest: sensitive land, significant business assets and fishing quota. Where sensitive land is defined in Schedule 1 of the Overseas Investment Act 2005 and includes non-urban land of over 5 hectares, land on offshore islands, and land that is over 0.4 hectares and includes or adjoins reserves, historic or heritage areas. Similarly, significant business assets is defined as the acquisition of securities or business assets with a value exceeding \$NZ100 million

The acquisition of sensitive land and significant business assets by "overseas persons" or an associate of an overseas person requires consent under the Overseas Investment Act 2005 (the Act). Persons are "overseas persons" if they are not a New Zealand citizen or ordinarily resident in New Zealand, or for companies, incorporated overseas, or are persons (including companies) that are 25% or more owned or controlled by an overseas person or persons. "Associate" is defined in section 8(1) of the Act, and includes persons who are controlled by, an overseas person or are subject to an overseas person's direction.

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The acquisition of fishing quota requires consent under sections 56 to 58B of the Fisheries Act 1996 (the overseas investment fishing provisions). The overseas investment fishing provisions are read as if they were part of the Act.

The Act and the overseas investment fishing provisions are administered by the Overseas Investment Office, which is a regulatory unit within a government department, Land Information New Zealand.

Part 1 of the Act states when consent is required.

Part 2 of the Act prescribes the consent process that an overseas investor must undertake. The role of the Overseas Investment Office is to consider the application and advise the relevant Minister or Ministers (the Minister of Finance and the Minister for Land Information for land applications, the Minister of Finance for significant business applications, or the Minister of Finance and the Minister of Aquaculture and Fisheries for fishing quota applications) as to whether or not consent should be granted to the application. In some cases, the relevant Minister or Ministers have delegated the decision-making powers to officials within the Overseas Investment Office.

In order for consent to be granted, the relevant Minister or Ministers must be satisfied that all relevant criteria have been met. Conversely, if the relevant Minister or Ministers are not satisfied that all the relevant criteria have been met, the application must be declined.

The criteria for consent differ accordingly to investment type and are listed in the Overseas Investment Act 2005 and the Fisheries Act 1996. However, all investors must meet an "investor test" (made up of four criteria that consider business experience and acumen, demonstrated financial commitment to the investment, good character, and eligibility for exemptions or permits under New Zealand's immigration legislation).

If the proposed investment involves the acquisition of sensitive land, then the investment must meet a criterion that considers whether the investment is of benefit to New Zealand (or part of it, or a group of New Zealanders). "Benefit to New Zealand" is assessed by reference to factors that are listed in the Act and the Overseas Investment Regulations 2005 (Regulations). If the land is non-urban and exceeds 5 hectares, the benefit must be substantial and identifiable.

If the land includes farm land, then there is an additional criterion that considers whether the land has been advertised on the open market for sale (or exempted from that requirement).

There are also additional criteria that also must be met for consent to be granted to acquire fishing quota - that the overseas person is a body corporate and that the interest in quota is capable of being registered in a Quota Register. Applications to acquire fishing quota must meet a "national interest" test. "National interest" is assessed by reference to 7 factors set out in the Fisheries Act 1996.

The Act does not specify a time frame within which an application for consent must be decided.

Within five working days of an application being received by the Overseas Investment Office the application undergoes an initial assessment to check the application contains sufficient information and is accompanied by the prescribed fee.

If the application is accepted, the Overseas Investment Office will register it and start its assessment of the application. The Overseas Investment Office will seek further information if needed. At its discretion, the Overseas Investment Office may also consult with third parties about the application.

If the OIO does not accept the application for assessment, it will be returned to the applicant for further action.

The Overseas Investment Office aims to make a decision on high quality, straightforward applications, where no third party consultation is required, within 50 working days of the date of registration.

On 27 September 2010 the New Zealand Government announced several changes to the Regulations. They include two new factors under the "Benefit to New Zealand" criterion for sensitive land:

\* A new "economic interests" factor allowing ministers to consider whether New Zealand's economic interests are adequately safeguarded and promoted. This will improve ministerial flexibility to respond to both current and future economic concerns about foreign investment, such as large-scale ownership of farmland.

