



**COUNTRY
COMPARATIVE
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The Legal 500 Country Comparative Guides

New Zealand PRIVATE CLIENT

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This country-specific Q&A provides an overview of private client laws and regulations applicable in New Zealand.

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NEW ZEALAND PRIVATE CLIENT



1. Which factors bring an individual within the scope of tax on income and capital gains?

There is no capital gains tax in New Zealand so the focus of this commentary is on income tax. New Zealand taxes individuals on the basis of their tax residency and does not on the basis of their domicile, nationality or citizenship.

An individual becomes tax resident in New Zealand if they are present in New Zealand for more than 183 days in total in a 12 month period. The individual is then treated as tax resident from the first of those 183 days.

There is then a permanent place of abode test which overrides the 183 day test. If an individual has a permanent place of abode in New Zealand that person is tax resident in New Zealand. A permanent place of abode is a place where that person habitually resides from time to time even if they spend periods overseas. To determine whether a person has a permanent place of abode requires an analysis of that person's specific circumstances.

An individual can lose their New Zealand tax residency status if they cease to have a permanent place of abode in New Zealand and are absent from New Zealand for more than 325 days in a 12 month period. The person is treated as ceasing to be a New Zealand tax resident on the latter of the first day of the 325 day period or when they cease to have a permanent place of abode.

The above tests are subject to the application of any of New Zealand's double tax treaties which are referred to later on in this commentary.

An individual can also be treated as a transitional resident where they are new migrants or returning to New Zealand (and have not been a New Zealand tax resident for the previous 10 years). A person's transitional resident status lasts until the end of the 48th month after the month in which they acquire a New Zealand tax residency status. Broadly, transitional

resident status provides a person with a temporary tax exemption for all foreign sourced income except for employment income and income from the supply of services.

Where an individual is non-resident they are still liable to pay tax in New Zealand on New Zealand sourced income. New Zealand sourced income is deemed to include income from a business carried on in New Zealand and contracts made in New Zealand.

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

The current rates of income tax for individuals are:

Up to \$14,000 10.5%

Over \$14,000 and up to \$48,000 17.5%

Over \$48,000 and up to \$70,000 30%

Over \$70,000 and up to \$180,000 33%

Remaining income over \$180,000 39%

It is expected that the income bands will be adjusted upwards slightly in the 2024 tax year reducing the overall amount taxpayers will pay. Income from Portfolio Investment Entities (PIES), a statutory investment fund regime, are taxed at a maximum effective rate of 28%.

The ordinary tax year starts on 1 April and ends 31 March. Generally, tax returns must be filed by 7 July 2023 unless the individual has a tax agent in which case the deadline for filing a tax return is extended to 31 March the following year. The final tax payment is generally due 7 February the following year for individuals without a tax agent and 7 April the following year for individuals with a tax agent. Provisional tax

payments may also be required to be paid throughout the tax year for certain individuals depending on the amount and nature of the income that they earn.

As previously noted, there is no capital gains tax in New Zealand, but the net gains on the sale of an asset can be deemed to be income where that asset was acquired for the purpose of sale/profit or, in the case of certain types of real property, where it is purchased and sold within a certain time frame. This time frame is currently 10 years from acquisition but is expected to be reduced to 2 years shortly.

New Zealand tax residents are subject to tax on their worldwide income and there is a separate set of international tax rules to tax foreign investments. In particular, certain types of foreign investments can be subject to income tax based on different formulas that do not necessarily correlate to the actual income earned under New Zealand's Foreign Investment Fund (FIF) and Controlled Foreign Company (CFC) rules.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

New Zealand tax residents are subject to resident withholding tax on interest and dividends. Withholding tax on interest is based on the individual's highest marginal tax rate (referred to above). If the taxpayer does not nominate a rate then the default rate is 33% and if the taxpayer does not provide an Inland Revenue number to the relevant financial institution the default rate is 45%. Dividends are taxed at a withholding tax rate of 33%.

New Zealand salaries and wages earned by employees are also subject to a type of withholding by employers called PAYE which is deducted at the employee's relevant marginal tax rates.

Non-residents are subject to non-resident withholding tax on New Zealand payments of interest, royalties and dividends to non-residents. The default rates are 15% for interest and royalties and 30% for dividends. These rates vary depending on whether there is an applicable double tax treaty with New Zealand.

