

DOING BUSINESS IN NEW ZEALAND

PREFACE

This booklet has been prepared by MGI WILSON ELIOTT LIMITED, the New Zealand member of Midsnell Group International, for the information of clients and fellow members of MGI.

Whilst every care has been taken in the preparation of this booklet, no responsibility can be accepted for inaccuracies. Clients are also advised that the law and practice may change from time to time.

DISCLAIMER

MGI is a world wide association of independent accounting firms. Each member firm undertakes no responsibility for the activities, work, opinions or services of other member firms.

MGI WILSON ELIOTT LIMITED
CHARTERED ACCOUNTANTS

A member of
MIDSNELL GROUP INTERNATIONAL

an association of independent accounting firms

CONTENTS

	Page
INTRODUCTION	5
NEW ZEALAND OVERVIEW	6
The Country & its People	
Government	
The Economy	
INVESTMENT CLIMATE & OPPORTUNITIES	8
The Overseas Investment Commission	
Significant Investment	
Specified Investment	
IMPORTING	10
EXPORTING	11
IMMIGRATION	11
RECOGNISED FORMS OF BUSINESS ENTERPRISE	12
Sole Trader	
Partnerships & Joint Ventures	
Trusts	
Limited Liability Companies	
Agent	
LAW RELATING TO BUSINESS IN NEW ZEALAND	13
COMPANY LEGISLATION	14
Annual Returns	
Directors' Duties	
Stock Exchange Listing	
LABOUR RELATIONS & EMPLOYMENT	15
Minimum Code	
Accident Compensation	
Fringe Benefits	

	Page
TAXATION	16
Direct and Indirect Taxation	
Classification of Residency	
Assessment of Tax	
Exemptions	
Deductions	
Tax Losses	
Transfer of Assets	
Controlled Foreign Companies	
Foreign Investment Funds	
TAX - COMPANY INCOME	18
TAX - INDIVIDUAL INCOME	19
TAX - PARTNERSHIPS & TRUSTS	19
TAXATION OF INTEREST	19
TAXATION OF DIVIDENDS	20
TAXATION OF ROYALTIES	20
DOUBLE TAXATION	21
GOODS & SERVICES TAX	22
ADMINISTRATION OF INCOME TAX	22
Filing	
Payment & Instalments	
Interest & Penalties	
Assessment, Audit & Reassessment	
Objections & Appeals	
STATUTORY DISCLOSURE & AUDIT	24
Reporting Requirements	
Entities & Issuers	
Exempt Companies	
Filing & Reporting	
Auditing Requirements	
CONCLUSION	25

INTRODUCTION

New Zealand is a country that is attracting a rapidly increasing level of international interest and attention.

Principal reason for this focus is the success of a tough period of economic reform which has opened-up far-reaching opportunities for investment and business in New Zealand.

Foreign investment and international trade have always been key factors in the development of this vigorous young country, but in recent years the government has concentrated its policies on creating an environment that welcomes wide-ranging commercial enterprise.

New Zealand is committed to maintaining an open, internationally competitive economy.

The regulatory environment is being systematically reviewed to lower compliance costs and remove impediments to business. Few regulatory controls exist other than in certain specified areas (farmland, fishing and communications) where, if the amount invested exceeds \$NZ 10 million, approval of the New Zealand Foreign Investment Commission is required.

There are no controls on the movement of funds, profits or capital from the country.

Labour laws have been radically reformed and training schemes for new industry skills have been introduced in many areas.

Investment in New Zealand can provide many competitive advantages:

- Low asset prices on property, plant and equipment
- Stable, hardworking, mostly non-union labour force
- Low overhead cost structure – 1.5 - 3% p.a. inflation
- Competitive exchange rates
- Pro-business government policies

In this booklet we cover a broad outline of the New Zealand business environment and tax regimes as they relate to investment from overseas.

We must stress that potential investors should seek advice beyond this publication when pursuing specific business interests, especially in relation to compliance with statutory regulations.

Whilst every care has been taken in the preparation of this booklet, no responsibility can be accepted for inaccuracies nor for changing circumstances occurring due to alterations in law and practice.

NEW ZEALAND - OVERVIEW

The Country and its People

New Zealand lies in the southern Pacific Ocean, 1,600km east of Australia, and approximately midway between the Equator and the South Pole. It is made up of two main Islands, known as North and South Islands, and a number of smaller islands.

With a total land area of 266,171 sq.km., New Zealand is slightly smaller than Japan, slightly larger than Great Britain and about the same size as the State of Colorado.

The climate of New Zealand varies considerably from region to region. As a long narrow island country with many intrusive geographic features, it is subject to very changeable weather conditions and in most areas there is plentiful rainfall. Seasons are opposite to those of the northern hemisphere. January and February are the warmest months. July is the coldest.

New Zealand has a strikingly diverse landscape, ranging from subtropical beaches and forests in the far north, to towering mountains, primeval forests and glacial fiords in the far south. Between those two extremes are almost every type of land formation and land usage imaginable. Urban and rural.

