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NON-RESIDENTS

CONTENTS:

1. Tax Rates
2. What a non-resident is taxed on in NZ
3. Exemptions from NZ tax
   - 3.1 Income from venture capital investments
   - 3.2 Income from short-term visits
   - 3.3 Income from specified activities
   - 3.4 Interest (under very limited circumstances)
   - 3.5 Business profits not derived through a permanent establishment in NZ
   - 3.6 Exemption under double tax agreements for income from employment
   - 3.7 Exemption under tax treaties for income from independent personal services
4. Non-resident passive income
   - 4.1 Rates of NRWT (before any reduction under a double tax agreement)
   - 4.2 Reduced rates of NRWT that apply under double tax agreements
   - 4.3 Approved issuer levy (AIL) on interest
   - 4.4 Treatment of trustee income
5. Non-resident film renters
6. Non-resident contractors and non-resident entertainers
   - 6.1 Non-resident contractors' withholding tax
   - 6.2 Withholding tax on payments made to non-resident entertainers
7. Special cases: specified income levels
   - 7.1 Non-resident general insurers
   - 7.2 Non-resident shippers
8. Special case: certain commercial bills
9. Taxation of non-resident beneficiaries of trusts

10. Taxation of profits of permanent establishments

11. Ways of doing business in NZ

12. GST implications for non-residents

13. Latest Developments

PDF ATTACHMENTS:

1. Venture capital NZ tax exemption for qualifying foreign equity investors
2. Venture capital NZ tax exemption for investments alongside the NZ Venture Investment Fund Ltd
3. Exemption from NZ tax for short-term visits
4. Activities that constitute a permanent establishment
5. Exemptions under double tax agreements for income from independent personal services and employment income
6. Royalties that qualify for reduced rates of NRWT under double tax agreements
7. "Interest" for NRWT purposes
8. Reduced rates of NRWT that apply under double tax agreements to non-resident passive income
9. Approved issuer levy
10. Non-resident contractors' withholding tax
11. Taxation of non-resident entertainers
12. Income of non-resident general insurers
13. GST implications for non-residents

1. TAX RATES

1. 0% if the exemptions from NZ income tax set out in the Exemptions section below apply.
2. Individual tax rates for non-residents who are natural persons, for the 2011-12 income year are

$0 - $14,000	0.105
$14,001 - $48,000	0.175
$48,001 - $70,000	0.300
$70,001 upwards	0.330

3. Individual tax rates for the 2010-11 income year are:

$0 - $14,000	0.1150
$14,001 - $48,000	0.1925
$48,001 - $70,000	0.3150
$70,001 upwards	0.3550

4. The company tax rate is 0.28 for income years from 2011-12 onwards.

5. For the 2008-09 to 2010-11 income years, the company tax rate was 0.30. (Prior to that, for the 2007-08 income years and earlier it was 0.33.)

6. The tax rate that applies to trustees, in relation to trustee income, is 0.33.

7. The tax rate on a taxable distribution from a non-complying trust is 0.45 (regardless of whether the distribution is received by a trustee or a beneficiary of a trust).

8. The rates of non-resident withholding tax (NRWT) on non-resident passive income that is dividends, interest or royalties, are set out in the section on Non-resident Passive Income below.

9. The withholding tax rate for income derived by non-resident entertainers is 0.20.

10. The GST rate is 15%.

2. WHAT A NON-RESIDENT IS TAXED ON IN NZ

11. The income of a non-resident is taxable in New Zealand if it is NZ-sourced income. Foreign-sourced income derived by a non-resident is not taxable in NZ, (unless it is derived by a non-resident trustee, and a settlor of the trust is either resident in New Zealand or died while resident in New Zealand -see further below).

12. The NZ tax liability of a non-resident may be reduced or eliminated by the provisions of a double tax agreement. At the time of writing, January 2013, NZ has negotiated double tax agreements with 38 other countries. For the list, refer to paragraph 15 of the attached PDF *Activities that constitute a permanent establishment*.

3. EXEMPTIONS FROM NZ INCOME TAX

13. The following types of income of a non-resident will be entirely exempt from NZ income tax:

    (a) Income from venture capital investments that meet specified requirements.