\* A new "mitigating" factor enabling ministers to consider whether an overseas investment provides opportunities for New Zealand oversight or involvement.

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The New Zealand Government will also provide more clarity on overseas investment in sensitive assets, and this will be set out in a new ministerial directive letter from the Minister of Finance to the Overseas Investment Office. This will provide advice to the Overseas Investment Office about which factors in applying the "Benefit to New Zealand" criterion are likely to be more or less important in relation to particular assets.

The changes are expected to be made in December 2010 and will only apply to applications received after the new regulations come into effect.

### Does this apply to all investment or, are there differential treatment?

FDI screening in New Zealand is targeted at a few areas of critical interest: sensitive land, significant business assets and fishing quota. It does not apply to all investment, and investment that does not come within the specified thresholds or asset categories is not screened. In addition, some types of sensitive land are exempted from the screening regime, as are some specified types of transaction or persons. Some portfolio investors and New Zealand controlled overseas persons can also be exempted from the requirement for consent provisions of the Act.

The Overseas Investment Office does have a helpful and comprehensive website <http://www.lin.govt.nz/overseas-investment/index.aspx> but the Office does not give advice as to whether the screening regime applies in a particular instance. If prospective investors are uncertain whether the screening process is applicable, it is recommended a reputable firm of New Zealand solicitors be engaged.

### Conditions of investment

Consents granted under the Overseas Investment Act 2005 or the overseas investment fishing provisions of the Fisheries Act 1996 can be unconditional or subject to such conditions that the relevant Ministers think appropriate. In practice, all consents are subject to conditions. The conditions attaching to some consents may be more extensive than others, depending on the type and relative sensitivity of the asset being acquired. Often conditions are imposed to ensure that proposed benefits to New Zealand are delivered by the investor.

### Investment promotion and facilitation

New Zealand promotes foreign direct investment through its economic development agency, New Zealand Trade and Enterprise. The specialist investment team within New Zealand Trade and Enterprise is tasked with:

- \* Attracting foreign companies to invest in New Zealand through Greenfield, Brownfield, mergers and acquisitions, or partnership business opportunities.
- \* Attracting foreign funds (sovereign wealth, institutional, etc ) to invest in New Zealand through participation in domestic funds, fund-of-funds, Venture Capital funds, private equity, or direct investment.
- \* Assisting New Zealand businesses to expand and invest overseas.
- \* Assisting New Zealand businesses to attract funding via foreign direct investment.
- \* Contributing to or influencing government policy to help make New Zealand more competitive and attractive to investors.
- \* Undertaking market development research and implementing schemes aimed at improving the capital and investment markets in New Zealand.

New Zealand-based investment specialists offer advice and support across the key investment sectors in New Zealand. The international investment representatives are located in these key business centres: Sydney, Singapore, Hong Kong, Tokyo, Seoul, London, and Los Angeles.

The Government offers co-funding through the Strategic Investment Feasibility Study Grants programme (SIF) to support significant direct investment in New Zealand and New Zealand firms looking to expand their operations offshore. SIF is designed to support investment cases with the potential to generate significant economic benefit for New Zealand.

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Potential investors may also be invited to New Zealand under the Visiting Investor Programme which supports visits by contributing to the costs.

Other incentives include the Government undertaking preliminary exploration work on its petroleum estate and providing packages of seismic information to potential investors free of charge through its agency Crown Minerals.

### More information about the process of investing in our economy

The New Zealand Government's investment promotion website: <http://www.investmentnz.govt.nz>

Investing in minerals and petroleum in New Zealand: <http://www.crownminerals.govt.nz>

## Investment protection

### Protection of property rights and conditions for expropriation

The property rights of foreigners who invest in New Zealand are protected under domestic law.

The Land Transfer Act 1952 is the primary landholding statute in New Zealand and applies to nearly all the land in New Zealand. It provides for the registration and transfer of land interests and registration gives validity and certainty to land transactions. The estate of a registered proprietor is paramount subject to the interests affecting the land, such as easements and covenants, noted on the register and the exceptions, such as fraud, stated in the Act. The State is responsible for the register and will compensate people for loss caused by errors in the register.