Interest payments from registered and approved borrowers can in some circumstances be subject to the Approved Issuer Levy regime which reduces the non-resident withholding tax to a rate of 0% and instead imposes a levy of 2% on the interest paid to the non-resident.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

New Zealand has a significant number of double tax treaties. Currently there are 40 tax treaties in force that deal with double taxation issues. New Zealand also provides for foreign tax credits for income earned by an individual which is subject to income tax in New Zealand and has been taxed overseas.

The first step in dealing with any double taxation issues is to apply the rules under any double tax treaty that is applicable. If a double tax treaty does not apply then the individual should consider whether they can obtain a foreign tax credit for any tax paid overseas. The main criteria for obtain a foreign tax credit for tax paid overseas is that the income must be taxable in New Zealand and the foreign tax must be substantially the same nature as the income tax imposed under New Zealand's income tax rules.

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting has been in force in New Zealand since 1 October 2018.

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

There is no wealth tax in New Zealand.

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

There are no death taxes or gift taxes in New Zealand.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how

do any such reliefs apply?

There are no gift taxes in New Zealand.

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

Gifts made to qualifying registered charities, not for profit organisations or schools provide the donor with a tax credit of 33% for every dollar. The tax credit is limited to the amount of the taxable income of the donor in that year but can be divided between the taxable income of the donor and his or her spouse and partner.

9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

There are no specific real property taxes in New Zealand and no capital gains tax on real property. There are land and water rates that are charged by the relevant local council for local services, roading and amenities. Real property transactions can be subject to income tax where the real property was acquired for the purpose of sale/profit, is being developed or, in the case of residential property, is sold within a certain time frame.

The tax rules that create a tax liability for taxpayers when they acquire and sell residential property within a certain time frame are known as the "brightline rules". Currently these rules apply when property is acquired and sold within a ten-year period and create an income tax liability on the net gain made in such transactions. It is expected that these rules will be amended shortly to reduce the period to a two-year period. There are special exemptions for real property that is a main home and roll-over tax relief for certain types of transfers between associated parties such as a family trust or deceased estate and relevant beneficiaries.

It is also worth noting that there are restrictions on foreign persons purchasing residential property and sensitive land. Under the Overseas Investment Act 2005 a foreign person can be refused the right to purchase certain types of real property.

10. Does your jurisdiction have any specific**rules in relation to the taxation of digital assets?**

Generally digital assets are taxed in the same way as any other asset under New Zealand's income tax rules. Digital assets can be subject to income tax where they are acquired for the purpose of sale, carrying on a business or profit.

11. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

New Zealand has a good and services tax of 15% that is applied broadly to most goods and services received by persons resident in New Zealand (including imports).

12. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

New Zealand has the transitional residents regime (described earlier in this commentary) that provides a four year exemption on foreign sourced income for individuals either arriving into New Zealand for the first time or who have been non-resident for ten years or more.

New Zealand also has a regime that taxes trusts based on the tax residency of the settlor. This regime enables individuals moving to New Zealand to leave assets permanently outside the New Zealand tax net in overseas trusts before they arrive in New Zealand. While the foreign sourced income of such trusts are not taxed in New Zealand, distributions to New Zealand tax residents may be subject to higher rates of tax in certain circumstances. The same regime enables non-residents to establish trusts in New Zealand to hold and managed their foreign investments. Those foreign investments are not taxed in New Zealand provided no distributions are made to New Zealand tax resident persons.

New Zealand also has a legal structure called a Limited Partnership that is an incorporated entity with limited liability for its limited partners and which is look through for New Zealand tax purposes. A Limited Partnership can receive foreign sourced income and pass it through to its non-resident limited partners without any New Zealand liability arising on the foreign sourced income.

New Zealand has an active CFC exemption from the usual CFC rules. It allows New Zealand resident persons to hold significant or controlling interests in foreign

companies operating active businesses overseas without those persons being subject to New Zealand tax on profits made from those businesses until a dividend is received or profits otherwise distributed to the New Zealand tax resident person.

13. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

The timing of becoming a New Zealand tax resident can assist with tax planning particularly in relation to when the four-year transitional tax residency period begins. Individuals should take care that initial exploratory visits to New Zealand or the acquisition of residential property in New Zealand do not cause them to have tax residency in New Zealand early than they planned for.

It is usually advisable for an individual to decide on whether he or she wants to undertake any tax and succession planning involving trusts before he or she becomes tax resident in New Zealand as the timing of establishing these trusts can lead to different tax outcomes. Becoming New Zealand tax resident can also create New Zealand tax liabilities in relation to existing trusts set up by an individual prior to moving to New Zealand. Consideration needs to be given as to whether any existing trusts require restructuring or planning around.