    (b) Income from short-term visits.

    (c) Income from specified activities.

    (d) Interest, in very limited circumstances.

(e) Business profits of a non-resident enterprise, from a country with which NZ has negotiated a double tax agreement (a “Contracting State”), if the enterprise’s business profits are not derived through a permanent establishment in NZ.

(f) Income from employment that is exempt from NZ tax under a double tax agreement.

(g) Income from performing personal services that is exempt from NZ tax under a double tax agreement.

3.1 Income From Venture Capital Investments

(See the attached PDFs *QFEI Exemption* and *VIA Exemption* for the details)

14. Income derived from the sale of shares or options in a NZ company, held for at least 12 months by a foreign investor who is a tax-exempt entity in their country of residence, is exempt from NZ income tax if all of the following conditions are met:

    (a) The foreign investor meets the requirements to be a “qualified foreign equity investor”.

    (b) The shares in the NZ company were not listed at some time in the first 12 months that they were held by the foreign investor.

    (c) The NZ company does not engage in specified prohibited activities.

    [Refer to the attached PDF on the *QFEI Exemption*.]

15. Income from the sale of a share or option that was acquired by a non-resident in connection with a venture investment agreement between a venture capital manager and the NZ Venture Investment Fund Limited, is exempt from tax if all of the following conditions are met:

    (a) The share or option is bought through the venture capital manager under a venture investment agreement.

    (b) The investee company does not engage in specified prohibited activities and meets minimum specified investment requirements in New Zealand.

    (c) At the time of sale, all the parties’ obligations have been satisfied, and no single group of associated persons in New Zealand has a direct or indirect interest of more than 10% in the share being sold.

    [Refer to the attached PDF on the *VIA Exemption*]

3.2 Income From Short-term Visits

(Refer to the attached PDF *Short-term Visits Exemptions* for the details)

16. Income from personal or professional services performed during a visit to New Zealand of no more than 92 days is exempt from NZ tax if certain other requirements are also met.

17. Income derived by an overseas expert or trainee, while visiting New Zealand by arrangement with the New Zealand government, is exempt if some specified criteria are met.

18. Income derived by a non-resident entertainer or non-resident sportsperson, or by their employers or companies, is exempt if specified criteria are met.

3.3 Income From Specified Activities

19. Income derived by a non-resident aircraft operator is exempt from NZ tax if there is a reciprocal exemption for a New Zealand aircraft operator in the non-resident aircraft operator's country of residence.

20. Income derived by a non-resident company from exploration and development activities in an offshore permit area is exempt income if derived between the 2005-06 income year and 31 December 2014.

21. Income of a non-resident from an investment in a NZ Foreign Investment Portfolio Investment Entity will be exempt from NZ tax from the 2012-13 income year, to the extent that income is sourced from outside NZ.

3.4 Interest (under very limited circumstances)

22. The Taxation (International Investment and Remedial Matters) Act 2012 contains an amendment in s. 149 that provides for a 0% rate of *approved issuer levy* ("AIL") on interest paid to a non-resident, in very limited circumstances. (See the *Non-resident Withholding Tax* section below for an explanation of AIL and paragraphs 109 to 110 in the Larger Companies section of this website.) The amendment applies from 7 May 2012, the date of assent of the amending Act.

3.5 Business profits not derived through a permanent establishment in NZ

(Refer to the attached PDF *Activities That Constitute A Permanent Establishment* for the details)

23. To date, NZ has negotiated double tax agreements with 38 other countries. Under a double tax agreement, business profits derived by a resident of a Contracting State (or Contracting Party) will be exempt from NZ tax if the profits are not derived from a business carried on through a permanent establishment in NZ.

24. Activities that will not constitute a permanent establishment in New Zealand, as a consequence of which business profits will be exempt from tax in New Zealand, are set out in the attached PDF.

3.6 Exemption Under Double Tax Agreements For Income From Employment

(Refer to the attached PDF *Exemptions Under Double Tax Agreements For Income From Independent Personal Services And Employment Income*)

25. All New Zealand's double tax agreements allow NZ to tax income from employment in NZ. However, double tax agreements provide for an exemption from NZ tax on income from employment in NZ earned by a non-resident, if all of the following conditions are satisfied:

    (a) The employee who receives the income must not be present in NZ for more than 183 days in any 12-month period (*how this is counted differs between agreements*).