The Property Law Act 2007 provides general rules for the creation, disposition and control of real and personal property. This Act governs transfers, leases, mortgages and similar dealings in property. Other protections for people investing in New Zealand are contained in our contract statutes and general law which governs the ways in which property rights can be structured and changed.

The government may compulsorily acquire land for essential public works under the Public Works Act 1981 but compensation may be payable to the landowner. Similarly, under the Local Government Act 2002 a local authority may construct works on private land and compensation may be payable.

The Proceeds of Crimes Act 1991 and the Terrorism Suppression Act 2002 allow interests in land to be forfeited to the Crown in cases of serious criminal offending. There are provisions in these Acts for the relief of innocent third parties.

### More information

N/A

### Protection of IPRs

New Zealand has a robust intellectual property regime providing both effective protection and enforcement. As a member of the WTO, New Zealand's intellectual property regime provides the minimum standards of protection as set out in the TRIPS Agreement to patents, trade marks, industrial designs, copyright, plant variety rights, geographical indications, trade secrets and circuit layout designs.

New Zealand is also a member of a number of important WIPO administered intellectual property treaties, such as the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works and the Patent Cooperation Treaty. In addition, New Zealand is currently working towards implementation of the Protocol Relating to the Madrid Agreement Concerning International Registration of Marks (the Madrid Protocol).

In New Zealand, some intellectual property rights are automatically protected, while others are protected after application and examination against the relevant criteria by government agencies:

\* The Ministry of Economic Development is responsible for legislation protecting intellectual property rights.

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\* The Intellectual Property Office of New Zealand, a business unit of the Ministry of Economic Development, administers patents, trade marks, design and plant variety (or breeder's) rights registers.

\* There is no register for copyright, copyright and related rights protection arises automatically when certain criteria set out under the Copyright Act 1994 are met.

Under New Zealand law, patents, trade marks, industrial designs, copyright, plant variety rights, geographical indications, trade secrets and circuit layout designs are all protected as required by the WTO TRIPS Agreement.

### Patents

A New Zealand patent provides a legal right to stop third parties from manufacturing, using and/or selling an invention in New Zealand for up to 20 years. A patent can be bought, sold, transferred or licensed on agreed terms.

In New Zealand, a patent can be granted for new manners of manufacture (inventions) that meets certain criteria relating to novelty, inventiveness and utility:

\* **Novelty** - if the invention has already been used, displayed or otherwise made available in New Zealand, or been described in any public document within New Zealand it will not normally be patentable.

\* **Inventiveness** - the invention cannot be obvious to a person skilled in the art.

\* **Useful** - the invention must be industrially applicable.

### Trade Marks

A trade mark may not be registrable if it is merely descriptive (i.e. indicates the kind, quality, quantity, intended purpose or dollar value of the good/service) unless these features are presented in a unique or unusual way, or incorporated into a trade mark as one of its elements. To be registrable, a trade mark must be able to be graphically represented and capable of being distinctive of a single trader's goods or services. Colloquial or generic terms that have been commonly used to describe a characteristic of the goods or services may not be registrable. Trade marks may be registered for a term of 10 years and registration may be renewed, indefinitely, for further periods of 10 years.

### Industrial Designs

Designs comprising new or original features of shape, configuration, pattern or ornament that are applied to an article by any industrial process or means, being features which appear to and are judged solely by the eye, can be protected through a registration regime for a period of up to 15 years.

A registered design can become a valuable business asset that can be bought, sold, transferred or licensed like other forms of IP.

Industrial designs may also be protected under copyright law, provided that it meets the copyright protection requirements of being a new and original work, with some artistic quality or level of skill. If so, copyright protection is automatic and immediate. Copyright protection is free and does not require registration. Protection of copyright in industrial designs is for a period of up to 16 years.