Individuals should also review their wills, powers of attorney and matrimonial agreements and consider whether they need new wills, matrimonial agreements, enduring powers of attorney (to deal with loss of mental capacity) in New Zealand. Existing matrimonial agreements may not be recognised by the New Zealand courts and enforceable in New Zealand.

Business owners and directors of companies will need to consider the implications (both tax and otherwise) of them becoming resident in New Zealand. Under New Zealand tax rules, the tax residency of a company may be determined by where its head office is or its centre of management, or by whether the control of the company by its directors is exercised in New Zealand. A foreign company may also be subject to tax in New Zealand if it has a permanent establishment in New Zealand.

14. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

New Zealand is a Commonwealth country that follows common law and equitable principles derived from English law. Generally New Zealand law recognises testamentary freedom and an individual can gift assets during their lifetime or dispose of assets by will to whomever they choose subject to certain equitable and statutory remedies that exist for the benefit of affected parties.

Under New Zealand law, an individual's domicile is relevant to determining the succession laws that apply. Generally under New Zealand common law, when dealing with testamentary dispositions, immovable property is subject to New Zealand law but moveable property is subject to the law of the individual's domicile. The application of this principle may result in the laws of an individual's country of origin (including relevant forced heirship rules) still applying notwithstanding that person has recently moved to New Zealand.

There are also a number of New Zealand statutes that relate to succession where the domicile of the individuals determines the applicability of the statute. See, for example, the Family Protection Act 1955, Property (Relationships) Act 1976 and the Family Proceedings Act 1980.

Under New Zealand law a person's domicile is determined under the Domicile Act 1976. A person can change their domicile to New Zealand by living in New Zealand and forming an intention to live in New Zealand indefinitely. A person's domicile is determined as a question of fact and depends on a number of factors and supporting evidence.

There are no forced heirship rules in New Zealand but a spouse, partner, child or grandchild can make a claim against the estate of a deceased under the Family Protection Act 1955. Under this Act, the court can order a payment out of the deceased's estate to a claimant where the deceased has not sufficiently provided for a spouse, partner, child or grandchild to discharge their moral obligations to those persons. Awards under this Act are larger when the claimant is dependent on the deceased and significantly smaller when the claimant is financially independent of the deceased. Each situation is fact specific and therefore it is not possible to quantify what a likely award might be without careful analysis.

The Family Protection Act 1955 does not have a mechanism for the Court to make an award out of assets gifted to other individuals or settled on trust by the deceased during their lifetime. An individual can choose to settle assets on trust during their lifetime to avoid the application of this Act.

There are also a number of other equitable and statutory

claims that can potentially be made against an estate, for example, claims relating to testamentary promises (under the Law Reform (Testamentary Promises) Act 1949), undue influence, mistake and lack of capacity.

15. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

New Zealand's matrimonial property regime is codified under the Property (Relationships) Act 1976. There is also a specific provision under section 182 of the Family Proceedings Act 1980 that provides the Court with broad powers to vary trusts that were settled for the benefit of parties to a marriage and their children.

The Property (Relationships) Act 1976 applies to marriages, civil unions and de-facto relationships where the couple are living together. In broad terms, once there is a qualifying relationship (typically a relationship of 3 years or more) all property acquired during the relationship is shared equally as relationship property. The family home and other assets used for the relationship are also deemed to be relationship property. Separate property that is not subject to the equal sharing rule includes property acquired before the relationship, gifts from third parties and inheritances from an estate (unless such property becomes relationship property by reason of it becoming the family home, being intermingled with relationship property or being used for the purposes of the relationship). The above is only a broad outline of the regime and there are a number of significant complexities in the regime that are beyond the scope of this commentary.

It is possible to contract out of the regime by entering into a qualifying agreement. This agreement requires independent advice from New Zealand qualified lawyers who must follow a prescribed process and certify the agreement.

One of the specific succession planning issues in relation to this regime is that under the Act, a spouse or partner can choose to bring proceedings against the estate of their deceased spouse or partner for a division of the couple's relationship property rather than take under the will or intestacy. Similarly, the executors of the deceased person can also apply to bring a claim under the Act against the surviving partner.

16. What factors cause the succession law of the jurisdiction to apply on the death of

an individual?

This topic is mostly covered in the generally commentary on New Zealand's succession law above. In summary, on the death of an individual New Zealand's succession laws apply to immoveable property located in New Zealand and generally apply to moveable property anywhere in the world when the deceased is domiciled in New Zealand. Where another country asserts jurisdiction over foreign moveable property, New Zealand courts will apply private international law principles to determine which court has jurisdiction.

