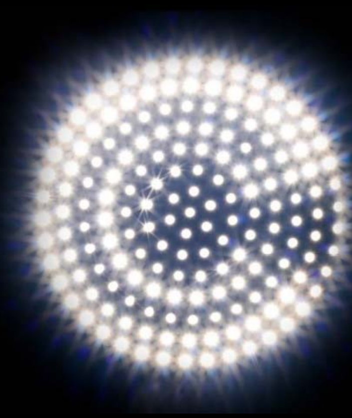
International Tax
New Zealand Highlights 2019



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Recent developments

For the latest tax developments relating to New Zealand, see Deloitte tax@hand.

Investment basics:

Currency – New Zealand Dollar (NZD)

Foreign exchange control – There are no restrictions on the import or export of capital.

Accounting principles/financial statements – All Financial Market Conduct reporting entities, public entities, large companies and large overseas companies (as defined) that meet certain thresholds must prepare general purpose financial statements. The External Reporting Board (XRB) determines which accounting, auditing and assurance standards apply to which entities or sectors.

Entities that do not meet the Financial Reporting Act thresholds (generally small to medium-sized enterprises) are not required to prepare general purpose financial statements, but must prepare special purpose financial statements to a minimum standard, as specified by the Inland Revenue.

Principal business entities – These are the public and private limited liability company, partnership, limited partnership, trust, sole proprietorship and branch of a foreign corporation.

Corporate taxation:

Residence – A company is resident if it is incorporated in New Zealand, its head office or center of management is in New Zealand or control of the company by its directors is exercised in New Zealand.

Basis – Resident companies are taxed on worldwide income; nonresident companies are taxed only on New Zealand-source income. As a general rule, tax rates and tax treatment are the same for all companies, including branches of foreign companies. Certain companies may elect look-through tax status, and certain companies and collective investment vehicles can choose to be taxed as a portfolio investment entity (PIE).

Taxable income – Taxable income is calculated by subtracting allowable deductions from assessable income. Assessable income from carrying on a business normally includes gross income from the sale of goods, the provision of services, most dividends, interest and royalties. Deductions are allowed for expenses incurred in gaining assessable income or conducting business for the purpose of gaining or producing assessable income for any income year.

Taxation of dividends – New Zealand operates a full imputation system, under which the payment of company tax is imputed to shareholders and the shareholders are relieved of their tax liability to the extent profits have been taxed at the corporate level. Dividends received by a company from a wholly owned group member generally are exempt. Foreign-source dividends received by resident companies generally are exempt from income tax, subject to some exceptions.

Capital gains – There is no capital gains tax regime in New Zealand, although certain gains arising from profit-making schemes or undertakings and the disposal of personal property purchased with the intention of resale or for a business of dealing are taxable. Gains on the sale and transfer of land may be taxable in certain cases. Additionally, gains from the sale of residential property that is sold within five years (increased from two years for land acquired on or after 29 March 2018) of being purchased (with an exception for a family home) are taxable (referred to as the “bright-line test”).

Losses – Losses may be carried forward indefinitely, subject to a 49% continuity of ultimate share ownership requirement. Losses also may be offset against the profits of other group companies, where the companies are at least 66% commonly owned at all relevant times. It generally is possible to carry forward part-year losses (which may occur if there is a lapse in shareholder continuity during the year). Losses may not be carried back. Start-up companies with losses arising from research and development expenditure may be eligible for a tax credit upon meeting certain eligibility criteria.

Rate – 28%

Surtax – No

Alternative minimum tax – No

Foreign tax credit – A foreign tax credit may be allowed against New Zealand income tax applicable to foreign income, but the credit is limited to the lesser of the actual foreign tax paid on the foreign income or the New Zealand tax applicable to that income.

Participation exemption – No

Holding company regime – No

Incentives – There are no specific incentive schemes, but tax legislation provides some industry-specific concessions and rules for farming, forestry, research and development, environmental protection, venture capital, film production and research and development-intensive start-up companies.

Withholding tax:

Dividends – Dividends paid by New Zealand resident companies from profits already taxed at the corporate level may carry imputation credits for the tax paid. Dividends are referred to as "fully imputed," "partially imputed" or "unimputed," depending on the extent to which a company has chosen to use its imputation credits. Dividends paid to a nonresident are subject to a 30% nonresident withholding tax (NRWT) to the extent they are not fully imputed. Fully imputed dividends are subject to a 0% NRWT rate where the nonresident has a 10% or more voting interest in the company. In most other cases, the NRWT rate will be 15%. Rates may be subject to further reduction under an applicable tax treaty.