However, without registration an individual may never know if copyright provides adequate protection for their design until it is challenged by another person or business. Registration with Intellectual Property Office of New Zealand provides a higher degree of protection than relying on copyright because it requires that Intellectual Property Office of New Zealand first search for similar or identical New Zealand registered designs.

### Plant Variety Rights

A grant of Plant Variety Rights for a new plant variety provides the owner with the exclusive right to produce for sale and sell the propagating material of that variety. In the case of vegetatively-propagated fruit, ornamental and vegetable varieties, Plant Variety Rights provide the additional exclusive commercial right to propagate the protected variety for the commercial production of fruit, flowers or other products of the variety. Exceptions to Plant Variety Rights protection include the use of the variety for private and non-commercial purposes, for experimental purposes, and for breeding other plant varieties.

Plant Variety Rights may be sold, licensed, mortgaged or assigned to another person or business. Rights holders often collect royalties from the commercialisation of their protected varieties.



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As with other types of Intellectual Property, Plant Variety Rights entitle the rights holder to bring civil action against persons or businesses infringing their rights. For example, a rights holder would be entitled to seek an injunction against, or if appropriate, claim damages from, another person or business that deliberately sold seeds or plants of the protected variety without permission.

The rights holder can also take action against another party using the approved denomination (registered name) of the protected variety to sell propagating material of another variety of the same genus or species.

### Copyright

In New Zealand, copyright is an automatic unregistered right that comes into existence every time an original work is created, published and performed. Copyright law in New Zealand covers the following categories of works: literary works, dramatic works, musical works, artistic works, sound recordings, films, communication works, and typographical arrangements.

The Copyright Tribunal is a statutory body that hears disputes relating to the provision of collective licensing regimes allowing the copying, performing and broadcasting of copyright works. In addition, some proposed or operative schemes for licensing can be referred by interested parties.

Any person who believes that the operator of a collective licensing regime has unreasonably refused to grant a licence for the copying, performing or broadcasting of a copyright work may apply to the Tribunal. The Tribunal decides whether the applicant is entitled to a licence and on what terms. This only applies where the copyright owner has set up a scheme for licensing the use of copyright works.

### More information

Intellectual Property Office of New Zealand:

[www.iponz.govt.nz](http://www.iponz.govt.nz)

### Flow of funds

Since March 1985 the New Zealand dollar has been freely floating.

And if managed, under what circumstances or purposes does your government/central bank intervene?

The Reserve Bank has the option to intervene in two circumstances:

\* In cases of extreme market dis-order to help preserve the functioning of the market.

\* In support of monetary policy if it is judged that intervention might be helpful in meeting the Bank's Policy Targets Agreement obligations. Details on the Bank's intervention policy can be found at <http://www.rbnz.govt.nz/research/search/article.asp?id=3802>

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

There are no exchange controls relating to either residents or non-residents.

### Mechanisms to review decisions, and settle disputes

Decisions made under the Overseas Investment Act 2005 or the overseas investment fishing provisions of the Fisheries Act 1996 can only be judicially reviewed. "Judicial review" is the review by a judge of the High Court of New Zealand of any exercise of, or non-exercise of, a decision-making power in order to determine whether or not the decision was lawful or valid. The courts are primarily concerned with the process of decision making rather than the outcome or merits of the decision.

The most likely grounds for review are that, in making the decision in question, the decision maker:

\* acted outside the scope of the power or discretion;

\* misinterpreted the applicable law;

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- \* did not make up his or her own mind on the matter that he or she has been called on by law to determine (acted "under dictation");
- \* took into account irrelevant considerations;
- \* failed to take account of relevant considerations; or
- \* did not act "fairly" in that he or she failed to hear from or consult with persons or groups who would be affected by, or otherwise had an interest in, the particular decision.

What, if any, mechanism do you have for foreign investors to settle disputes?

Once a foreign investor has received approval to invest in New Zealand all disputes are subject to the same legal framework as is afforded domestic investors. This includes access to a range of dispute resolution mechanisms, including the Courts, and, where relevant, specialist Tribunals (e.g. the Copyright Tribunal), arbitration, mediation, and conciliation. The Arbitration Act 1996 adapts the UNCITRAL Model Law on International Commercial Arbitration.