The scenic beauty of New Zealand together with rapidly expanding facilities for leisure pursuits and tourism, attract a growing number of visitors every season of the year. New Zealand is one of the most sought-after tourist destinations in the world.

The total population of New Zealand is just over 4.0 million, of which nearly 1 million live in the greater Auckland region. Other major areas of population are Hamilton, Wellington, Christchurch and Dunedin.

Political capital and seat of government is Wellington, situated at the southern tip of the North Island.

Approximately 74% of New Zealand's population is of British and European origin. The ethnic Maori people (many of whom now have mixed heritage) make up around 13% of the population. Immigrants of Pacific Island and Asian origin comprise of 6% each. The balance of the population is made up of immigrants from Africa and Eastern Europe,

The official languages are English and Maori. The vast majority of people speak only English though Maori is enjoying increasing exposure through schools, institutions and some ethnic-based businesses.

Government

The government of New Zealand was founded on the British Westminster system of democratic rule.

The European style democracy can be traced back to 1840, when by the ceremonial signing of the Treaty of Waitangi, the indigenous Maori people exchanged their sovereignty for the constitutional guarantees of the treaty, and New Zealand became a British colony.

Today, New Zealand is an independent state within the Commonwealth. Queen Elizabeth II is represented by a Governor-General who summons and dissolves Parliament, and assents to legislation.

In 1996 - following a nation-wide referendum which voted for change - the New Zealand parliamentary system was revised from a first-past-the-post electoral vote to MMP or Mixed Member Proportional representation, similar to some European parliamentary systems, but with just a single house, made up of 120 members, 50% of whom represent electoral districts, the other 50% representing their affiliated parties.

This system is unlikely to result in a single ruling party, but more likely a coalition of either National (centre right) or Labour (centre left) with one of the minority parties: NZ First, Act, United or Greens.

There is no Upper House. There are no State or Provincial governments. (Regional affairs are run by local City or District Councils and Regional Authorities).

The present Government is a Labour led coalition.

The Economy

New Zealand's economy is heavily dependent on overseas trade. Traditionally, a large proportion of New Zealand's exports - mainly agricultural products - went to the United Kingdom.

In recent years, however, New Zealand has diversified its markets and products.

At present Australia is New Zealand's biggest export market, a trading relationship that has developed significantly with the introduction of the CER (*Closer Economic Relations*) free trade agreement between the two countries.

Trade with countries of the Pacific rim is also growing rapidly, assisted by much improved air links and shipping transport.

Countries of Asia now make up New Zealand's next greatest export market, followed by the United States and the United Kingdom.

Over the decades, New Zealand has moved away from its dependence on dairy, meat and wool exports. Forestry, horticulture, fishing and manufacturing have become increasingly more significant. Tourism contributes a high level of overseas earnings.

Another interesting growth area is that of technical expertise. Skilled professional people market their highly practical expertise worldwide with entrepreneurial flair. Of particular note are researchers and consultants in engineering, medicine, computer sciences and telecommunications.

Like most countries worldwide, New Zealand went into a severe recessionary period in the late 1980s. However a stable and very strong government introduced tough, uncompromising measures of economic reform, coupled with revision of labour laws and deregulation of almost all commercial enterprise. This bold move has resulted in an economic recovery that has attracted considerable international attention and brought increased investment in wide-ranging spheres of activity.

The unit of currency is the New Zealand Dollar which trades freely on international money markets.

INVESTMENT CLIMATE & OPPORTUNITIES

New Zealand has won past recognition from authoritative independent sources as the OECD country "best adapted for long-term competitiveness".

There is now a flourishing expansion of international investment in New Zealand.

A number of factors have contributed significantly to this growth:

- the deregulated economy
- reform of tax laws
- reform of the labour market
- removal of subsidies
- sharply reduced trade barriers

A simple, liberal regime applies to investment from overseas. The government's policy is to encourage any overseas investment which will provide recognisable benefits to the country.

In recent years, notable investment has included:

- **New Ventures** in sectors such as tourism, forestry and food production.
- **Acquisitions** of New Zealand enterprises, including banks, a major insurance company, leading manufacturers, forest cutting rights and telecommunications.
- **Investment in new plant and technology** in areas such as telecommunications, food processing and retailing.

The Overseas Investment Commission administers regulations governing overseas investment, and monitors significant investments. Routine consent is given to the vast majority of applications.

THE OVERSEAS INVESTMENT COMMISSION

The OIC monitors and controls any direct investment by foreign controlled enterprises. Direct foreign investment is generally defined as "*investment by non-residents in New Zealand business, where the level of non-resident ownership is sufficient, or likely to give the investor an effective element of control over the management and activities of the business.*"

In practice, there is no simple way of determining whether or not "an effective element of overseas control" is present in any particular case. Accordingly, the practice adopted is to treat companies with 25% or more of their voting share capital controlled by foreign investors as "overseas companies". In addition: a company which is 25% or more owned by an overseas company, is itself treated as an "overseas company".