    (b) The remuneration must not be paid by a NZ resident.

    (c) The remuneration must not be borne by, or tax deductible by, a permanent establishment in NZ.

26. There is a special exemption in the double tax agreement with Australia under which employment income derived during a secondment that does not exceed 90 days in a 12-month

period will only be taxable in the employee's country of tax residence. For more on this refer to paragraphs 23 to 25 of the *NZ Residents Operating In Australia* section.

3.7 Exemption Under Double Tax Agreements For Income From Independent Personal Services

(Refer to the attached PDF *Exemptions Under Double Tax Agreements For Income From Independent Personal Services And Employment Income*)

27. The general rule is that the income from independent personal services derived by a non-resident from New Zealand will be exempt from NZ tax under a double tax agreement, if <u>both</u> the following conditions are satisfied:
    (a) The non-resident must not have a fixed base regularly available to them in NZ for the purpose of performing their activities.
    (b) The individual performing the activities in New Zealand must not be present in NZ for more than 183 days or less in any 12-month period (*how this is counted differs between agreements)*.
28. Some agreements specify the circumstances in which a permanent establishment will result from performing independent personal services. The usual rule is that presence exceeding 183 days in a 12-month period, while performing the services in a Contracting State, will give rise to a permanent establishment.

4. NON-RESIDENT PASSIVE INCOME

29. Non-resident passive income is treated separately from any other income derived from NZ. Non-resident withholding tax (NRWT) is deducted from gross payments of non-resident passive income. NRWT is not refundable.
30. Non-resident passive income consists of:
    (a) Dividends (excluding investment society dividends).
    (b) Royalties. (For what constitutes a royalty, refer to the attached PDF on *Royalties*.)
    (c) Interest (only if the non-resident is not in business in NZ through a fixed establishment in NZ).
31. Interest for NRWT purposes takes its ordinary meaning, and excludes amounts that arise only due to the application of the financial arrangements rules. (Refer to the PDF on *Interest for NRWT Purposes* for a detailed explanation.)
32. NRWT is a final tax, <u>except</u> when non-resident passive income is:
    (a) Royalties (other than royalties relating to literary, dramatic, musical, or artistic works in which copyright subsists for which NRWT is a final tax).
    (b) Interest or an investment society dividend that is derived by a non-resident who is <u>associated with the NZ payer</u>.
    (c) Interest or royalties derived by a non-resident life insurer, unless paid by a NZ company to a life insurer who is treated as a NZ resident in relation to its NZ business.

33. In the 3 cases listed above, for which NRWT is not a final tax, it is a minimum tax, and may be credited towards the final NZ tax liability. NRWT is not refundable if the final NZ tax liability is lower than the amount of tax withheld.

4.1 Rates of NRWT (before any reduction under a double tax agreement)

34. The following are the rates of NRWT that apply under NZ domestic tax law, as a final or minimum tax under the rules set out above, before any reduction in the rate that may be available under a relevant double tax agreement.

35. The NRWT rate is 30% on cash dividends, to the extent they are not fully imputed. The NRWT rate on non-cash dividends is the same. The value of a non-cash dividend is grossed up so that the NRWT is 30% of the gross amount.

36. The NRWT rate is 15% on cash dividends to the extent they are fully imputed. The extent to which a dividend is fully imputed is calculated based on a formula that takes into account the imputation credits attached to, and the supplementary dividend paid with, the dividend. The NRWT rate of 15% applies only to the fully imputed portion. The unimputed portion is taxed at the NRWT rate of 30%.

37. Under previous tax law, the total NRWT payable on a partly imputed dividend (i.e. not fully imputed) was the sum of the NRWT payable on the fully imputed portion at 15% and the NRWT payable on the unimputed portion at 30%.

38. Under the previous calculation, because of the partial imputation, there could in some cases be effectively no treaty relief: the total NRWT payable could be less than the amount calculated for the total dividend using a reduced rate of NRWT that applies under an applicable double tax agreement, even though the rate of NRWT payable on the unimputed portion exceeds the reduced rate under a double tax agreement. Therefore, the unimputed portion would end up being taxed at a higher rate than specified in an applicable tax treaty.