Resident withholding tax (RWT) may be required to be withheld at source from certain types of dividend payments made to New Zealand resident taxpayers, at a rate of 33%.

Interest – Interest paid to a nonresident is subject to a 15% NRWT, which may be subject to further reduction under an applicable tax treaty. New Zealand also has an approved issuer levy (AIL) regime that allows an approved issuer to pay a 2% levy instead of NRWT on registered securities where the parties are not associated.

RWT may be required to be withheld at source from certain types of interest payments made to New Zealand resident taxpayers. The rates are 10.5%, 17.5%, 28%, 30% or 33%.

Royalties – Royalties paid to a nonresident are subject to a 15% NRWT, which may be subject to further reduction under an applicable tax treaty.

Technical service fees – New Zealand generally does not levy withholding tax on payments of technical service fees, unless such services fall within the definition of royalties.

Branch remittance tax – No

Other – Payments made to a nonresident for services that have been physically performed in New Zealand, or for the use of personal property in New Zealand, are subject to the 15% nonresident contractors' tax (NRCT), withheld at source (subject to exemptions). Payments of management fees to an associated company offshore often will attract an NRCT liability if offshore staff are physically performing management services in New Zealand.

Payments to "offshore persons" in relation to the sale and purchase of property subject to the bright-line test (see "Capital gains" under "Corporate taxation") may be subject to the residential land withholding tax (RLWT). The amount of RLWT to be withheld generally is the lower of: (i) 33% (or 28% for a company) of the purchase price, less the acquisition cost; or (ii) 10% of the purchase price.

Other taxes on corporations:

Capital duty – No

Payroll tax – No

Real property tax – Local authorities charge rates on land based on the official valuation of the land. The rates vary considerably from one locality to another. Rates collected are used to fund local city services, waste collection, local roads and the provision of parks, community facilities and activities.

Social security – An employer may be required to contribute a percentage of an employee's gross salary or wages to the KiwiSaver superannuation scheme, for employees that have opted into the scheme.

Stamp duty – No

Transfer tax – No

Other – An employer is required to pay fringe benefits tax (FBT) on the value of fringe benefits (e.g. motor vehicles and low-interest loans) provided to its employees, at a rate of up to 49.25%. Accident compensation premiums, local government property rates, road tax and the employer superannuation contribution tax also may be payable.

Anti-avoidance rules:

Transfer pricing – New Zealand's transfer pricing rules are set out in local legislation that aligns with the 2017 OECD transfer pricing guidelines. The general policy intention is that when a taxpayer correctly applies the OECD transfer pricing guidelines and demonstrates through documentation that its transfer pricing positions satisfy the arm's length principle, these tax positions also should meet the requirements of New Zealand's transfer pricing rules.

Generally, for branch operations, the Inland Revenue does not follow the OECD authorized approach for the attribution of profits to a permanent establishment, on the grounds that the updated article 7 of the OECD model tax treaty has not been incorporated into any of New Zealand's tax treaties.

Advance pricing agreements (APAs) are possible. Taxpayers can enter into unilateral or bilateral APAs to minimize transfer pricing risk.

New Zealand-headquartered taxpayers that have global revenue in excess of EUR 750 million are required to comply with CbC reporting (based on BEPS action 13). New Zealand subsidiaries of foreign-owned multinational groups are not required to provide a notification to the Inland Revenue.

For income years beginning on or after 1 July 2018, a new restricted transfer pricing rule applies to inbound cross-border related party debt between a nonresident lender and New Zealand borrower. This requires a New Zealand borrower with NZD 10 million or more in aggregate cross-border related party borrowings to consider related party financing arrangements and capital structures against certain threshold criteria.

Thin capitalization – Interest deductions claimed against New Zealand assessable income for inbound and outbound companies are limited where any entity's debt exceeds a safe harbor debt-to-assets ratio (debt percentage). For inbound companies, interest will be apportioned (and the deductible portion will be limited) if the debt percentage of the New Zealand group is more than 60% and exceeds 110% of the debt percentage of the worldwide group. For outbound companies, interest will be apportioned if the debt percentage of the New Zealand group is more than 75% and exceeds 110% of the debt percentage of the worldwide group.

