

Doing Business Guide

New Zealand

1st Edition



Hayes Knight

www.hayesknight.co.nz



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Morison International

About This Booklet

This booklet has been produced by Hayes Knight for the benefit of its clients and associate offices worldwide who are interested in doing business in New Zealand.

Its main purpose is to provide a broad overview of the various things that should be considered by organisations considering setting up business in New Zealand.

The information provided cannot be exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend anyone considering doing business in New Zealand or looking to the area as an opportunity for expansion should seek professional advice before making any business or investment decision.

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While every effort has been made to ensure the accuracy of the information contained in this booklet, no responsibility is accepted for its accuracy or completeness.

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Overview

Geography

New Zealand is situated in the South Pacific Ocean, 1,600 km southeast of Australia. The country consists of two large islands, the North Island (115,000 km²) and South Island (151,000 km²), together with a number of smaller islands, some close to its shores and others hundreds of kilometres away.

The population of New Zealand is almost 4.5 million. The capital city is Wellington, but the largest city by population and geographic area is Auckland. The dominant cultural groups are those of British, Scottish and Irish descent, and the Maori. Other smaller groups include Asians and Pacific Islanders, which has resulted in an ethnically diverse population.

English is the everyday language spoken in New Zealand; Maori is the other official language.

Political System

New Zealand is an independent member of the British Commonwealth. Queen Elizabeth II is the Head of State, her representative in New Zealand being the Governor General.

Parliament is the governing body of New Zealand. Parliament is composed of a single legislative chamber consisting of the House of Representatives, which generally has 121 members. The House is elected for a maximum 3-year term using a mixed member proportional (MMP) system. MMP is a form of proportional representation where voters each cast a party vote to choose the political party, and an electorate vote to choose which individual from their electorate they want to be their Member of Parliament.

Education, social welfare services, police and fire are under the control of the central government. Territorial councils administer local and community services such as water supply and rubbish collection.

Legal System

The New Zealand legal system is based on the English common law system. The judicial system comprises three main tiers: the lower District Courts, the upper High Courts, and the Court of Appeal, with a further and ultimate appeal to the Supreme Court. Prior to the establishment of the Supreme Court (in January 2004), New Zealand's highest Court of Appeal was the UK Privy Council. Although there are a number of specialised tribunals and courts (such as the Environment Court and the Taxation Review Authority) that have judicial functions, in almost all cases their decisions can be subject to appeal to a higher court.

The New Zealand Economy

New Zealand is a free market economy that competes globally. Its inflation rate is one of the lowest in the industrial world.

New Zealand's gross domestic product (GDP) was NZ\$ 202 billion for the year ended March 2012. In the recent World Bank Doing Business survey, New Zealand was ranked as third best country in terms of ease of doing business (just behind Singapore and Hong Kong SAR, China). New Zealand has also been ranked the least corrupt country, ahead of Denmark and Finland, by Transparency International in its Corruption Perception Index 2011.

New Zealand has a range of manufacturing and service sectors, which complements a very efficient agricultural sector. The economy is heavily trade-orientated, with the agricultural, horticultural, forestry, mining, energy and fishing sectors playing an important role in the export sector and in employment. Overall, the primary sector contributes >50% of New Zealand's export earnings.

New Zealand's dependence on trade means that it is sometimes vulnerable to fluctuations in commodity prices and to its trading partners' economic performance. Despite this, New Zealand is a low-risk place to do business, due to the long-term stability of its economy and political climate.

New Zealand has worldwide trading relations, its most important trading partners being Australia, China, the USA, Japan, the UK and Singapore.

New Zealand has a very close trading relationship with Australia, governed by the Australia–New Zealand Closer Economic Relations Trade Agreement (CER), which has removed most restrictions on trade between the two countries. CER includes undertakings to ensure that New Zealand is guaranteed access to the Australian market in a number of industries and to ensure that trade develops under conditions of fair competition.

Foreign investment is welcomed and the government is keen to promote economic development, business, and employment growth, as illustrated by the government's Grown and Innovation Framework, which aims to return New Zealand to the top half of the OECD (Organisation for Economic Co-operation and Development) in terms of gross domestic product per capita.

New Zealand has a freely floating exchange rate that typically fluctuates in line with currencies of its major trading partners, especially Australia, the USA and Japan.