In order to facilitate the OIC's functions, the Overseas Investment Regulations 1985 require that consent must be obtained from the Minister of Finance, or the OIC to any of the following investments:

▪ **Significant Investment**

- Acquisition or control of 25% (or more) of any class of shares or voting power in a company where the consideration for the transfer, or the value of the assets exceeds \$NZ10 million.

- Commencement of business in New Zealand, where the total expenditure to be incurred in setting-up the business exceeds \$NZ10 million.

- Acquisition of the assets of a business where the total consideration paid or payable for the assets exceeds \$NZ10 million.

- For a body corporate, incorporated in New Zealand; or an un-incorporated body of persons, to issue shares to an "overseas person", when the issue results in the proportion of equity owned by "overseas persons" increasing; and the body concerned is an "overseas person" (or will become one as a result of the issue), and the total consideration paid or payable exceeds \$NZ10 million.

▪ **Investment in *Specified Business***

This applies to any investment (regardless of \$ value) by an "overseas person" In a *Specified Business* where the investment results in the "overseas person/s" controlling 25% or more of any class of shares or voting power. It also applies to any acquisition of assets (regardless of value) used, or proposed to be used, in conducting a *Specified Business*. ... ie. ...

Commercial Fishing this refers to the taking of fish for sale within N.Z. or N.Z. fisheries waters:

- All waters in the exclusive economic zone of New Zealand
- All waters of the territorial sea of New Zealand
- All internal waters, lakes, rivers streams of New Zealand
- All other fresh or estuarine waters where fish, indigenous or acclimatised, are found.

The Fisheries Act 1983 precludes the allocation of a fishing quota to an overseas person unless the Director General of the Ministry of Agriculture and Fisheries grants an exemption.

Rural Land. There are no restrictions as to a specific maximum level of allowable foreign ownership, however foreigners wishing to purchase rural land need to demonstrate that the acquisition will give rise to notable benefits to New Zealand.

In determining the benefits offered by any investment in New Zealand, the OIC takes the following criteria into account:

- Added market competition, lower prices, greater efficiency, enhanced consumer services
- The introduction of new technology, managerial and/or technical skills
- The development of new export markets or increased market access
- The creation of new job opportunities or the retention of existing jobs
- The relative opportunities for current owners to realise their investment to the best advantage, and the flow-on benefits that will accrue from that realisation

It is highly recommended that any application be prepared in conjunction with a professional advisor within New Zealand who will be aware of the most recent interpretations and understand the relative value of such criteria.

IMPORTING

New Zealand's once highly protected and regulated business environment has been considerably opened-up in recent years.

Imports into the country are now controlled simply by customs tariffs, based on the GATT Valuation Code.

Import Duty - ranging from 0% to 39% - applies to a limited number of items. (Just 7% of total value of imports).

Preferential rates apply to many items from specified countries of origin, such as Australia, some Pacific nations and Developing countries. Preferential rates also apply to some goods from the U.K. and Canada.

There are some things which are totally banned for import into New Zealand. Such prohibited items are principally to protect New Zealand's all-important natural resources and rural industries and include plants, produce and livestock from certain countries; specified breeds of fish, reptiles and animal pests.

EXPORTING

Certain commodities may not be exported from New Zealand without a permit.

These include: historic works of art and artefacts; animals and animal products (including marine); arms and explosives; fertilisers; seeds, grains, potatoes; metals and minerals; banknotes and coins (above a certain level); timber and timber products.

Documentation for any goods exceeding NZ\$1,000 in value must be filed with the Customs Department before export.

IMMIGRATION

New Zealand is a country that attracts a high level of interest from prospective migrants. The quality and standards of living, the "clean green" image and equitable climate, combined with a very favourable business and investment environment add up to an appealing alternative to life in many of the more crowded industrialised nations.

The government actively encourages immigrants with valued educational skills and work experience, and has set a target level of 25,000 migrants per annum.

Applications for immigration and residence are considered under four main categories:

1. General

Applicants are assessed on a "Points System" based on age, qualifications, work experience, or an offer of employment in a specified occupational category. Other factors taken into consideration include the applicant's ability to meet costs of resettlement, funds available to invest in New Zealand, sponsorship by a family member or an approved community organisation.

2. Business Investment

There are four business categories.

- i. Investor Category:- is a points based system on age, business experience and investment funds. There needs to be a minimum of \$1,000,000 to be invested for at least 2 years in a business in New Zealand.
- ii. Entrepreneur Category:- Application can be made under this category if a successful business has been established in New Zealand for a period of at least two years.
- iii. Long Term Business Visa/Permit:- This is not a residency permit, an applicant will be granted a work visa or permit for up to three years. Application can then be made for residency through the Entrepreneur Category.
- iv. Employees of Relocating Businesses:- Application may be made if candidate is a key employee of a business relocating to New Zealand.

Migrants must also meet certain criteria of education and work experience, and either they, or a migrating member of their family, over the age of 17 years, must have a reasonable command of the English language.

3. Family

Applications under this category may be made by those who already have family living in New Zealand. However, granting of residence under such circumstances should not be assumed to be automatic.