Controlled foreign companies – Certain foreign income may be attributed to New Zealand resident shareholders. A foreign company is a CFC if a group of five or fewer New Zealand residents has a control interest of over 50% in the company or, in certain circumstances, where a single New Zealand resident has a control interest of 40% or more or where there is a group of five or fewer New Zealand residents that effectively control the company's affairs.

New Zealand's CFC rules encompass an active income exemption, a limited exemption for certain Australian CFCs, a foreign dividend exemption and a comprehensive interest allocation regime.

Broadly, a New Zealand resident with an income interest of 10% or more in a CFC has attributed CFC income from that CFC where the active business test is not met or the Australian exemption is not available. Only certain types of income (generally passive income) derived by the CFC are attributed.

Disclosure requirements – Certain taxpayers in New Zealand are required to keep and retain adequate records. While there are no legislative requirements for a taxpayer to prepare, keep or retain transfer pricing documentation, it could be used as evidence of compliance with the arm's length principle. There are other disclosure requirements under certain regimes (e.g. a person with an income interest of 10% or more in a CFC must make an electronic disclosure of the interest).

Other – Foreign Investment Fund (FIF) rules apply to investments in foreign entities where the control and income interests of the New Zealand resident shareholders are lower than the CFC thresholds. Different methods are available to calculate attributable FIF income, depending on whether the investor has a portfolio (less than 10%) or a nonportfolio (between 10% and 50%) interest in the FIF. The active income exemption for CFCs applies to nonportfolio FIFs. New Zealand's tax legislation contains specific anti-avoidance provisions that are supplemented by a general anti-avoidance rule (GAAR). The GAAR operates as a "back-stop" to protect New Zealand's tax base and may apply to arrangements that have the purpose or effect of avoiding tax.

For income years beginning on or after 1 July 2018, domestic rules apply to counter hybrid and branch mismatches that exploit differences in the tax treatment of an instrument, entity or branch under the laws of two or more countries to eliminate, defer or reduce income tax.

With effect for income years beginning on or after 1 July 2018, a permanent establishment anti-avoidance rule applies to large multinationals with more than EUR 750 million of consolidated global turnover that structure to avoid having a permanent establishment in New Zealand.

Compliance for corporations:

Tax year – The standard tax year runs from 1 April to the following 31 March, although a company can apply to the Inland Revenue to have a nonstandard balance date to align accounting and tax year-ends.

Consolidated returns – The consolidation regime allows a wholly owned group of companies to be taxed as if they were a single company. Consolidation allows companies to file a single income tax return to simplify the tax affairs of the group.

Filing requirements – The tax liability of a company generally is paid in three provisional tax installments during the year in which the income is earned. The date on which installments are due depends on the balance date. The amount payable depends on the taxpayer's income level in the previous year. For "provisional taxpayers," payments generally must be made on the 28th day of the fifth, ninth and 13th months after the start of the income year.

Penalties – Penalties are imposed for late payment of taxes and late filing of returns. Shortfall penalties can be imposed as a percentage of a tax shortfall resulting from certain actions or behavior of taxpayers (e.g. for taking an unacceptable tax position, gross carelessness or for not taking reasonable care). Criminal penalties can be imposed for absolute liability, "knowledge offenses," aiding and abetting, evasion and obstruction offenses.

While not considered a penalty, a two-way "use of money interest" regime operates for under- and overpayments of tax, with rates that are designed to encourage taxpayers to make tax payments on time.

Rulings – The Commissioner of Inland Revenue may issue a binding ruling in respect of the application of tax legislation and how tax laws may apply to a particular arrangement. There are four types of rulings: public, private, product and status.

Personal taxation:

Basis – New Zealand resident individuals are taxed on their worldwide income, with a foreign tax credit available for foreign income tax paid. The amount of the foreign tax credit available is for the lesser of New Zealand income tax payable or the amount of foreign tax paid. Conversely, nonresidents of New Zealand are taxed only on New Zealand-source income.

Residence – An individual is resident for New Zealand tax purposes if he/she has a permanent place of abode in New Zealand or has been in New Zealand for more than 183 days in any 12-month period. An individual who is a first-time resident (or who is a returning New Zealander who has been nonresident for more than 10 years) may qualify to be a transitional resident. In that case, the individual generally will be taxable on only his/her New Zealand-source income and worldwide income from personal services for 48 months from the date he/she becomes resident (the start date may vary).

Filing status – See "Taxable income," below.