New Zealand does not operate any foreign exchange controls or restrictions on either inward or outward flow of funds, nor is there any requirement to report the transfer of funds.

Operating Structures

A foreign investor may conduct a business in New Zealand under the entities described below.

Sole Proprietorship

A sole proprietor is an individual, therefore no separate legal entity is involved. The business is operated by the individual through the individual. As no distinction is made between the business assets and the personal assets of the individual, the individual is personally liable in all aspects of the business. There is no system in New Zealand of registering a business name except the reservation of a company name. Accordingly, there are no special steps required to become a sole proprietor.

Partnership

Partnerships are defined in the Partnership Act, 1908 as the relation that exists between persons who carry on a business in common with a view to profit. A partnership is not a separate legal entity. Partners are jointly and severally liable for the partnership's debts and have unlimited liability. Individual partners are taxed on their share of partnership income at their individual tax rates.

Limited Partnership

A limited partnership is a separate legal entity that provides the protection of limited liability for its limited partners but is taxed in the same way as a traditional partnership. A limited partnership must be registered, have a partnership agreement, at least one general partner and one separate limited partner. The general partner is liable for all the debts and liabilities of the partnership, while the limited partner's liability is limited by their contribution to the partnership and is also prohibited from taking part in the 'management' of the partnership.

Trust

A business may be carried on by a trust. A trust can be set up whereby the trustee (or trustees) owns the business assets and carries on the business on behalf of the beneficiaries of the trust. A trust does not have separate legal existence like a company. All transactions in respect of the trust are undertaken by the trustees. A trust is, however, required to file a tax return; and in certain circumstances, the trustee is required to pay tax.

Joint Venture

A joint venture is an arrangement between two or more entities who contribute resources for a specific purpose, usually for a limited duration. A joint venture will not be jointly and severally liable unless the nature of the joint venture so prescribes. A joint venture is itself not subject to tax and is not required to file an income tax return, unless it elects to be treated as a partnership for income tax purposes. A joint venture is a separate taxable entity for Good

and Services Tax (GST) purposes and must file GST returns on its own account. For more information on GST, see the section on Taxation.

Look-Through Company

The look-through company regime was introduced from 1 April 2011 and effectively replaces the qualifying company and loss-attributing company regimes (however, existing qualifying companies can continue). A look-through company is transparent for tax purposes. Income and expenses pass through to the owners and are taxed at the owner's marginal tax rate. To become a look-through company, the following requirements must be met:

- The entity has separate legal existence separate from its members
- The entity is resident in New Zealand for tax purposes
- The entity has five or fewer owners
- All owners have look through interests
- A valid election is filed with the Inland Revenue.

Company

Companies in New Zealand are governed by the Companies Act, 1993. A company is a separate legal entity capable of holding assets in its own name. Company shareholders' liability may be either limited or unlimited, and normally companies are registered with shareholder liability limited to the share issue price. To become incorporated under the Companies Act, 1993, the only requirements are:

- A name
- One or more shares
- One or more shareholders
- One or more directors
- A registered office and address for service.

Branch of an Overseas Company

Before conducting business in New Zealand, overseas companies must 'reserve' their name with the Registrar of Companies. An overseas company must then register with the Registrar of Companies within 10 working days of commencing business. Registration includes filing:

- A certified copy of its certificate of incorporation and articles and/or constitution
- A list of its directors and the name of a person in New Zealand authorised to accept process notices on its behalf.

The overseas company may also be required to obtain the Overseas Investment Office's prior consent.

There is no requirement that New Zealand directors sit on the board of an overseas company. A branch is not a separate legal entity from the overseas company.

Overseas companies must prepare separate audited financial statements for their New Zealand branch and file these, together with separate financial statements for their worldwide operations, with the Registrar of Companies.

Subsidiary

As with a branch, the company name must be reserved and the relevant administrative documentation must be registered with the Registrar of Companies. Once the name has been approved and reserved with the Registrar, the following incorporation documents must be filed:

- Consent to act as a director, and a certificate for each director confirming that they are not disqualified from acting
- Consent of the shareholder (for each shareholder)
- The notice reserving the company's name
- A copy of the constitution, if the company is to have one.