39. As this was not the intention, an amendment to s. RF 11B of the *Income Tax Act 2007* contained in s. 152 the *Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012* corrects the rate of NRWT payable on the unimputed portion so that it reflects the reduced rate of NRWT in an applicable double tax agreement. The amendment applies from 1 February 2010, which was the date on which the NRWT rate on imputed non-portfolio dividends was reduced to nil (see the next paragraph below).

40. The NRWT rate is 0% on a dividend that is fully imputed and paid to a company that meets one of the following criteria:
    (a) A non-resident company that has a 10% or greater direct voting interest in the company that pays the dividend; or
    (b) A non-resident company that has a less than 10% direct voting interest, if a double tax agreement reduces the NRWT to less than 15%.

41. The NRWT rate is 15% on interest, unless "approved issuer levy" (AIL) is paid instead (see paragraphs 46 to 49 below). If AIL is paid, the NRWT rate for interest is 0%.

42. The NRWT is 0% on interest paid by a "transitional resident" (- a non-resident who becomes a NZ resident can elect to be treated as a transitional resident for the first 4 years of residence in NZ -) if <u>all</u> of the following conditions are satisfied:

(a) The interest is paid on money borrowed during the period of non-residence.

(b) The interest is not paid in relation to a business carried on through a fixed establishment in New Zealand.

(c) The interest is derived by a person not associated with the transitional resident.

(d) The interest is not derived by a non-resident jointly with a NZ resident.

43. The NRWT rate is 15% on royalties.

4.2 Reduced Rates Of NRWT That Apply Under Double Tax Agreements

(Refer to the attached PDFs *Reduced Rates Of NRWT Under Double Tax Agreements* and *Royalties Under Double Tax Agreements* for the details)

44. Under a relevant double tax agreement, the NRWT rate is capped at a set maximum, and may be reduced or sometimes eliminated altogether:

(a) All of the double tax agreements that NZ has entered into provide for the NRWT on dividends to be capped at 15%. In specified circumstances the NRWT on dividends is reduced to 5% or completely eliminated.

(b) The rate of NRWT on interest is generally capped at 10%, and in a few cases, 15%. The rate that applies to interest paid to US banks is 0%. The rate on interest paid to Australian banks is also 0%, if AIL is paid, or if the payer is ineligible to elect to pay AIL.

(c) On royalties, the rate of NRWT is capped as low as 5% in recent cases (Australia, Singapore, the US, Chile and the new agreement with Japan) and is either 10% or 15% in most cases. The rate caps apply even if under domestic NZ law the NRWT is a minimum tax and not a final tax. The rate cap also applies to items that are within the definition of "royalties" in a double tax agreement, but not within the domestic NZ tax definition.

45. Refer to the attached PDF on *Reduced Rates Of NRWT Under Double Tax Agreements* for the maximum NRWT rates under the 38 double tax agreements. Refer to the attached PDF on *Royalties Under Double Tax Agreements* for the treatment of royalties under the 38 double tax agreements.

4.3 Approved Issuer Levy (AIL) On Interest

(Refer to the attached PDF *Approved Issuer Levy* for the details)

46. A 0% rate of NRWT applies to an interest payment on which approved issuer Levy (AIL) is paid.

47. The 0% rate of NRWT does not apply to an interest payment unless AIL is paid on that interest payment by the due date. However, a 0% rate of AIL has applied since 7 May 2012 in respect of a limited range of securities. Refer to the attached PDF on *Approved Issuer Levy* for the details.

48. In order to pay AIL instead of NRWT, a person has to register as an approved issuer and register the security on which the interest is paid. Refer to the attached PDF for details on the procedure involved.

49. AIL cannot apply, and interest must have NRWT deducted, if the interest is paid to either of the following:

    (a) A person associated with the approved issuer (other than a person associated only through being a beneficiary of a trust established to protect beneficiaries' rights under the registered security for which the interest is paid – an amendment to s. RF 12(1)(a)(ii) inserted by s. 131 of the *Taxation (International Investment and Remedial Matters) Act 2012* applying from the 2010-11 income year).

