



**Aspen Group Limited**

# A Guide to New Zealand Foreign Trusts

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The Polynesian Maori reached New Zealand in about A.D. 800. In 1840, their chieftains entered into a pact with Britain, the Treaty of Waitangi, in which they ceded sovereignty to Queen Victoria while retaining territorial rights. That same year, the British began the first organized colonial settlement. A series of land wars between 1843 and 1872 ended with the defeat of the native peoples. The British colony of New Zealand became an independent dominion in 1907 and supported the United Kingdom militarily in both World Wars. New Zealand's full participation in a number of defense alliances lapsed in the 1980s. In recent years, the government has sought to address longstanding Maori grievances.

New Zealand is located in Oceania, southeast of Australia. It is a sovereign state that enjoys political and economic stability. There is a well developed legal system founded on English common law and equity. Trust law is therefore, supported by both statute and the decisions of the common law Courts. Although a high tax jurisdiction, New Zealand offers considerable attractions as a base for tax effective "foreign" trusts for settlors or grantors who are non-residents of New Zealand.

### **THE NEW ZEALAND FOREIGN TRUST**

The New Zealand "foreign" trust is a normal trust with beneficiaries who may be non-residents or residents of New Zealand, but with a settlor who is non-resident in New Zealand. Trusts are an integral part of the legal system of New Zealand, just as it is in most countries with common law and equity legal systems. New Zealand has developed its own approach to the taxation of trusts, based on the source of the trust funds. The residences of the trustees or the beneficiaries don't play a part; essentially, taxation is based on the residence of the settlor (or grantor).

The 1988 taxation regime for trusts, particularly trusts with non-resident trustees, codified the New Zealand "foreign" trust. The tax code considers a trust "foreign" when the trust is settled by a settlor (grantor) who is a non-resident of New Zealand.

### **HOW IS THE NEW ZEALAND FOREIGN TRUST TAXED?**

The New Zealand foreign trust is not subject to New Zealand tax, except on income with a source in New Zealand. This is true even if the trustees are tax residents of New Zealand and some or all of the beneficiaries are resident in New Zealand.

This condition of the New Zealand trust is also interesting for beneficiaries because if the beneficiary is a non-resident, only income sourced in New Zealand will be taxed but not on capital profits or gains -- even if said capital gains or profits are sourced in New Zealand. Foreign income and all capital gains can be distributed without the imposition of New Zealand tax on either the trustee or the beneficiaries.

Income with a New Zealand source will be subject to normal New Zealand income tax rules, including any income tax concessions provided under double tax treaties. Distributions to any New Zealand resident beneficiaries of such a trust are not subject to any disadvantage- such distributions are taxable in the hands of the beneficiaries in accordance with the normal New Zealand tax rules. Again, capital gains will not be taxed. The same rules would also apply to a trust established under New Zealand law but which does not have New Zealand resident trustees, or has both resident and non-resident trustees, provided that no settlor was resident in New Zealand.

New Zealand trusts deemed “foreign trusts” by New Zealand legislation, are not specifically considered non-resident in the legislation. The Income tax Act of 1994 (“the Act”) does not define the residence of a trust. The taxation status of the New Zealand foreign trust is wholly determined by the residence of the settlor.

#### **APPLICATION OF TAX TREATIES TO NEW ZEALAND FOREIGN TRUSTS**

New Zealand has a network of double tax agreements which includes treaties with Australia, Canada, the United States of America, Japan, Singapore, Malaysia, Italy, France and the United Kingdom. A New Zealand foreign trust with a trustee resident in New Zealand should qualify as a resident of New Zealand for the purposes of a double taxation treaty. It is important to note, however, that tax treaties vary in the treatment of trusts and of “persons” not subject to tax in their country of residence but this is not a concern because the New Zealand foreign trust is considered to be “subject to taxation” in New Zealand in terms of its double tax treaties. As such, the New Zealand foreign trust would be entitled to the benefits of the treaty without being taxed in New Zealand. But, all treaties are not exactly the same, it is best to consider each situation independently.

Regardless of the comments expressed in this reference, it is recommended that legal and tax advice be obtained in the country of residence or nationality of the interested party.