There are a number of providers of alternative dispute resolution services in New Zealand. The principal groups are the Arbitrators and Mediators Institute of New Zealand (AMINZ - [www.aminz.org.nz](http://www.aminz.org.nz)) and the Association of Dispute Resolvers (LEADR - [www.leadr.co.nz](http://www.leadr.co.nz)). The AMINZ Arbitration Appeals Tribunal provides an alternative appeals service on points of law from arbitral awards to appeals to the Courts.

New Zealand is party to international agreements which permit investors from China, Malaysia and ASEAN to take the New Zealand government to binding arbitration for breaches of obligations in those agreements.

### ICSID

New Zealand signed the ICSID Convention on September 2, 1970 and ratified it on April 2 1980. The Convention entered into force for New Zealand on May 2, 1980 and is given effect under the Arbitration (International Investment Disputes) Act 1979.

### More information

Arbitrators and Mediators Institute of New Zealand (AMINZ):

[www.aminz.org.nz](http://www.aminz.org.nz)

Association of Dispute Resolvers (LEADR):

[www.leadr.co.nz](http://www.leadr.co.nz)

### International investment agreements

With;

Australia; Brunei Darussalam; Chile; China, People's Republic of; Hong Kong, China; Myanmar (ex-Burma); Philippines; Singapore; Thailand; Viet Nam;

Please provide a brief description of these IIAs, or your IIAs in general.

New Zealand has entered into two bilateral investment treaties and eight free trade agreements to further promote the flow of inward and outward foreign direct investment.

While the details of these agreements vary, common features include:

- \* Provisions to secure market access for investors, including through national treatment, most favoured nation treatment, and prohibitions on performance requirements and senior management and board of director requirements.
- \* Comprehensive investment protection provisions to safeguard investors' interests, including provisions relating to expropriation, minimum standard of treatment, transfer of capital/funds, and dispute settlement.



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\* Enhanced requirements on transparency which set minimum standards for the publication of laws affecting investment, review and appeal of administrative decisions, administrative proceedings, and contact point.

### More information

N/A

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

New Zealand has a wide range of immigration options open to foreign nationals intending to visit or reside in New Zealand. They are more facilitative than New Zealand's WTO commitments. The policy suite includes immigration categories specifically for transferring personnel of foreign firms, business people on short and long-term engagements and potential investors. Visa-free arrangements with many countries mean that, in many cases, no immigration application need be made before arrival. New Zealand's immigration policies are flexible in nature - there are no maximum limits on the duration of stay, and it is possible to extend or change one's immigration status while onshore.

### More information

Immigration New Zealand: [www.immigration.govt.nz](http://www.immigration.govt.nz)

Investment New Zealand: [www.investmentnz.govt.nz](http://www.investmentnz.govt.nz)

## Taxation

### Taxation of foreign nationals and foreign firms

New Zealand income tax is imposed under the Income Tax Act 2007. Resident individuals and companies are taxed on their world-wide income. Non-residents are subject to tax on income sourced from New Zealand. The rules for determining taxable income are generally the same for both individuals and companies. The tax year for both individuals and companies is 1 April to 31 March, but non-standard balance dates can be applied for (for example, for a subsidiary to match the balance date of its parent). New Zealand tax law features many rules that are common amongst OECD member countries, such as a consolidation regime for companies.

The tax base is broad, but New Zealand generally does not tax capital gains (with some exceptions, such as capital gains from loan arrangements or from trading in 'capital' items). There are no export incentives or investment holidays in the New Zealand tax system. There are, however, a number of concessionary rules that pertain to particular activities - such as mining, farming, forestry and films. There are also some concessionary rules for venture capital investment into New Zealand. An individual who becomes resident for tax purposes, having previously been non-resident for at least 10 years, will enjoy a four year exemption from many categories of foreign-sourced income (provided they satisfy the "transitional resident" criteria).

The company tax rate is currently 30%, but is set to reduce to 28% for tax years commencing on or after 1 April 2011. Individuals are taxed at progressive rates which, from 1 April 2011, will range from 10.5% on the first dollar earned to 33%.