Applications to the Registrar must also include:

- The name and residential address of each director
- Similar details for the proposed shareholders, and the number of shares to be issued respectively to them
- Details of the registered office and address for service of documents, both of which must be in New Zealand.

There is no requirement to have New Zealand directors or officers.

The subsidiary is a separate legal entity from its shareholder, the overseas parent. A wholly owned subsidiary of a foreign parent must file accounts with the Registrar of Companies relating only to its operations, not the operations of its overseas parent company. If foreign ownership is $\geq 25\%$, the subsidiary's accounts are required to be audited.

Shareholders of companies incorporated in New Zealand automatically receive limited liability.

Note: As at mid 2012, there are proposals before Parliament to change the law in this area. These proposals yet to be confirmed include requiring a New Zealand resident director, as well as removing some of the audit and filing requirements for various types of foreign-owned subsidiary.

Starting a Business

Once an operating structure is chosen, a few other matters must be addressed.

Naming the Business

With tens of thousands of businesses operating in New Zealand, it is quite possible that your preferred choice could already be in use or contain banned words or phrases. There are two places to check if you can use your intended business name: The Companies Office or the Intellectual Property Office of New Zealand (IPONZ).

The Companies Office: It is possible to reserve a business name on the companies register for 20 days; during this time, it is impossible for others to reserve the same or a similar name. Reserving a company name costs (at the time of print) NZ\$ 10.22 and can be done online. That name only becomes permanently secured once the company is registered. The Companies Office is also the place to find government restrictions on the types of names you can use. Visit www.business.govt.nz/companies/.

IPONZ: This is the organisation where copyright, patents and trademarks on original commercial assets – including business names – are registered. The IPONZ database can be used to determine whether a preferred business name is already being used as a commercial asset. IPONZ is also where logos and any unique combination of words and images that make up a business brand can be registered as a trade mark, thus preventing others from copying it. Visit www.iponz.govt.nz.

Note: Unlike companies, sole traders and partnerships don't have any protection over their business names. However, they can apply for a trade mark from IPONZ for their brand or logo to give them exclusive rights to use it in a unique way.

Registering your Business

Register with the Inland Revenue Department (IRD): All businesses in New Zealand are required to register with the IRD for tax purposes. Businesses operating as under a sole trader and partnership structure can lodge the business' income under the owner's personal IRD number. Partnerships must have their own IRD number. Visit www.ird.govt.nz.

Register with the Companies Office: In addition to registering with the IRD, companies are required to be incorporated with the Companies Office. While companies require an IRD number, rather than going through the IRD this can be obtained by through the Companies Office when a company is registered for incorporation. This can be done online at the Companies Office website (www.business.govt.nz/companies/) for a fee of (at time of print) NZ\$ 150.

Register for Goods and Services Tax (GST): Businesses must register for GST (via the IRD) once they reach (or expect to reach in the next 12 months) an annual turnover of more than NZ\$ 60,000. Once registered, the business collects GST for the government on the goods and services it sells and can then claim GST back on the goods and services bought for the business. Businesses with a turnover under NZ\$ 60,000 may choose to register voluntarily. See the section on Taxation to find out more about GST.

Register to become an employer: When a business starts employing staff, they must register as an employer with the IRD. Upon registering, the business is typically asked whether they also wish to register for Fringe Benefit Tax (FBT) and the Employer Superannuation Contribution Tax (ESCT). See the sections on Taxation and Employer Obligations to find out more about these. Businesses that only hire contractors are not required to register as an employer.

Registering for licences, consents and permits: New Zealand's regional councils and other regulatory bodies can also impact upon the running and set-up of a business. For example, 'work from home' businesses, cafés and bakeries first have to obtain a licence from their regional council. The local councils are also responsible for regulating health and safety standards for all business and building permits. They should therefore always be the first point of contact before starting the business. Some industries also have to abide by a specialist regulatory authority that regulates product and service standards, the use of environmental resources, and anything else that might concern public safety by ensuring that businesses adhere to the relevant standards and codes of practice. Visit <http://www.business.govt.nz/laws-and-regulations/regulatory-authorities>.