#### **ADVANTAGES**

- Exemption from New Zealand income tax on foreign source income;
- No local tax on capital gains even if such gains are derived in New Zealand;
- New Zealand is not regarded as a tax haven;
- Possible access to New Zealand’s wide network of anti-double taxation treaties;
- Flexible trust administration through the use of a custodian or advisory trustees as non-resident co-trustees;
- Well established system of trust law founded on equity and common law;
- Politically and economically stable country;
- No reporting requirements to the New Zealand Inland Revenue Department or any other government body, except in relation to New Zealand sourced income.

OVERSEAS SETTLOR / NZ TRUSTEE (FOREIGN TRUSTEE)				
SETTLOR	TRUSTEE	INCOME	BENEFICIARY	TAX TREATMENT
Resident Overseas	NZ Resident	NZ Source	NZ Resident	Trustees liable tax as agent for beneficiary income on any income which is Trustee income.
Resident Overseas	NZ Resident	Overseas Source	NZ Beneficiary	<ul style="list-style-type: none"> <li>- Trustees liable to tax as agent for beneficiary if income is beneficiary income with credit allowable for overseas tax paid limited to NZ tax suffered on overseas income.</li> <li>- No NZ tax liability if trustee income (Sec. 288(3))</li> </ul>
Resident Overseas	NZ Resident	NZ Source	Overseas Beneficiary	<ul style="list-style-type: none"> <li>- Trustees liable to tax.</li> <li>- -Beneficiary income: interest and dividends subject to Non-Resident Withholding Tax; other income, e.g. Rents, subject to tax at individual rates.</li> <li>- -Tax on any trustee income.</li> </ul>
Resident Overseas	NZ Resident	Overseas Source	Overseas Beneficiary	No NZ tax liability whether income is beneficiary income or trustee income.

OVERSEAS SETTLOR / OVERSEAS TRUSTEE				
SETTLOR	TRUSTEE	INCOME	BENEFICIARY	TAX TREATMENT
Overseas Resident	Overseas Resident	NZ Source	NZ Resident	<ul style="list-style-type: none"> <li>- Trustees are liable on trustee income. The payer of interest, royalties or dividends to the trustees will be liable to deduct non-resident withholding tax.</li> </ul> <p>Beneficiary income:</p> <ul style="list-style-type: none"> <li>- The beneficiary is liable to New Zealand tax.</li> <li>- The trustees are technically liable as agents for the beneficiary.</li> <li>- The payer of interest, royalties or dividends will deduct withholding tax on income paid to the trustee even if that income is classified as beneficiary income.</li> </ul>
Overseas Resident	Overseas Resident	Overseas Source	NZ Resident	<ul style="list-style-type: none"> <li>- No New Zealand tax liability on trustee income.</li> <li>- Beneficiary liable in New Zealand with a credit allowed for overseas tax paid, limited to the New Zealand tax liability.</li> <li>- Trustee technically liable as agent for the beneficiary.</li> </ul>
Overseas Resident	Overseas Resident	NZ Source	Overseas Resident	Payer of interest or dividend liable to deduct Non-resident withholding tax. If income other than Non-Resident withholding income, pay tax at individual rates.
Overseas Resident	Overseas Resident	Overseas Source	Overseas Resident	No NZ tax implications whatsoever.

Our fee for establishing a New Zealand foreign trust varies and depends on the level of complexity of the trust deed, if local or nominee settlor need to be provided; or if a company must be established as a private trustee company for the trust. Our fee of \$4,500 (four thousand five hundred) is an indication of the cost of setting up ONLY the trust; all other elements will incur an additional fee.

The foregoing does not constitute legal advice and it is merely Aspen Global Incorporations opinion based on use and experience. If you are not a professional service provider, please consult a tax attorney, solicitor, and/or accountant before you pursue any venture in a tax free environment. Aspen Global Group will be glad to meet with you and assess your requirements. Legal evaluations in each jurisdiction are available at a time cost fee.

If you would like additional information on this jurisdiction or our current shelf list, please contact us at [enquiries@aspenoffshore.com](mailto:enquiries@aspenoffshore.com); or contact any of our offices.

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