4. Humanitarian

This category applies to those who are suffering persecution in their home countries or who are fleeing as refugees. Granting of residence is not automatic and is subject to strict criteria.

RECOGNISED FORMS OF BUSINESS ENTERPRISE

1. Sole Trader / Sole Proprietor

Any individual may commence in business as a sole trader, and personally realise all profits and losses arising from the enterprise.

There is no requirement to register a business name.

There is no limitation of personal liability; the sole trader being personally liable for all the debts and obligations of the business.

2. Partnerships & Joint Ventures

Partnerships and joint ventures may be entered into by groups of individuals, trusts, companies, or combinations of these.

It is usual to have a formal signed agreement which establishes the rights and responsibilities of those involved, particularly in relation to business procedures and the sharing of profits or losses. In a trading partnership, all partners must have a written service agreement with the working party. This document clearly shows the obligations on the working partner and the salary payable. The partners are liable for debts and obligations of the partnership and individuals may be sued for debts of the partnership as a whole.

In joint venture or a special partnership, one or more of the parties may be excluded from liability (e.g. as an investor rather than an active participant).

3. Trusts

A Trust may be created by Will or by Deed. Use of a corporate trustee is becoming more common.

4. Companies

The "Limited Liability Company" is by far the most common means of conducting business in New Zealand.

There are a number of statutory regulations pertaining to overseas investors commencing operations in New Zealand:

New Zealand subsidiary of a Non-resident company.

Provision of capital from overseas may require consent under the Overseas Investment Regulations. However, in most other instances company law relating to incorporation of a N.Z. subsidiary is the same as that for incorporation of a local company.

Non-resident shareholding in a New Zealand Company

There are no restrictions on acquisition of anything up to 24.9% of any class of shares in a New Zealand company, although such acquisition must conform with regulations of the Commerce Act. However, if 25% or higher is sought, the company is classed as an "overseas person" and is subject to the same controls as a wholly-owned subsidiary. (See further information under the section relating to the Overseas Investment Commission).

A New Zealand Branch

Any company wishing to conduct business through a New Zealand Branch may require consent from the Overseas Investment Commission.

5. Agent in New Zealand

If the Agent's role is simply to carry & display sample stock, provide technical assistance to N.Z. customers and to take orders, the overseas principal is not normally considered to be conducting business in New Zealand and no controls are imposed.

However, a more extensive operation may be considered to be a Branch operation and subject to the controls of company law, taxation and overseas investment.

LAW RELATING TO BUSINESS IN NEW ZEALAND

New Zealand's legal system is based on British Common Law and Jurisprudence, with clear legal processes for resolving disputes and defining property rights.

Legal reforms have aimed to reduce the cost of doing business, and promote a dynamic, competitive environment.

International best practice is being adopted in areas such as accounting standards, whilst company and security legislation and legal process are being made compatible with that of Australia where practicable.

Anyone commencing business in New Zealand; involved in a takeover, investment, or acquiring assets; or providing services within New Zealand, will be affected by a variety of legislation and statutory requirements.

The following is a summary of legislation and government regulations that may need consideration.

- The Accident Rehabilitation & Compensation Insurance Act or Accident Insurance Act
- The Commerce Act
- The Companies Act
- The Consumer Guarantees Act
- The Credit Contracts Act
- The Employment Relations Act
- The Fair Trading Act
- The Financial Reporting Act
- The Goods & Services Act
- The Health & Safety in Employment Act
- The Holidays Act
- The Income Tax Act
- The Land Transfer Act
- The Minimum Wages Act
- The Privacy Act
- The Official Information Act
- The Resource Management Act
- The Securities Act
- Customs Department requirements
- Equal Opportunities employment regulations
- Fish Packhouse and Export Licences
- Immigration requirements
- Reserve Bank requirements

Details relating to some of these statutes are given in other sections of this publication.

In general, the regulations are principally aimed at protecting rights and privileges of the New Zealand people, particularly in relation to fair and honest trading,

However the importance of seeking current local professional guidance when doing business in New Zealand cannot be stressed enough.

COMPANY LEGISLATION

Traditionally, business practices and company law in New Zealand have been based on English concepts of par value and the doctrine of capital maintenance.

However, The Companies Act 1993, introduces principles similar to those operating in some American systems.

Companies registered under the 1993 Act are governed by a Constitution. This Constitution replaces the Memorandum and Articles of Association. The Constitution is a legal document, drafted when the company is first incorporated, or when it was re-registered under the 1993 Act.

Other important areas of legislative control cover the activities of companies offering securities to the public; co-operative companies operating in the public sector; standards of financial reporting; receiverships and takeovers.

Annual Returns

All companies registered with the Registrar of Companies are required to make an annual return with details of the registered office, the directors and secretary of the company, shareholding and secured liabilities.

Overseas companies must be registered with the Registrar of Companies and make annual return of audited financial accounts.