Employment Obligations

Labour relations in New Zealand are governed by various legislation, the primary statute being the Employment Relations Act, 2000. This Act places emphasis on collectivism, although union membership is voluntary. The main features of the Act are:

- Employers must comply with requirements including those regarding hiring, union rights, collective bargaining and strikes and lockouts
- All employment agreements must be recorded in writing
- Good faith is to be exercised in the process of bargaining collective employment agreements, requiring the parties to:
 - not mislead or deceive each other
 - be active and constructive
 - be responsive and communicative in their employment relationship

If an employer proposes a restructure or sale of the business, then they have a duty (of good faith) to give each affected employee information about the relevant proposal and an opportunity for that employee to provide feedback or comment on the proposal before any decision is made.

Although union membership is not compulsory, unions have specific rights of access to workplaces. Employers must recognise that the union represents their employees.

Unions

In New Zealand, union membership is voluntary; but if an employee wants to be involved in a collective agreement and to bargain collectively, they must be a member of a union. Union representatives have specific rights of access to workplaces and can represent their members' individual rights at mediations and court proceedings. Employers cannot unreasonably refuse union access, even for purposes of recruitment.

90-Day Trial Period

Employers are able to engage new employees on a trial period of up to 90 days, provided this is recorded in the signed employment agreement. During this 90-day period, the employee can be dismissed and cannot raise a personal grievance on the grounds of unjustified dismissal. While an employer is not required to provide written reasons for an employee's dismissal, there is an expectation that an employer, acting in good faith, would inform the employee as to why they have been dismissed.

KiwiSaver

The KiwiSaver scheme is a voluntary work-based savings initiative aimed at helping New Zealanders with their long-term saving for retirement. KiwiSaver came into effect in July 2007.

KiwiSaver is said to be work-based for two reasons: employers are expected to provide information about KiwiSaver to their employees, and KiwiSaver contributions come directly out of an employee's pay.

Contributions can be deducted from the employees pay at the rate of 2%, 4% or 8% (employees nominate the rate, which they can change at any time).

As from 1 July 2008, employers have been required to contribute to their employee's KiwiSaver account or complying fund at 2% of their gross salary or wage.

A complying superannuation fund is a section within a registered superannuation scheme that has been approved by the Financial Markets Authority as having met certain criteria similar to KiwiSaver. From 1 April 2012, employers are obligated to calculate Employer Superannuation Contribution Tax (ESCT) on any employer cash contributions made to a registered superannuation scheme for an employee.

KiwiSaver employer contributions are paid with PAYE ('pay as you earn'), while any contributions made to an employee's complying funds will still need to be paid directly to the applicable scheme.

It is worth noting that KiwiSaver schemes are managed by private sector companies called KiwiSaver providers, of which there are several to choose from. KiwiSaver is therefore not guaranteed by the government.

For more information about KiwiSaver, visit: www.ird.govt.nz/kiwisaver/employers/.

Deductions From Pay

Employers are required to withhold tax from wage and salary payments and return this to the Inland Revenue Department (the PAYE regime). The rate of withholding depends upon the relevant employee's individual tax rate. The employer must also withhold the employee's Accident Compensation Corporation earners levy and may be required to make other withholdings.

If the employee is a member of a KiwiSaver retirement savings scheme, the employer will be required to withhold the employee's contribution (usually 2% of gross pay) and will be required to make a compulsory employer contribution (a minimum 2% of the employee's gross pay). These rates are proposed to increase to 3% from 1 April 2013.

Further deductions from pay may be required to be withheld depending on the employee's circumstances (e.g. repayments of student loans).

Fringe Benefits

The Fringe Benefit regime is designed to impose tax on the employer in respect of non-cash benefits provided to employees by reason of past, present or future employment.

Fringe Benefit Tax (FBT) is generally payable in quarterly instalments by employers on the value of fringe benefits provided to employees and shareholder employees. The value of fringe benefits is not included in the employee's gross income amount.

Employers with PAYE and employer superannuation contribution tax deductions not in excess of NZ\$ 500,000 per annum can pay FBT on an annual basis.

Occupational Health and Safety

Under the Health and Safety in Employment Act, 1992, employers have a general duty to ensure workplace safety. Occupational safety and health levies are imposed on employers and the self-employed, which are based on payroll. For particular industries where known hazards exist (e.g. businesses using dangerous chemicals or materials or processes), specific regulations and codes of practice under the Act apply.