New Zealand succession law will not generally apply to foreign immoveable property such as foreign real property.

A person's domicile is determined under the Domicile Act 1976 which codifies the English common law position with some changes. A person's domicile is determined when they are a child based on the domicile of the parents they live with (the father's domicile taking priority). Once they are an adult they can change their domicile by living in a country and forming an intention to live in that country indefinitely. If a person changes their domicile and then stops living in the relevant country their domicile of origin does not revive automatically.

17. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

New Zealand will assert exclusive jurisdiction over immoveable property in New Zealand such as real property. A conflict of law situation typically arises in New Zealand in relation to moveable property and, in particular, moveable property located overseas. New Zealand will apply private international law principles developed under English common law to these situations to determine which court has jurisdiction and the law that applies. In some cases, New Zealand courts will accept jurisdiction to determine an estate matter but choose to apply foreign laws of the domicile of the deceased. In such cases the court will call for evidence from legal experts in the relevant country to assist with determining the matter. New Zealand courts adhere to and apply the private international law principles of forum conveniens and the doctrine of renvoi.

18. In what circumstances should an

individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

Generally, a person should make a will in New Zealand where they have significant assets or real property in New Zealand or they are living in New Zealand and want their only or primary will to be made in New Zealand. Where a person has real property or other significant assets in New Zealand, the exception to them needing a will in New Zealand is where they have a valid will in another commonwealth jurisdiction (for example Australia or England). In this situation it may be sufficient to have the overseas probate of that will resealed in the New Zealand High Court.

The consequences of not making a will is that there will be an intestate estate. An application to the High Court for letters of administration must be made in this situation. Intestate estates have more red tape and cost associated with them and the estate is distributed in accordance with predetermined outcomes specified in the Administration Act 1969. In broad terms the assets of the estate will go to the deceased's closest living relatives but the provisions of the Act are quite antiquated and there can be some unusual results for a spouse or partner of the deceased in certain circumstances.

The formal requirements for making a will are specified in the Wills Act 2007. A will must be in writing, signed by the will-maker in the presence of two witnesses who also sign the will in the will-maker's presence. There are provisions in the Act that allow exceptions to these requirements in certain circumstances and a will that does not meet the requirements can be validated by the High Court under section 14 of the Act.

19. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

The executors named in the will or the administrators of the estate specified in letters of administration issued by the High Court are responsible for administering the estate and collection in assets, paying debts and distributing to beneficiaries. Executors must apply to the High Court for probate of the will where there is real property in the estate or individual bank accounts or financial assets have a value of \$15,000 or more.

Executors need to have the probate of the will issued by the Court for the estate lawyers to be able to deal with

real property and to present to relevant financial institutions to gain control of and collect in the financial assets. The estate lawyers typically assist by collecting the estate funds into their trust account so there is a proper accounting of those funds and also assist with transferring any relevant assets in specie to the beneficiaries of the estate and the final distribution of the estate funds.

20. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

New Zealand is a common law jurisdiction that has well developed trust and equity law. There are a large number of trusts in New Zealand and trusts are typically the main succession planning vehicle for families with significant assets or wealth.

New Zealand does not have a private foundation legal structure.

New Zealand has companies, partnerships and limited partnerships. All of these entities and arrangements are used in New Zealand for carrying on business and holding assets. Companies are the most used vehicle for carrying on business and holding assets.

21. How are these structures constituted and what are the main rules that govern them?

New Zealand trusts are constituted based on long standing common law and equity principles derived from English common law. The High Court of New Zealand has inherent jurisdiction to supervise trusts in New Zealand. Establishing a trust requires an asset to be transferred to a trustee or a person to declare they are a trustee of an asset that they already hold. It is necessary to meet the three certainties: certainty of intention (to create a trust); certainty of subject matter (the assets of the trust) and certainty of objects (the beneficiaries of the trust). Most trusts in New Zealand are set up and described as discretionary trusts meaning that the trustees have discretionary powers to decide which of the beneficiaries will benefit from the trust fund.

Many of the legal principles governing trusts are now set out in the Trusts Act 2019. The Trusts Act 2019 contains

the provisions that support the supervision, administration and management of trusts in New Zealand. At a fundamental level the law provides that trustees must hold the trust assets for the benefit of the beneficiaries and the trustees have a number of core duties owed to the beneficiaries that they must discharge when administering the trust assets. In most situations there is also a trust deed that sets out the specific rules of the trust.