Directors' Duties

Directors undertake wide-ranging duties and obligations under the law. Breach of a duty can make the director liable for damages to the company or its shareholders. In addition, directors must not allow a company to continue trading if this would create a substantial risk of serious loss to creditors.

Stock Exchange Listing

The New Zealand Stock Exchange issues a Listing Manual detailing specific requirements relating primarily to disclosure of accounts, Constitution or Articles of Association and shareholding.

LABOUR RELATIONS & EMPLOYMENT

In New Zealand, organisations and individuals have the right to negotiate their own Employment Contracts, within a specific framework. Membership of a Trade Union is no longer compulsory.

Employees are empowered to group together and authorise a bargaining agent to act on their behalf to negotiate the terms of Employment Contracts. All employees, whether covered by a collective or an individual agreement, have guaranteed access to personal grievances procedures through the Employment Tribunal.

Minimum Code

The Employment Relations Act & The Holidays Act lay down the minimum employment standards. This covers minimum wage levels, statutory holidays, paid holiday and special leave.

Employees are entitled to 11 statutory holidays a year, and a minimum of 3 weeks annual leave. A minimum wage rate applies for employees over 20 years of age.

Employers are not permitted to discriminate on the basis of age, colour, race, ethnic or national origins; religious or ethical beliefs; marital status, gender or sexual orientation.

Equal pay is obligatory under the law, requiring the same pay scale for the same job, irrespective of gender.

The working week is generally regarded as 37.5 to 40 hours, spread over 5 days, but not necessarily Monday to Friday. Weekend trading is now widespread - particularly in retailing - and in the industrial sector many factories now operate split shifts through a 24 hour day, seven days a week.

An Employment Contract must stipulate the period of notice required for dismissal (or pay in lieu) and any redundancy provisions.

Accident Compensation

New Zealand residents do not have the right to sue for work-related accidents and injuries.

Instead, the Accident Compensation and Rehabilitation Insurance Corporation (ACC) provides benefits and disability pensions as determined on a case-by-case basis.

The ACC is funded partly by a payroll tax, paid by the employer, at a level that varies according to the nature of the industry, and partly by a levy on wage and salary income.

Fringe Benefits

All employer-provided fringe benefits are subject to a Fringe Benefit Tax (FBT). Included in this are benefits such as employer-provided cars; medical schemes; personal insurance plans and financial loans at below-market rates.

A major exception is free or subsidised accommodation of any kind. Such benefits are not subject to FBT, but are regarded as taxable to the recipient.

TAXATION

Taxation is the primary source of Government revenue. Included in the regime are:

Direct Taxation

Individual Income Tax

Income Tax on Company Profits

Taxation of Interest

Taxation of Dividends

Taxation of Royalties

Withholding Payments

Indirect Taxation

Goods & Services Tax (GST- a value added tax)

Import Duties

Excise Duty

Gift Duty

Accident Compensation Levy

Fringe Benefit Tax (FBT)

(Petroleum and mining companies are subject to special provisions of their own income tax regime).

There is no Capital Gains or Wealth Tax in New Zealand, although capital profits from certain speculative ventures and transactions in land or investments are liable to income tax.

There is currently no Death Duty on estates of New Zealand residents.

The standard Tax Year in New Zealand runs from 1 April to the following 31 March.

A resident of New Zealand, (person or company), is assessable for income tax on all income derived worldwide.

A tax credit is allowed for any tax payable on foreign source income, where such tax is similar in nature to New Zealand income tax, and does not exceed the relevant New Zealand tax.

A non-resident is assessable for income tax only on income with a source in New Zealand.

Classification of Residency

An individual is classified as "Resident" for taxation purposes if he or she has a permanent place of living in New Zealand, or is physically present in the country for more than 183 days in any 12 month period.

Anyone who is resident, but does not have a permanent place of living, is classified "Non-Resident" if physically absent from the country for more than 325 days in any 12 month period.

A Company is classified as "Resident" for taxation purposes if the company is incorporated in New Zealand or has its Head Office located here; or if the company has its centre of management or control of the company exercised in New Zealand.

Assessment of Tax

Income tax is levied on assessable gross income and receipts, less specified exemptions and deductions.

Gross income is classified as:

- Income from employment
- Earnings-related compensation
- Business and venture profits - including increase in value of trading stock
- N.Z. superannuation
- Rents
- Interest and dividends
- Royalties and know-how payments
- Capital Gains from certain speculative transactions.

Exemptions from tax

There is a small number of exemptions for the purposes of income tax. Some are of a specialised nature. For example, the income of charities; and distributions by lump sum or pension from N.Z. registered superannuation schemes.

Other exemptions relate to Dividends paid between two N.Z. resident companies which are members of a 100% wholly owned group; and Dividends derived by a N.Z. resident company from a non-resident company. In the latter instance the dividends may be liable to a "Dividend Withholding Payment".

Deductions allowable

To be deductible, an expenditure or loss must be incurred in producing assessable income. Depreciation is allowed at specified rates.

Deductions for outgoings or losses of domestic and/or capital nature are not generally allowed. Only 50% of business entertainment expenditure, above certain limits, is deductible.

