

THE NEW ZEALAND FOREIGN TRUST

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THE NEW ZEALAND FOREIGN TRUST

It is based on and very similar to the UK Trust and can have discretionary and/or fixed beneficiaries. Assets are transferred into a legal structure (considered a natural person), for the benefit of individuals, companies or trusts.

Settlor or Founder: It is the settlor that establishes the trust and transfers the assets that will be encompassed by it. For taxation purposes it is important that the Settlor is not a N.Z. resident, and remains so.

It is important to note that it is conceivable for a person to unwittingly become a Settlor, since the concept is widely defined by the NZ law. For example, if a person transfers assets to the Trust (other than as an arms length commercial transaction, such as a sale of assets at market valuation) then he or she may be regarded as a Settlor of the trust, and if he or she is resident in NZ the Trust effectively ceases to be a “foreign” Trust.

Trustee: The Trustee can be a Corporate Trustee or a natural person. The Trustee acts on behalf of the Trust. The assets are owned in the name of the Trustee, on behalf of the trust. The Trustee manages the Trust business, and operations, as well as approves the distributions to the beneficiaries of the Trust.

Corporate Trustee: It is often the case that a trust settlor will found also a company to act as the corporate trustee of his trust. This corporation is operating in a trustee capacity, rather than trading on its own account. This NZ Corporate Trustee will own assets and operate businesses, or undertake any commercial activity on behalf of the Trust.

Disclosure: No registration or filing of the trust is required. A privately owned and controlled trust company may act as trustee ensuring confidentiality.

Tax: New Zealand fiscal laws allow a non resident to establish a trust in New Zealand without exposing that trust, its trustees, or beneficiaries, to local tax liabilities, provided that the Settlor does not reside in New Zealand, nor is there any income generated by any New Zealand sources. In the N.Z. tax legislation, the residence of the Settlor(s) is the determining factor as to whether the Trust is Foreign. New Zealand legislation stipulates that if 25% or more of the shares are held by NZ non residents, the company will be classed as a foreign company, the trustee is not liable to New Zealand income tax and is not required to file income tax returns in N. Z.

As the taxation status depends on residence of the Settlor, a N.Z resident Corporate Trustee may be a Trustee of the Trust without prejudicing the tax status. A trust with

New Zealand resident trustees settled by a Settlor who is a non resident of New Zealand and with non resident beneficiaries, as long as the income is generated outside New Zealand, is not subject to tax in New Zealand on either trustee or beneficiary income. In practice, the trust does not invest in New Zealand, nor have New Zealand resident beneficiaries.

In addition to the above, a N.Z registered company acting as Corporate Trustee on behalf of a N.Z. Foreign Trust would not pay taxes provided that the Trustee derives income from a non N.Z. source, and the Settlor(s) of the Trust is not a N.Z. resident. Under N.Z. Tax Legislation and DTA (Double tax Agreements), a Trust is covered by double tax agreements by virtue of being "a person" whether an individual or a company.

Distributions: Distributions to any N.Z. beneficiary of a NZ Foreign Trust are not taxable, as long as income is not originating from N.Z. sources. Capital gains will not be taxed either.

Beneficiaries: The individuals or companies that receive the benefits of a Trust when the income or assets are distributed are called beneficiaries. Foreign income and all capital gains (even those arising in N.Z.) will be distributed free of N.Z. tax, whether at the level of the Trustee or the beneficiary. Accordingly a New Zealand offshore trust is able to distribute all foreign derived income and all capital gains without New Zealand tax being paid by either the trustee or the beneficiaries.

Assets: In general N.Z. does not tax real estate capital gains. This exemption also applies to any Foreign Trust investing in N.Z. real estate, although there might be exemptions to the above.

The assets can be held outside New Zealand on behalf of the trust by a custodian trustee of your choice.