Taxable income – Tax is deducted at source for wage and salary earners. Most individuals are subject to pay-as-you-earn (PAYE) deductions from their employment income and resident withholding taxes on certain passive income and are not required to submit annual income tax returns. Taxpayers with other types of income, such as business income, certain capital gains and passive income, are required to submit annual income tax returns. Joint returns are not permitted.

Capital gains – There is no capital gains tax in New Zealand. However, certain gains arising from profit-making schemes or undertakings and the disposal of personal property purchased with the intention of resale or for a business of dealing are taxable. Gains on the sale and transfer of land may be taxable in certain circumstances (including land acquired with the purpose or intention of disposal). Additionally, gains from the sale of residential property that is sold within the bright-line period (with an exception for the family home) are taxable.

Deductions and allowances – Wage and salary earners generally are not permitted to claim deductions against employment income. Tax rebates may be claimed for charitable donations. For members of partnerships and sole traders not registered as companies (i.e. the self-employed), the same deductions apply as for corporate tax, except that FBT does not apply to benefits provided to the proprietor and the costs of providing the benefits are unlikely to be deductible.

Rates – Progressive rates up to 33% apply. There is no tax-free threshold.

Other taxes on individuals:

Capital duty – No

Stamp duty – No

Capital acquisitions tax – No

Real property tax – Local authorities charge rates on land based on the official valuation of the land. The rates vary considerably from one locality to another. Rates collected are used to fund local city services, waste collection, local roads and the provision of parks, community facilities and activities.

Inheritance/estate tax – No

Net wealth/net worth tax – No

Social security – KiwiSaver is a voluntary, work-based savings scheme. The minimum employee contribution rate is 3% of gross pay (an employee also may contribute at prescribed percentages). The compulsory employer contribution rate is 3% of an employee's gross pay. The government also will contribute a "member tax credit" in relation to an employee member's contribution over an annual period at a rate of NZD 0.50 for each NZD 1 contributed by the member, up to a maximum limit of NZD 521.43.

Compliance for individuals:

Tax year – 1 April to 31 March

Filing and payment – Tax on employment income is withheld by the employer under the PAYE system and remitted to the tax authorities. Income not subject to PAYE is self-assessed, in which case the individual must file a tax return.

Penalties – A range of penalties and "use of money" interest may apply for failure to comply with tax laws. Use of money interest generally is payable on over- and underpayments of taxes, at rates that encourage taxpayers to pay taxes on time.

Goods and services tax:

Taxable transactions – The Goods and Services Tax (GST) is a broad-based tax applied to the total value of goods and services, whether at an intermediate or final stage of supply, including imported goods and, in some cases, imported services. Financial transactions, residential property leases and residential property sales generally are exempt from GST. Exports are subject to GST, but at 0% (zero-rated), thereby ensuring that exporters can recover GST incurred on their costs. In addition, certain transfers of commercial land (and related assets) between GST-registered parties are zero-rated (i.e. subject to GST but at a rate of 0%). GST applies to services and intangibles (including digital downloads) supplied remotely by an offshore supplier to New Zealand resident consumers. Offshore suppliers of remote services to private consumers will have a liability to register for New Zealand GST only if supplies exceed the threshold of NZD 60,000 per annum.

Entities that are registered for GST purposes generally may recover the GST paid on the inputs they have consumed in their taxable business operations.

Rates – The standard rate is 15%, unless supplies are exempt or zero-rated.

Registration – Registration is compulsory for businesses whose annual value of supplies made in New Zealand exceeds NZD 60,000. However, a person carrying on a business may register for GST on a voluntary basis if it does not satisfy the turnover threshold.

Filing and payment – GST returns must be filed monthly, bimonthly or every six months by each registered person, depending on the annual value of the supplies made. Generally, returns must be filed and GST paid by the 28th day of the month following the end of the taxable period.

Source of tax law: The Income Tax Act 2007 is the primary legislation governing the levy of tax in New Zealand. The Tax Administration Act 1994 governs how the Inland Revenue Department administers the tax legislation. The Goods and Services Tax Act 1985 provides for the imposition and collection of GST.

Tax treaties: New Zealand has concluded 40 tax treaties and 19 tax information exchange agreements. For further information on New Zealand's tax treaty network, visit Deloitte International Tax Source.

New Zealand has signed the OECD multilateral instrument (MLI) and deposited its instrument of ratification with the OECD on 27 June 2018. The MLI entered into force for New Zealand on 1 October 2018.

Tax authorities: Inland Revenue Department

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