Tax Losses

Losses from previous years may be carried forward indefinitely by all classes of taxpayer, and offset against future income.

In the case of companies, this is subject to at least a 49% continuity of shareholding at all times from the beginning of the year of loss to the end of the year of deduction.

Transfer of Assets

Where depreciation has been allowed on any asset (including buildings) and the asset is later sold at a price in excess of its written-down value, the depreciation recovered is assessable.

A voluntary consolidation regime allows wholly-owned companies to consolidate for tax purposes.

Controlled Foreign Companies

A N.Z. resident shareholder is liable for tax on income derived through a "Controlled Foreign Company" (CFC) defined as *"a foreign company which is controlled by a group of not more than five N.Z. residents in proportion to their income interests held in the company"*.

Foreign Investment Funds

New Zealand residents who have an interest in a Foreign Investment Fund (FIF) are required to declare their income interest in the FIF for New Zealand tax purposes.

TAX – COMPANY INCOME

The current rate of tax on resident companies is 33% Non-resident companies pay 33%.

It should be noted that N.Z. income tax law has special provisions relating to petroleum and mining, insurance companies, co-operative companies and non-resident film renters.

Special tax provisions apply to companies with a significant proportion of common shareholding.

"Grouping" of companies allows for the transfer of losses between members of the group.

Under the Voluntary Consolidation Regime, all members of a consolidated group are jointly and severally liable for tax debts of all members of the group.

For the purposes of Provisional Tax, a Consolidated Group is treated as being one company.

An optional tax regime, known as the Qualifying Company Regime, allows closely held companies to be treated the same as partnerships.

TAX - INDIVIDUAL INCOME

<i>Income Bracket</i>	<i>Tax rate per dollar</i>
\$0 - \$38,000	19.5%
\$38,001 - \$60,000	33.0%
Over \$60,000	39.0%

TAX - PARTNERSHIPS & TRUSTS

In New Zealand, a partnership is not a taxable entity, although it must file an annual return of income. The income is then taxed on the returns of the partners.

Trusts are identified for tax purposes on the basis of residence of the Settlor.

Each Trust is a separate taxable entity. Income derived by the trustee of a Trust will be assessed as individual income and taxed at 33%, unless it is credited to the account of or distributed to, the beneficiaries of the Trust, in which case the beneficiaries' personal rates apply.

Considerable tax advantages can sometimes be achieved by correctly structuring an individual tax-payer's affairs using Trusts **before** they become a New Zealand resident.

TAXATION OF INTEREST

Interest received by a New Zealand resident (individual, partnership, trust or company) is included in the assessable income of the recipient.

New Zealand has a domestic Withholding Tax on interest at the rate of 19.5% of the gross interest for taxpayers earning less than \$38,000. The minimum rate increases to 33% for taxpayers earning over \$38,000. Taxpayers earning over \$60,000 can elect to have their withholding tax deducted at either 33% or 39%. The rate is 39% where the recipient fails to notify the payer of their tax file number.

Interest derived by a non-resident, from New Zealand sources, is subject to a non-resident Withholding Tax of 15% on gross interest, reduced to 10% under some Double Tax Treaties.

TAXATION OF DIVIDENDS

The definition of "Dividends" includes: cash distributions, some bonus issues, and certain transactions between a company and shareholders, where some benefit is passed to the shareholder or associate. Imputation credits can be attached to these Dividends, but are not available to non-resident shareholders.

Dividends from a foreign company are not subject to income tax, but are subject to a Withholding Tax at 33%. Dividends in the hands of a resident company are exempt from income tax in a number of specified cases.

Share Redemptions, Buy-backs and Cancellations are subject to complex rulings which require local professional guidance.

Dividends derived by non-residents are not liable to income tax, but are liable to non-resident Withholding Tax at the rate of 30% of the gross dividend, unless a lower rate (usually 15%) is provided by the relevant Double Tax treaty.

Full dividend imputation enables companies to allocate tax credits for payments of company taxes to dividends paid to shareholders. Individual shareholders may then use this "imputed" tax credit to offset their own tax liability.

Corporate shareholders can pass this credit on to their shareholders, but imputation credits may not be used by non-residents to reduce their liability to non-resident Withholding Tax on dividends.

An annual return of imputation credit records must be filed with the Inland Revenue Department.

TAXATION OF ROYALTIES

This is a complex area of taxation, especially in relation to the definition of the term "Royalty" which is defined differently in various Double Tax Treaties. Where a Treaty does apply, it takes precedence over domestic law.

Broadly speaking, the definition covers any payment for:

- The right to use any copyright, patent, trademark, design, model, plan, formula or process.
- The right to use any film, videotape or broadcasting material.
- The right to use any mine or quarry.
- The right to extract, or remove standing timber or any natural resource.

Royalty payments by a New Zealand resident or non-resident, deemed to have a source in New Zealand, are deductible in calculating that individual's assessable income.

Royalties with a source in New Zealand, derived by non-residents, are subject to a Withholding Tax at the rate of 15% (reduced to 10% in most of the Double Tax Treaties).