The Act allows for premises to be inspected and improvement and prohibition notices may be issued to stop activities. Failure to comply with the Act is a criminal offence, with fines of up to NZ\$ 500,000 or 2 years' imprisonment.

Workers' Compensation

Under New Zealand domestic law, there is no right to sue for damages for accidental injury. Instead, New Zealand's Accident Compensation Corporation (ACC) operates a comprehensive scheme focusing on the needs of the injured person. The system removes the need to determine liability before compensation is provided to accident victims.

Both employers and employees are required to contribute to the scheme, so as to cover work and non-work accidents. The employer's account is funded by an annual levy imposed on the employers and self-employed people. The employee's or earner's levy is collected under the PAYE system.

Holidays and Leave

In New Zealand, this is governed by the Holidays Act, 2003, which outlines minimum legal entitlements as summarised below.

Annual holidays: All employees are entitled to ≥ 4 weeks' paid holidays a year. This entitlement comes into effect on their first and subsequent anniversaries after starting work with an employer. Annual holidays can be taken at any time agreed between the employer and the employee. All employees must be given the opportunity to take at least 2 of the 4 weeks' holidays consecutively, if they wish.

Public holidays: All employees are entitled to a paid day off on a public holiday if it would otherwise be a working day. Public holidays are separate from and additional to annual holidays. For more information on paying employees who work on public holidays and alternate holidays for working public holidays, visit www.dol.govt.nz.

Sick leave: For most employees, there is a minimum provision of 5 days' paid sick leave a year after the first 6 months of continuous employment and an additional 5 days' sick leave after each subsequent 12-month period. Exceptions are covered under 'The Effect of Various Work Patterns' in the Holidays Act, 2003.

New Zealand employers are entitled to ask for proof of sickness or injury at any time. If the employee has been away from work for <3 days, then the employer must reimburse the employee for the cost of obtaining the proof (e.g. doctor's visit). If the employee has been away for ≥3 consecutive days, then they meet the costs.

Bereavement leave: On the death of an immediate family member, employees are entitled to up to 3 days' paid leave. Where there is more than one bereavement, the employee is entitled to 3 days' bereavement leave in respect of each death.

In the event of a death outside the immediate family that causes a person to suffer bereavement, up to 1 day's paid leave may be taken if the employer accepts that the employee has suffered bereavement. For more information, visit www.dol.govt.nz.

Parental leave: The Parental Leave and Employment Protection Act, 1987 provides for both parents to take specified periods of parental leave (unpaid) on the birth or adoption of a child. Government-funded paid parental leave: Primary caregivers are entitled to receive up to 14 weeks' paid leave. The maximum level of payment is currently NZ\$ 475.16 per week before tax. Employees are entitled to either their gross weekly rate of pay (pay before tax) or NZ\$ 475.16, whichever is lower. For more information on parental leave, visit www.dol.govt.nz.

For public holidays, alternative holidays, sick leave and bereavement leave, an employee is entitled to either their relevant daily pay or average daily pay.

Statutory Reporting Requirements and Relevant Business Laws

Reporting and Audit Requirements

Under the Companies Act, 1993 and the Financial Reporting Act, 1993, every company must keep accounting records that:

- Correctly record and explain company transactions
- Will at any time enable the company's financial position to be determined with reasonable accuracy
- Will enable the directors to ensure that the financial statements are prepared in accordance with the provisions of the Financial Reporting Act, 1993
- Will enable the financial statements to be readily and properly audited.

Further provisions of the Companies Act specify particular types of accounting records to be kept; that they are to be kept in English, and retained for a period of ≥ 7 years from the year they were filed.

Financial statements must be supplied to shareholders at least every calendar year and must comply with statutory disclosure requirements, including an overriding requirement to:

- Present a 'true and fair view' of the company's financial position at the date of accounts, and of its operations for the period up to that date
- Comply with Generally Accepted Accounting Practice (GAAP).

The Financial Reporting Act, 1993 is the umbrella legislation regarding financial reporting requirements in New Zealand. It defines generally accepted accounting practice as applicable financial reporting standards as issued by the External Reporting Board, the government's accounting, audit and assurance standard setter.

Each year, every company must file an annual return of directors, shareholders and other matters with the Registrar of Companies.