New Zealand companies are incorporated bodies with limited liability in respect of the shareholders. They are constituted and governed under the Companies Act 1993. A New Zealand company must have individuals as directors and at least one New Zealand or Australian resident director. They are regulated by the Registrar of Companies and the Companies Office. The directors manage the company, owe duties to the company and must act in the best interests of the company. Certain powers are or can be reserved to the shareholders. A company can have a constitution but does not require one. If the company does not have a constitution then the default provisions of the Act apply.

Partnerships are governed by the Partnership Law Act 2019. Ordinary partnerships are not incorporated and the partners are equally liable for the debts and liabilities of the partnership. They are usually governed by a partnership agreement.

Limited Partnerships are governed by the Limited Partnerships Act 2008. They are incorporated bodies and have a general partners and limited partners. The general partners manage the limited partnership. The limited partners are not permitted manage the limited partnership and have limited liability. A limited partnership requires a partnership agreement which contains the rules of the limited partnership.

22. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

Trusts are private arrangements and do not require registration. Certain trusts including trusts that earn income and trusts that are settled by non-residents (New Zealand foreign trusts) are required to register for an Inland Revenue number and file an annual information return with Inland Revenue. These returns are not available to the public. The annual returns require financial information of the trust to be disclosed as well as details of the settlors, trustees and main beneficiaries. The extent of the information filed

depends on the circumstances of each trust. For New Zealand trusts settled by non-residents, financial statements must be filed that meet the statutory criteria.

Partnerships have no registration requirements but Limited Partnerships are incorporated and registered with the New Zealand Companies Office. This process is completed online and details of the partnership must be provided. The key registration details of a limited partnership are available publicly online and contain the details of the addresses of the limited partnership and general partners. An annual information return is required to be filed each year which primarily confirms the information provided on registration remains correct.

Companies are incorporated and registered with the New Zealand Companies Office. This process is completed online. It requires the details of the proposed company, directors and shareholders to be entered online and consents signed by the directors and shareholders and uploaded as part of the application. If there is a constitution proposed then it is uploaded with the application. In some cases the Companies Office will request identification verification documents for directors and shareholders. The details of a company, its directors and shareholders are available publicly online. An annual information return is required to be filed each year which primarily confirms the information provided on registration remains correct.

23. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

New Zealand's tax regime for trusts has been summarised earlier in this commentary. In New Zealand, settlors are generally not liable for paying tax for trusts that they establish. It is the trustees that are primarily liable for tax payable in New Zealand at a rate of 33% (although this rate may be increased to 39% in the near future). Unless there is an applicable exemption for foreign sourced income, the trustees are taxed on the worldwide income of the trust under New Zealand's income tax rules.

A beneficiary only becomes liable to pay the tax liability on trust income where the trustees distribute that income to the beneficiary in the relevant tax year that the income is earned (or within a prescribed period during the following tax year). If trust income is distributed in this manner it is defined as "beneficiary income" and taxed at the beneficiary's marginal tax rate. Generally beneficiaries are only taxed on beneficiary income and not on trust capital or capital

gains but there are exceptions for trusts settled by non-residents, which are discussed further below.

The trustees of a trust settled by a non-resident have a tax exemption in respect of foreign sourced income and are not required to pay tax on the same. Foreign sourced income can generally be distributed to non-resident beneficiaries without any New Zealand tax liability arising. If a distribution from such trust is made to a New Zealand tax resident beneficiary then tax will be payable on the distribution to the extent it is made up of income (including accrued income) and non-arm's length capital gains.

Circumstances can arise where trusts with non-resident settlors become "non-complying trusts" because they are not compliant with New Zealand's tax rules. In this situation distributions of income and capital to New Zealand tax resident beneficiaries may be taxed at a penal rate of up to 45%. These distribution rules are complex and may require specialist tax advice.

New Zealand companies are subject to tax on their worldwide income. The directors of a company are generally not liable for a company's tax liabilities. Shareholders can be liable for a company's tax liabilities where an election is made to make the company a look through company. When a dividend is paid from the company to shareholders, imputation credits can be attached to those dividends so that the shareholder obtains a tax credit for tax already paid by the company (avoiding double taxation).

Partnerships and Limited Partnerships are generally look through for tax purposes subject to certain exceptions around GST, PAYE and some withholding taxes. It is the partners that are liable to pay tax on the income of a partnership.