Because expenses attributable to royalty or "know-how" income are difficult to identify, non-residents subject to normal annual assessment are able to claim deduction of a specified percentage of the gross royalty, depending on the nature of the Royalty.

DOUBLE TAXATION

A New Zealand resident is subject to tax on any income from outside the country.

To prevent attracting Double Taxation, a Foreign Tax Credit is made available, if the foreign tax is of the same nature as New Zealand tax.

New Zealand has agreements for the avoidance of double taxation with the following countries:

Australia	Belgium	Canada	China	Denmark	Fiji
Finland	France	Germany	India	Indonesia	Ireland
Italy	Japan	Korea	Malaysia	Netherlands	Norway
Philippines	Russian Federation	Singapore	South Africa	Sweden	Switzerland
Taiwan	Thailand	United Kingdom	USA		

Tax treaties with a number of other countries are in the process of negotiation.

In general, agreements follow the principles of the OECD model convention.

GOODS & SERVICES TAX

GST is a domestic value-added tax. It is charged on business transactions and on imports.

The current rate of GST taxation is 12.5% and it applies almost right across the board.

Goods and services **not** subject to GST are:

- Exported items.

- The sale of a business as a "going concern".

- Goods not located in N.Z. at the time of supply and which will not enter the country for domestic consumption.

- Services related to land and property outside New Zealand.

- Services performed outside the country.

- Services supplied to non-residents who are not present in the country.

- Services related to temporary Imports.

The major categories of GST exemptions are those in financial services and residential accommodation.

Any business operation must register for payment of GST if the taxable trading activity is valued in excess of \$40,000.

Goods imported into New Zealand are subject to GST. This is imposed on the total value of goods imported and is collected by the Customs Department at point of entry.

ADMINISTRATION OF INCOME TAX

Filing of Tax Returns

Taxpayers with a 31 March balance date must file their tax return on or before 7 July of that year.

Those with alternative balance dates must file returns on or before 7 July each year, or within four months of their annual balance date if it falls between 1 April and 30 September.

A taxpayer is liable to a late filing penalty if the required return is not filed on time.

Payment & Instalments

Individuals who receive salary or wages have PAYE (pay as you earn) tax deducted at source by their employers. This tax is then remitted to the IRD by the employer.

Any tax outstanding after assessment of the individual's tax return, must be paid by 7 February in the next year. (7 April if they have a tax agent).

Any taxpayer whose income is not taxed at source, and whose residual tax in any year exceeds \$2,500 is a Provisional Taxpayer and is required to make payment by instalments toward their current year's tax liability

Provisional tax, usually paid in three instalments each year, is calculated by an assessment of previous years' earnings.

Any amount outstanding once the provisional taxpayer's final liability has been assessed is paid as Terminal Tax on a specified date.

Interest & Late Payment Penalties

Late payment penalty tax. Where tax is not paid on time, there will be an initial penalty of 1% imposed on the day after the due date with an additional 4% charged if there is still an amount of unpaid tax at the end of the 7th day from the due date. With an incremental penalty of 1% imposed each month thereafter.

Interest: Usually imposed where provisional tax paid is less than the actual liability for the year. Usually credited when a taxpayer has made an overpayment of provisional tax.

Penalties

Offences under the Income Tax Act usually attract a penal tax. Subsequent offences attract a higher level of monetary penalty, some calculated on a daily basis.

The maximum amount of penal tax that can be imposed is 150% the amount in default. Criminal penalties may also be imposed in some instances.

Assessment - Audit - Reassessment

Once a return has been filed, the Commissioner is empowered to make an assessment of the taxable income and tax payable. This "self-assessment" is generally based on the return as submitted.

An assessment is deemed to be correct, except in objection proceedings, or if the Commissioner at a later date submits the return to an audit.

If any changes arise out of these procedures, then the Commissioner will issue a reassessment.

Objections & Appeals

There is a comprehensive system of objections and appeals, ensuring that taxpayers have every opportunity to receive a fair hearing.

An objection can be lodged with the Inland Revenue Department.

If this is disallowed, the case may then be taken further with the Taxation Review Authority, and then to the New Zealand courts.

STATUTORY DISCLOSURE & AUDIT

Statutory Disclosure requirements in New Zealand are governed by the Financial Reporting Act.

This Act prescribes standards for financial reporting by all entities and gives legal force to accounting standards, as approved by the Accounting Standards Review Board. The Act requires all issuers of securities to the public to file financial statements that comply with "generally accepted accounting practice" (GAAP), giving a true and fair view of their affairs.

Reporting Requirements

Reporting Entities & Issuers

Reporting Entities are companies which are not classified "Exempt" (see below).

Issuers are persons and bodies with securities on issue to the public, life insurance companies, unit trusts, listed companies and registered banks.

These entities are required to include statements of financial position and financial performance, and may also be required to produce a statement of cashflows.

Financial statements are required to comply with GAAP, presenting a true and fair view.