    (b) Two or more joint recipients of the interest, of whom at least one is a NZ resident.

4.4 Treatment of Trustee Income

50. A number of NZ's double tax agreements provide that dividends, interest and royalties arising in NZ and derived by or through a trust, are deemed to be beneficially owned by a resident of the other Contracting State where the income is subject to tax in the hands of the trustee of the trust (i.e. where the income is the equivalent of "trustee income" in NZ).

51. Accordingly, when one of these double tax agreements applies, the rates of NRWT that apply to non-resident passive income derived by a trustee who is taxable on that income in a Contracting State, will be determined based on the agreement with that Contracting State.

52. The double tax agreements that provide for this are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Fiji, Finland, Germany, Hong Kong, the new agreement with Japan, the Netherlands, Norway, the new agreement with Papua New Guinea, the Philippines, Poland, Singapore, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and the United Arab Emirates.

5. NON-RESIDENT FILM RENTERS

53. From 2 November 2012, the date of assent of the *Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012*, non-resident film renters are subject to NRWT on their royalty income. (Refer to paragraphs 29 onwards above and the PDF attachment on *Royalties*.)

    [Refer to sections 5, 14, 159 & 160 of the *Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012*]

54. From 2 November 2012, film-renting income is taxable as a royalty, or as income received from a right or interest in a film that is taxable under section CC 10.

55. Previously, 10% of the amount derived by a non-resident film renter, was deemed to be derived from New Zealand, if the amount ("film-renting income") related to:

    (a) Renting, exhibiting or issuing a film, or making other arrangements for its exhibition.

    (b) Selling or hiring film containers, cinematographic or photographic materials, or equipment or accessories relating to a film.

    (c) Selling or hiring advertising materials relating to the film.

56. Also previously, no deductions were allowed for any expenditure of a non-resident relating to NZ income from film renting. Therefore, a non-resident company taxed at the company tax rate of 28% previously paid tax at the rate of 2.8% (28% of 10%) of its gross film-renting income from NZ. Moreover, under previous law film-renting income was exempt from tax if

the amount derived by the non-resident was an insignificant proportion of the total amount derived by them from a business carried on in New Zealand or elsewhere.

57. Furthermore under the previous laws, if the non-resident film renter was required to pay another non-resident a portion of the amount derived from film-renting in NZ, the amount paid to the other non-resident was treated as not having a source in NZ and there were, consequently, no NZ tax implications.

58. The rationale behind the change is that practically all amounts currently subject to the non-resident film renters' tax are royalties under both the domestic tax definition and the royalties article in double tax agreements. (Refer to paragraphs 29 onwards above and the PDF attachment on *Royalties*.)

59. Consequently, the rule that deemed 10% of gross income from film renting to be derived from NZ has been repealed. The rule that denied deductions for film-renting income has also been repealed. The exclusion from non-resident passive income of non-resident film renters' income has ceased to apply.

60. The previous rule that treated a payment by a non-resident film renter to another non-resident as not being sourced in NZ (see paragraph 57 above) has also been repealed. From 2 November 2012, if such a payment falls within the definition of a "royalty" and the non-resident film renter is allowed a deduction for it when calculating taxable income in NZ, the payment to the other non-resident will be treated as being sourced in NZ and there will be NZ tax implications.

6. NON-RESIDENT CONTRACTORS AND NON-RESIDENT ENTERTAINERS

61. Withholding taxes must be deducted from payments made to non-resident contractors and non-resident entertainers.

6.1 Non-resident Contractors' Withholding Tax

(Refer to the attached PDF *Non-resident Contractors' Withholding Tax* for the details)

62. Non-resident contractors will have non-resident contractor's withholding tax (NRCWT) deducted from contract payments made to them. The rate of NRCWT is 15% of the gross amount of each contract payment. Increased rates apply if the non-resident contractor has not completed a withholding tax certificate (IR 330) and given it to the payer.

63. A nonresident contractor may be exempt from having tax withheld, or exempt from NZ tax. In that case, an exemption certificate can be applied for. An exemption certificate only applies to payments made after the date on which the certificate is issued.