The following entities are required to have their financial statements audited:

- Overseas companies operating in New Zealand (i.e. a branch operation)
- Subsidiaries of overseas companies
- Large companies with $\geq 25\%$ voting power held by an overseas company or non-resident.

Overseas companies and companies controlled by overseas interests must provide a copy of their financial statements and auditor's report to the Registrar of Companies within 20 days after the financial statements are required to be signed by directors. Directors must sign the financial statements within 5 months of the balance date.

In addition to these requirements, an overseas company that has a branch in New Zealand must also file separate financial statements for the business conducted in New Zealand. There are penalty fees for late registration.

Auditors of companies are required to be chartered accountants holding a valid certificate of public practice. Auditors of issuers, essentially any entity offering debt or equity securities to the general public, are required to be audited by a licensed auditor from a registered audit firm. The licensing and firm registration is regulated by the Financial Markets Authority. Hayes Knight Audit NZ is a registered audit firm with licensed auditors qualifying them to perform all forms of auditing in New Zealand.

Changes on the Horizon

In mid 2012, proposed financial reporting legislation was presented to Parliament that will significantly change the financial reporting requirements of entities operating in New Zealand. This will result in a new Financial Reporting Act and consequent amendments to many other Acts.

The proposed amendments aim to improve the financial reporting system by reducing compliance costs and streamline the financial reporting requirements for entities required to prepare general purpose financial statements. The overriding principle is to ensure that external users who have a need for an entity's financial statements have access to that information when they are unable to demand it.

If adopted into legislation as proposed, then the following will apply and will take effect over the next 1–3 years:

Requirement to Prepare Company Financial Statements

The requirement for companies to prepare general-purpose financial statements will apply to:

- Large companies and large overseas companies that carry on business in New Zealand. 'Large' is defined as assets exceeding NZ\$ 60 million, or revenue exceeding NZ\$ 30 million (assessed over the two preceding accounting periods)
- Companies with ≥ 10 shareholders unless, through a 95% majority vote, the company opts out of compliance
- Companies with < 10 shareholders if shareholders who hold $\geq 5\%$ of the voting shares require the company to comply.

In addition:

- Financial statements must be prepared in accordance with GAAP within 3 months of the balance date (rather than 5 months, as is currently the case)
- Parent entity financial statements will no longer be required if group financial statements are prepared

- In respect of Companies Act, Section 211 required disclosures in annual reports; the threshold has been reduced. Shareholders who hold $\geq 95\%$ of the voting rights will be able to agree to exclude information from the annual report; previously, unanimous agreement was required.

Requirement to Audit Company Financial Statements

The audit requirement applies to the same companies as noted above, and the same opt-in/opt-out provisions apply.

In addition:

- Large companies (other than those that are required to register their financial statements) can opt out of the audit requirement through a 95% majority vote
- Audits must be carried out in accordance with auditing and assurance standards (but the Registrar can recognise overseas standards)
- An auditor is required to be appointed only if the financial statements or group financial statements of the company are required to be audited.

Requirement to Register Company Financial Statements

The registration requirement for overseas companies has been consequentially restricted to large overseas companies and large companies with 25% overseas ownership (consistent with the current requirements).

In addition, any company that is a subsidiary of an overseas entity and that is required to prepare financial statements must register its financial statements.

Proposed Changes for Other Entities

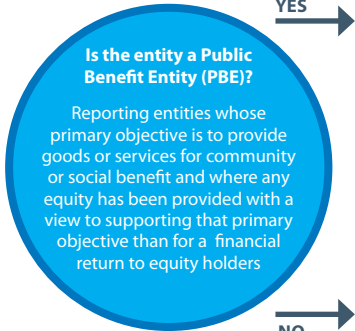
Large partnerships: Large partnerships will have to prepare financial information in accordance with GAAP. This information should be audited unless the partnership opts out of compliance by passing a resolution by partners who together have contributed $\geq 95\%$ of the capital.

Charities: Charities that have successfully registered with the Charities Commission are not subject to income taxation in New Zealand. They will be required to prepare financial information in accordance with GAAP, as appropriate for charities.

The External Reporting Board is currently developing appropriate accounting standards for the different tiers of Public Benefit Entities (PBE), which will include registered charities. These PBE accounting standards are based on International Public Sector Accounting Standards and modified as appropriate for the New Zealand environment and size of entity.