Companies which are listed on the Stock Exchange also have to comply with any additional requirements laid down by the Stock Exchange.

Exempt Companies

Companies exempt from these reporting requirements are those which are not issuers or overseas companies, and which have total assets of less than \$NZ450,000; have a turnover of less than \$NZ1 million; are not a subsidiary; and do not have any subsidiaries.

Filing & Reporting

Reporting Entities, Issuers & Exempt Companies are required to prepare financial statements within 5 months of their balance date.

Financial statements of Issuers and Overseas Companies must be audited, then filed within 20 days of the signing of the financial statements by the directors.

Other companies are not required to file financial statements.

The law requires all companies to prepare an annual report within five months of balance date. This annual report must be sent to shareholders not less than 20 working days before the annual meeting of the company.

The annual report must include the financial statements and auditor's report. Financial statements normally include:

- statement of financial position
- statement of financial performance or earnings statement and statement of cash flows
- statement of accounting policies and explanatory notes.

The Directors are responsible for ensuring that financial statements comply with the Financial Reporting Act.

Auditing Requirements

The extent of auditing requirements varies, depending on the entity and the nature of business activity.

However, in all cases, the auditor's report must clearly state the work done by the auditor, the scope and limitations of the audit, and whether the auditor has obtained all required information and explanations.

The report must also show the existence of any relationship or interests the auditor may have with the Reporting Entity or any of its subsidiaries.

The auditor must also state an opinion as to whether:

- Proper accounting records have been kept.
- Financial statements comply with generally accepted accounting practice, and if not, where they fail to comply.
- Financial statements give a true and fair view of the matters to which they relate, and if not, where they fail to give such a view.

CONCLUSION

No publication can hope to cover all aspects of doing business in New Zealand, nor give full details of accounting procedures, law and taxation.

This presentation is simply intended as a guide to those who are looking at new business opportunities, or who have clients seeking guidance on the business environment in New Zealand.

Once regarded as a remote and insignificant island nation at the bottom of the world, New Zealand is now very much part of the "global village."

State-of-the-art telecommunications bring New Zealand as close to international markets as any other country of the world. Instant access is readily available by phone, fax or Internet computer links.

An interesting point to note is that because of New Zealand's unique position close to the international date line, the New Zealand money market and stock exchange are the first in the world to open on each trading day.

The country is extremely well served with international and domestic air links. New Zealanders love to travel and get almost equal enjoyment welcoming visitors from overseas.

New Zealand is a country with immense potential and many great opportunities worthy of attention.

If you require any further information, please do not hesitate to contact us:

MGI WILSON ELIOTT LIMITED
CHARTERED ACCOUNTANTS

Level 2, Fidelity House, 81 Carlton Gore Road
Newmarket, Auckland 1

P.O.Box 2296 Auckland 1 New Zealand

Telephone: (64-9) 377 1362 Facsimile: (64-9) 307 2740

Email: wilsoneliott@mginz.co.nz

MGI PUBLICATIONS

Booklets are available on doing business in many countries.

A number of other publications on matters of financial and commercial interest are also available, including:-

International Corporate Formations

International Political Protection for Multinationals Offshore Trusts Explained

In addition, *Midsnell News*, which reports on events within the Association, is published quarterly.

An International Directory of the firms within MGI is published annually giving details of the offices and partners in each of the firms.

If you would like to receive copies of any publication, please either ask at your local MGI firm or write or fax to:

*International Secretariat at Ibex House, 61-65 Baker Street, Weybridge, Surrey KT13
8AH Surrey, United Kingdom.
(Fax 01932 854323).*

COUNTRIES WHERE MGI HAS MEMBERS

Argentina	Australia	Austria
Bahamas	Belgium	Bermuda
Bolivia	Brazil	Canada
Cayman Islands	Chile	Colombia
Congo Republic	Congo Democratic Republic	Costa Rica
Cyprus	Denmark	Dominican Republic
Ecuador	Egypt	Finland
France	Germany	Ghana
Guatemala	Holland	Hong Kong
India	Indonesia	Ireland
Isle of Man	Israel	Italy
Japan	Jordan	Kenya
Kuwait	Lebanon	Liberia
Liechtenstein	Luxembourg	Malaysia
Malta	Mexico	Nepal
New Zealand	Nigeria	Norway
Pakistan	Papua New Guinea	Paraguay
Peru	Poland	Portugal
Russia	Saudi Arabia	Singapore
South Africa	Spain	Sri Lanka
Sweden	Switzerland	Taiwan
Thailand	Trinidad	Tunisia
Turkey	Turks & Caicos Islands	Ukraine
United Arab Emirates	United Kingdom	United States of America
Uruguay	Yugoslavia	

MGI WILSON ELIOTT LIMITED
CHARTERED ACCOUNTANTS

Level 2, Fidelity House, 81 Carlton Gore Road
Newmarket, Auckland 1
P.O.Box 2296 Auckland 1 New Zealand
Telephone: (64-9) 377 1362 Facsimile: (64-9) 307 2740
Email: nick@mginz.co.nz