24. Are foreign trusts, private foundations, etc recognised?

Foreign trusts are recognised in New Zealand in that a New Zealand court will recognise an arrangement whereby a non-resident trustee holds assets upon trusts governed by the laws of another country.

There is no specific legislation dealing with private foundations. How New Zealand will recognise a private foundation created under the legislation of another country will depend first on how the foundation is constituted under the laws of the relevant country. New Zealand may, for example, treat a private foundation as a body corporate or an unincorporated association of persons depending on the circumstances.

25. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Foreign trusts are treated the same way as any other trust for New Zealand tax purposes. As noted earlier the main question is whether the trust has a New Zealand tax resident settlor. If it does not and the trustees are not resident in New Zealand then the key tax issue to consider is the tax treatment of distributions made to New Zealand tax-resident beneficiaries. This issue is dealt with earlier in the commentary. It is also worth noting that where a New Zealand tax resident person establishes a foreign trust (i.e. a trust with non-resident trustees) then the New Zealand tax resident settlor is treated as an agent for the trustees and can be required to pay any New Zealand tax liabilities of the trust.

26. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

Generally, once a discretionary trust is settled then the trust property is not the property of the settlors or the discretionary beneficiaries and is not available to their creditors. This legal principle is subject to the rules on claw back of gifts and settlements under the Insolvency Act 2006 and the Property Law Act 2007.

Under the Insolvency Act 2006, if a settlor is declared bankrupt, gifts or settlements that they have made may be clawed back within two years of the gift or settlement and within two to five years of the gift or settlement unless they can prove that they were solvent at the time of making the gift or settlement.

Under the Property Law Act 2007, the Court can overturn a gift or settlement if it can be shown that the settlor was insolvent, about to enter into a transaction for which their remaining assets were unreasonably small or reasonably should have believed they would have incurred debts beyond their ability to pay.

27. What provision can be made to hold and manage assets for minor children and grandchildren?

In New Zealand, a trust is the main arrangement for holding and managing assets for minor children and grandchildren.

28. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

In New Zealand it is advisable for individuals to have enduring powers of attorney to deal with issues around mental incapacity. These powers of attorney remain in force after the donor no longer has mental capacity. There are two types of enduring powers of attorney: enduring powers of attorney in relation to care and welfare and enduring powers of attorney in relation to property.

The first type of power of attorney permits the attorney to consent to and authorise medical treatment and care for a person who has lost capacity. It cannot be used to deny treatment to prevent serious damage to health or to authorise certain types of procedures (such as brain surgery).

The second type of power of attorney permits the attorney to deal with a person's property either generally or as specified in the document.

Both types of enduring power of attorney require a qualified independent lawyer or other qualified person to advise on and certify the enduring powers of attorney. The adviser must also be the witness to the donor's signature. As part of this process the adviser is required by statute to advise on certain key options available to the person giving the enduring powers of attorney.

29. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

In New Zealand most charities are charitable trusts, companies or incorporated societies. Some charitable trusts are referred to as foundations notwithstanding the legal structure is that of a trust. Most individuals set up charitable trusts for philanthropic purposes. If the

charitable trust or company is to obtain tax exemptions available to charities then it needs to be registered as a charity with the Department of Internal Affairs – Charities Services. Registration requires the details of the charity and its rules to be filed with Charities Services. An annual return must be filed each year which includes financial statements and a statement of service performance. The information filed is available publicly online. Depending on the size of the charity an audit may be required by a qualified auditor.

30. What is the jurisdiction's approach to information sharing with other jurisdictions?

New Zealand is an OECD country that has signed up to a number of multi-jurisdictional conventions and treaties around information sharing particularly in relation to tax. Both the FATCA and CRS reporting regimes operate in New Zealand and as noted earlier New Zealand has a significant number of double tax treaties and tax information sharing agreements with other countries that enable New Zealand to respond to tax information requests from other countries. New Zealand also has anti-money laundering and anti-terrorism laws that permit the sharing of information with other countries' law enforcement agencies.

At the same time, New Zealand has laws that protect the privacy and information of individuals (such as the Privacy Act 2020) and generally an individual's private information can only be shared lawfully and for a proper purpose.

31. What important legislative changes do you anticipate so far as they affect your advice to private clients?

Some of the important proposed tax changes have been referred to earlier in this commentary. There is currently a review being undertaken of New Zealand's succession laws and matrimonial/relationship property laws although these reviews are expected to still take some time (possibly years) and the legislative changes that will come out of these reviews are still uncertain.

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