Companies are resident in New Zealand for tax purposes if they are incorporated or have their head office or centre of management in New Zealand. They are also resident if control of the company by its directors is exercised in New Zealand.

Tax is paid at the company level and again at the shareholder level when profits are distributed. An imputation system operates to prevent double taxation by providing that a credit for the company tax paid is allowed against the shareholder's tax liability. Imputation credits can only be claimed by resident shareholders. However, imputation credits are also generally of value to non-resident shareholders - see below.

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Non-residents can operate business activities in New Zealand in a number of different ways - these include through a branch of a non-resident company, as a partnership or limited partnership, through a trust, or as an individual.

Entities that meet the definition of a "portfolio investment entity" (generally referred to as a PIE, and which is broadly akin to a managed fund) can elect into the PIE rules. PIEs generally pay tax on investment income based on the tax rates of their investors (capped at the company tax rate which is currently 30%), rather than at a flat rate. However, the tax rate for non-resident investors is currently always at the capped rate.

Repatriation of profits to a non-resident shareholder of a New Zealand resident company can generally be undertaken at any time as there are no foreign exchange controls on such repatriation. Withholding taxes may apply - see below.

New Zealand legislation includes both a general anti-avoidance rule and a number of specific anti-avoidance regimes (such as thin capitalisation and transfer pricing rules).

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Resident individuals and companies are taxed on their world-wide income. Non-residents are subject to tax on income sourced from New Zealand.

To help eliminate double taxation on income taxed in New Zealand, residents may claim credits for tax paid overseas (limited to the applicable amount of New Zealand tax). In addition, New Zealand has an extensive network of tax treaties with other countries (also referred to as "Double Tax Agreements" or "Double Tax Conventions"), that provide more comprehensive relief of double taxation and reduce withholding taxes on dividends, interest and royalties.

Outbound dividends may or may not be subject to withholding tax, depending on a number of factors. A fully imputed dividend (that is, a dividend in respect of which full company tax has been paid, and which therefore carries a full imputation credit) paid to a non-resident shareholder will generally either be exempt from withholding tax (if paid to an investor with a holding of 10% or greater in the company paying the dividend) or will be subject to relief under the supplementary dividend mechanism -see below. The part of a dividend that is not fully imputed will be subject to 30% withholding tax under domestic law, but this will generally be reduced if the shareholder resides in a country with which New Zealand has a tax treaty. The maximum withholding tax rate allowable under New Zealand's tax treaties is 15%, but treaties concluded since 2009 include lower (including nil) rates for some categories of investment.

The supplementary dividend mechanism (known prior to 2010 as the foreign investor tax credit regime) is designed to reduce the combined total of company tax and withholding tax on non-resident equity investors to the New Zealand company tax rate (currently 30%, reducing to 28% for tax years commencing on or after 1 April 2011). The mechanism operates by allowing a company an income tax credit, calculated as a portion of the imputation credits attached to dividends paid to non-resident shareholders, if the company pays a supplementary dividend of the same amount to its non-resident shareholders. Because it is based on the amount of imputation credit attached to a dividend, the mechanism applies only to the extent that company tax has actually been paid.

Interest paid offshore is nominally subject to 15% withholding tax, reducible to 10% under New Zealand's tax treaties. However, if the borrower has elected to pay a 2% levy (known as the approved issuer levy, or AIL), the rate of withholding tax is reduced to 0%. A borrower may only elect to pay AIL if certain criteria apply - the principal criterion being that they and the lender must not be associated persons.

Royalties paid offshore are subject to 15% withholding tax, reducible to either 10% or 5% under New Zealand's tax treaties.

### More information

All New Zealand legislation is available online at <http://www.legislation.co.nz>. More detailed information on the New Zealand tax system, including tax publications, can be obtained from the New Zealand Inland Revenue website at [www.ird.govt.nz](http://www.ird.govt.nz). New Zealand's tax treaties can be accessed at <http://taxpolicy.ird.govt.nz>.