New Accounting Standards Framework

For entities required by law to prepare General Purpose Financial Reports



Is the entity a Public Benefit Entity (PBE)?

Reporting entities whose primary objective is to provide goods or services for community or social benefit and where any equity has been provided with a view to supporting that primary objective than for a financial return to equity holders



	Tier 1	Tier 2	Tier 3	Tier 4
Who is captured?	<ul style="list-style-type: none"> Publicly accountable entities* Large entities (annual expenses > \$30million) 	<ul style="list-style-type: none"> Non-publicly accountable entities and non-large entities Which elect to be in tier 2 	<ul style="list-style-type: none"> Non-publicly accountable entities with expense ≤ \$2 million Which elect to be in tier 3 	<ul style="list-style-type: none"> Entities legally allowed to use cash accounting Which elect to be in tier 4
Accounting Standards to follow	PBE Accounting Standards (PAS)	PBE Accounting Standards Reduced Disclosure Regime (PAS RDR)	PBE Simple Format Reporting Standard – Accrual (PSFR-A)	PBE Simple Format Reporting Standard – Accrual (PSFR-C)
For-profit entity transitional tiers**				
Who is captured?	<ul style="list-style-type: none"> Publicly accountable entities* Large for-profit public sector entities (annual expenses > \$30 million) 	<ul style="list-style-type: none"> Non-publicly accountable entities and either, <ul style="list-style-type: none"> large i.e. assets > \$60 million or revenue > \$30 million (assessed over two preceding accounting periods, or companies with 10 or more shareholders (can opt out if 95% majority vote). Non-large for-profit public sector entities Which elect to be in tier 2 	<ul style="list-style-type: none"> Non-publicly accountable and either, <ul style="list-style-type: none"> all of its owners are members of the entity's governing body, or is not large. Large is any two of annual revenue > \$20 million, total assets > \$10 million, or > 50 employees Which elect to be in tier 3 	<ul style="list-style-type: none"> Non-publicly accountable, not required to file financial statements and not large (as defined in tier 3) Which elect to be in tier 4
Accounting Standards to follow	NZ International Financial Reporting Standards (NZ IFRS)	NZ IFRS Reduced Disclosure Regime (NZ IFRS RDR)	NZ IFRS Differential Reporting	Old Generally Accepted Accounting Principles (GAAP) Financial Reporting Standards and Statements of Standard Accounting Practice

What's next?

Proposed application dates:

- For-profit entities: From 1 November 2012 with early adoption permitted
- For-profit entities: **Transitional tiers will be removed when proposed legislative changes come into force
- Public sector PBEs: For periods beginning on or after 1 July 2014
- Not-for-profit PBEs: For periods beginning on or after 1 April 2015

*Definition of publicly accountable: Entities that meet the International Accounting Standards Board's (IASB) definition of public accountability:

- entities that have debt or equity instruments that are traded, or to be traded, in a public market;
- entities that hold assets in a fiduciary capacity for a broad group of outsiders as one of its primary businesses.

or, entities deemed to be publicly accountable in New Zealand by legislation being issuers as defined by the Securities Act 1978 or any other Act, registered banks, deposit takers and registered superannuation schemes.



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Securities Law

The Securities Act, 1978 is directed towards the activity of fundraising by all legal entities. The Act is the key statute regulating the securities markets and requires that certain information be disclosed when securities are offered to the public. In addition to corporate securities, the Act covers interests in unit trusts, superannuation schemes and life insurance policies. Any issue of these products must disclose certain key features of the product in a document aimed at the 'prudent but non-expert investor' as well as in a prospectus.

As at mid 2012, the area of securities law in New Zealand is currently undergoing significant reform and is likely to result in a revised Securities Act. The area of securities law is regulated by the Financial Markets Authority.

Competition Law

The Commerce Act, 1986 is the key competition statute. The Commerce Act aims to promote competition and prohibits:

- Agreements that have the purpose or effect of substantially lessening competition
- Price fixing
- Taking advantage of market power to exclude competition
- Resale price maintenance
- Business acquisitions that are likely to have the effect of substantially lessening competition.

Consumer Protection

In New Zealand, consumers are protected by two primary pieces of legislation: the Fair Trading Act, 1986, and the Consumer Guarantees Act, 1993. However, unlike some countries, in New Zealand there is no power to stop repeat offenders from trading.