64. An exemption from NRCWT applies if the total amount paid to the non-resident contractor does not exceed $15,000 in the 12-month period. In this case, any tax liability must be settled directly by the non-resident contractor.

65. An exemption certificate can be applied for on any of three grounds:

    (a) If there is tax relief available under a double tax agreement.

    (b) If the contractor provides a bond or other security for payment of the income tax.

(c) If the contractor has a good history of tax compliance in New Zealand for at least the previous two years.

66. NRCWT is not a final tax. A tax return must be filed returning the net income from the contract activity in NZ and, if the tax liability exceeds the NRCWT deducted it must be settled by the due date for payment of terminal tax (which, based on the standard tax year ending 31 March, is the following 7th of February , or if a tax agent is used, the 7th of April following the end of the tax year).

6.2 Withholding Tax On Payments Made To Non-resident Entertainers

(Refer to the attached PDF *Taxation Of Non-resident Entertainers* for the details)

67. Tax must be withheld from payments made to non-resident entertainers at a rate of 0.20. Non-resident entertainers are:

(a) Actors, entertainers, musicians, singers, dancers and similar artists, either alone or in a group.

(b) Sportspeople and athletes.

(c) Lecturers and speakers.

68. There are exemptions from tax for payments to non-resident entertainers who carry out an activity that is part of a cultural exchange program involving the New Zealand government, or when they participate in a game or sport as representatives of the official body that administers the game in an overseas country.

69. Around half of NZ's double tax agreements provide for an exemption from income tax in NZ in the following cases:

(a) Where the entertainer is substantially supported by public funds.

(b) Where the profits accrue to a non-profit entity.

70. There also other specific exemptions, for example, there is an exemption for payments not exceeding US $10,000 in the double tax agreement with the US, and there is a specific exemption for players in the NRL rugby league competition in the double tax agreement with Australia.

71. For more information refer to the attached PDF on *Taxation Of Non-resident Entertainers*.

7. SPECIAL CASES: SPECIFIED INCOME LEVELS

72. There is a specified level of income that is deemed to be taxable in New Zealand, in the case of income derived by either of the following:

(a) A non-resident general insurer.

(b) A non-resident shipper.

7.1 Non-resident General Insurers

(Refer to the attached PDF *Income Of A Non-resident General Insurer* for the details)

73. 10% of the premium derived by a non-resident general insurer is deemed to be income from New Zealand if <u>all</u> the following pre-conditions are present:

(a) The premium is sourced in New Zealand.

(b) The premium is paid in relation to general insurance, or for a guarantee that significantly reduces interest on money lent to the insured person, or for a guarantee provided by a person associated with the insured person.

(c) The premium is not attributable to a fixed establishment of the non-resident insurer in New Zealand through which they carry on business in New Zealand.

74. There are no deductions allowed for any expenditure.

75. The New Zealand payer of the premium is deemed to be the agent of the insurer and is required to file a tax return returning 10% of the premium as income. The tax is due to be paid on the terminal tax date, which is the 7th of February following the end of the standard tax year on 31 March, or the 7th of April, if a tax agent is used.

7.2 Non-resident Shippers

76. 5% of the amount payable, for the carriage out of NZ by a non-resident person of cargo, mail or passengers shipped or embarked in New Zealand, in a ship that belongs to, or is charted by, a nonresident, is treated as income derived from NZ.

77. However, the Commissioner is able to determine that some or all of the 5% is a foreign sourced amount that is exempt from tax in NZ. The Commissioner has determined that the 5% is not payable on international cargo (carriage out of NZ) in a ruling set out in *Tax Information Bulletin* Vol 6, No 14, June 1995 (page 15).

78. The carriage by ship, of cargo within New Zealand, by a nonresident person, is a contract activity and will be subject to non-resident contractors withholding tax.

8. SPECIAL CASE: CERTAIN COMMERCIAL BILLS

79. Special rules apply when a non-resident holder of a commercial bill is not required to calculate and allocate income and expenditure under the financial arrangements rules:
    - When the non-resident holder disposes of the commercial bill other than by redemption, the value of the commercial bill on the day the non-resident disposes of it is income of the person.
    - If the commercial bill was issued by a person who is associated with the non-resident holder, the amount that the non-resident holder receives upon redemption of the bill is income of the person.

80. For the definition of a commercial bill refer to paragraphs 5 & 6 of the attached PDF *"Interest" for NRWT Purposes*.

9. TAXATION OF NON-RESIDENT BENEFICIARIES OF TRUSTS

81. A number of NZ's more recent double tax agreements provide that where a trustee carries on business in NZ, and a non-resident beneficiary has a beneficial interest in a share of the profits of the business, the non-resident beneficiary is deemed to be carrying on the business carried on by the trustee through a permanent establishment in New Zealand. The beneficiary's share of the profit attributable to the permanent establishment can be taxed in NZ.

82. The double tax agreements that provide for this are the agreements with: Australia, Chile, Czech Republic, Hong Kong, the new agreement with Japan, Korea, Malaysia, Mexico, Singapore, Spain, Taiwan, Thailand, Turkey and the United States.

83. A share of profits is interpreted for New Zealand tax purposes, as a share of net income (see paragraphs 88 & 89 below). However, under NZ tax law, a beneficiary is not entitled to any deductions in relation to beneficiary income derived.

84. Therefore, where a beneficiary derives, as beneficiary income, a share of the gross profits from a business carried on by a trustee in NZ, it will be necessary to deduct expenditure relating to the derivation of those profits in order to determine the amount that is allowed to be taxed under a relevant double tax agreement. Presumably such deductions will not be allowed again in calculating the trustee's income, but the law is unclear regarding how that happens.

85. Refer also to the *Trusts* section of this website for an additional discussion on the tax treatment of income derived by a non-resident beneficiary.

10. TAXATION OF PROFITS OF PERMANENT ESTABLISHMENTS

86. New Zealand's double tax agreements all provide for the business profits of a NZ permanent establishment to be taxable in NZ.

87. For example, Article 7 of the double tax agreement with Australia provides as follows:

"1. *The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.*

2. *Subject to the provisions of paragraph 3, when an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.*

3. *In determining the profits of a permanent establishment there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere."*

88. Section BH 1(6) states that:

"A reference in a double tax agreement to the profits of an activity or business is to be read, if possible, as a reference to the amounts that would be the person's net income if that activity or business were there only activity or business."

89. Therefore, the profits of a permanent establishment must be determined for NZ tax purposes using the same rules as those used to determine the net income of a NZ business. Expenses

incurred in the other Contracting State relating to executive and general administrative costs, can be allocated to the permanent establishment.

90. Note that the deductions that are allowed to a permanent establishment can vary between double tax agreements. The provisions of the relevant double tax agreement should always be referred to. For example, the double tax agreement with the Philippines provides as follows:

"5. *Notwithstanding the provisions of paragraph 3, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of:*

(a) royalties, fees or other similar payments in return for the use of patents or other rights;

(b) commission for specific services performed or for management; and

(c) interest on money lent to the permanent establishment, except in the case of a banking institution."

11. WAYS OF DOING BUSINESS IN NZ

91. There are several ways of doing business in New Zealand. A non-resident could carry on business in New Zealand through a branch, a company, a trading trust, a partnership or limited partnership, a joint venture, or even a look-through company if the requirements are met.

92. The most suitable vehicle will depend on the facts and circumstances of each case. Simply comparing the attributes of the various forms of doing business is not likely to be very helpful. There are specific tax and regulatory characteristics in each case, which should be considered and weighed up in the light of the particular objectives of, and details regarding, carrying on business in New Zealand.

12. GST IMPLICATIONS FOR NON-RESIDENTS

(Refer to the attached PDF *GST implications for non-residents* for all the details)

93. A non-resident does not have to charge GST on any supplies made in New Zealand, unless: the value of the supplies of goods or services in New Zealand exceed the GST registration threshold of NZ $60,000 in a 12-month period, and either of the following pre-conditions apply:

    (a) The goods are in New Zealand at the time of supply.

    (b) The services are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed.

94. Under existing rules, a non-resident who makes supplies in New Zealand can voluntarily register for GST, charge GST on those supplies and pay the GST charged to the IRD. GST charged on goods and services acquired by the non-resident in New Zealand (referred to as "input tax"), can be deducted, from the GST charged and payable to the IRD, to the extent the acquired goods and services are acquired for use in making taxable supplies.

95. A non-resident who makes taxable supplies to a registered person in New Zealand must agree in writing with that person that GST will be charged (referred to as "a section 8(4) agreement").

96. Under existing rules, there is no advantage in registering for GST in New Zealand unless taxable supplies are going to be made. GST on goods and services acquired in New Zealand can only be deducted as input tax to the extent that those goods or services are used in making taxable supplies in New Zealand.

97. Proposals for important new rules, regarding the ability of a non-resident to voluntarily register for GST, are contained in clause 73 onwards of the *Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill* ("the Bill") introduced on 13 September 2012. These rules restrict the ability of a non-resident to voluntarily register for GST, while, at the same time, they will allow GST costs incurred in New Zealand to be claimed back as input tax deductions even though taxable supplies are made only outside New Zealand.

98. The proposed new rules are to come into force on 1 April 2014.

99. Under cl. 91 of the Bill, the new GST registration requirements for non-residents effectively apply from 13 September 2012 – the date of introduction of the Bill. Proposed new s. 54C(4), contained in cl. 91 of the Bill, will allow the Commissioner to cancel the registration of a non-resident who voluntarily registers between 13 September 2012 and 1 April 2014 if the new registration requirements in new s. 54B are not met.

100. The new registration requirements restrict the ability of a non-resident to voluntarily register unless the Commissioner is satisfied that:

(a) The non-resident is registered for a GST-type tax in their country of residence, or if that country does not have a GST-type tax, the non-resident would be liable to register in New Zealand under s. 51(1) if they were carrying on the taxable activity in New Zealand because the value of their supplies would exceed the registration threshold; and

(b) The amount of the non-resident's input tax for the first taxable period after the date of registration in New Zealand is likely to be more than $500; and

(c) The non-resident's taxable activity does not involve a supply of services in relation to which it is reasonably foreseeable that the services will be received in New Zealand by a person who is not GST-registered.

101. Under proposed new s. 20(3L), contained in cl. 83 of the Bill, a non-resident may deduct input tax to the extent to which the goods or services are used for, or are available for use in, making taxable supplies, *treating all supplies made by the person as if they were made and received in New Zealand*.

102. Note, however, that this rule means that if a non-resident makes supplies that would be exempt supplies if made in New Zealand, input tax cannot be deducted to the extent that such supplies are made.

103. The full details of the proposed new rules are contained in the PDF attachment *GST implications for non-residents*.

13. LATEST DEVELOPMENTS

104. New double tax agreements have been negotiated with Papua New Guinea (signed on 29 October 2012) and Japan (signed on 10 December 2012). These agreements are not yet in force at the time of writing (January 2013). For information on the NRWT rates and royalties covered by these agreements refer to refer to the attached PDFs *Reduced rates of NRWT that apply under double tax agreements* and *Royalties under double tax agreements*.

105. From 7 May 2012, a 0% rate of approved issuer levy has applied in respect of a limited range of securities offered by non-residents. For more information refer to paragraph 46 onwards and the attached PDF *Approved issuer levy*.

106. From the 2010-11 income year AIL (instead of NRWT) can be deducted and withheld by a person who is associated with the issuer only through being a beneficiary of a trust established to protect beneficiaries' rights under the registered security for which the interest is paid. (Refer to paragraph 49.)

107. The method for calculating the NRWT to be withheld in respect of partially imputed dividends has changed with effect from 1 February 2010, so that the rate at which NRWT is withheld on the unimputed portion alone is no higher than the rate specified under an applicable treaty. Refer to paragraph 38 onwards for a more detailed explanation.

108. Payments to non-resident film renters have been subject to NRWT on royalties since 2 November 2012. For the details refer to paragraph 53 onwards.

109. Amendments have been proposed to allow a non-resident to register for GST purposes and recover GST costs incurred in New Zealand, even though the non-resident may have no taxable activity in New Zealand. For the details refer to paragraph 97 onwards and the attached PDF *GST Implications for non-residents*.