The Fair Trading Act, 1986 aims to protect consumers against misleading or deceptive behaviour. The Act is enforced by the Commerce Commission and gives consumers direct rights of action. Anyone providing goods or services needs to be aware of the Act.

The Consumer Guarantees Act, 1993 ensures that certain guarantees are in place around goods and services to protect New Zealand consumers. The Act also offers remedies (damages and the right to cancel a contract) should goods and services not live up to these guarantees.

It is worth noting that the Act does not apply to dealings of a business-to-business nature and that most commercial contracts specifically acknowledge this. The Act only applies to persons buying goods or services for the purposes of household or domestic use.

Taxation

Income tax is imposed under the Income Tax Act, 2007. Generally, residents in New Zealand are taxed on their worldwide income, with a credit available in most circumstances for foreign taxes paid. Non-residents are only taxed on income derived from a New Zealand source, although the liability may be reduced under a double taxation agreement.

The tax year runs from 1 April to 31 March. Taxpayers must apply to the IRD for permission to adopt an alternative balance date.

Income for tax purposes is widely defined and includes business trading profits and most forms of return on investment. New Zealand does not have a comprehensive capital gains tax regime. There are, however, specific provisions that effectively tax capital gains on certain transactions. These transactions include:

- Profits from the sale of land in certain circumstances
- Certain royalty payments
- Profits from the sale of any personal property acquired with the purpose of sale or pursuant to a profit-making scheme
- Gains from any 'financial arrangements' (e.g. loans or deposits) under the accrual regime.

Taxation of Individuals

Individuals are resident in New Zealand for income tax purposes if they:

- Have a permanent place of abode in New Zealand, whether or not they have such an abode outside New Zealand; or
- Are physically present in New Zealand for >183 days in aggregate within any 12-month period.

If an individual is resident in New Zealand and is also a resident under the domestic laws of a country with which New Zealand has a double tax agreement, the 'tie-breaker' provision in that agreement will determine where the individual is resident for the purposes of applying the agreement for the relief of double taxation.

A 4-year domestic income tax exemption for foreign-sourced income (excluding employment or services income) is available for overseas individuals who become New Zealand tax residents. The exemption does not apply if the individual has been a New Zealand tax resident within the last 10 years.

Current, income tax rates for individuals are shown in Table 1.

Table 1. Current income tax rates for individuals.

Annual income bracket (NZ\$)	Tax rate
0–14,000	10.5%
14,001–48,000	17.5%
48,001–70,000	30%
>70,001	33%

Taxation of Companies

Companies are treated as New Zealand tax residents if they meet any of the following criteria:

- They are incorporated in New Zealand
- They have their head office situated in New Zealand
- They have their centre of management in New Zealand
- Control of the company by their directors is exercised in New Zealand, whether or not decision-making by their directors is confined to New Zealand.

Similarly, tie-breaker provisions apply for the purpose of double tax agreements.

Currently, resident and non-resident companies are subject to a flat tax rate of 28%.

The dividend imputation system allows New Zealand resident companies to pass on to their shareholders credits for the New Zealand income tax paid by the company. The credits attach to dividends paid and taxable bonus issues, including bonus shares in lieu.

New Zealand-resident companies must maintain an imputation credit account. This is a memorandum account that records tax paid and the allocation of credits to shareholders.

Where resident individual shareholders receive dividends with imputation credits attached, they may offset these credits against their personal tax liability. Resident corporate shareholders may also offset credits against their tax liability except where the dividend is exempt from income tax. Non-resident shareholders cannot benefit from imputation credits under the foreign investor tax credit regime, but can mitigate withholding tax on dividends.

Most inter-company dividends are taxable. However, dividends may not be taxable to a shareholder when that shareholder is also a company and is a member of the same wholly owned group of companies as the payer of the dividends.

Taxation of Trusts

The trustees of a trust generally are treated as a taxpayer. Income derived by the trustees will either be 'trustee income' or 'beneficiary income', depending on whether or when it is distributed to a beneficiary. Trustee income is taxed at 33%. Beneficiary income is taxed at the recipient beneficiary's marginal tax rate. However, distributions to beneficiaries who are minors are taxed at a 33% rate in most instances.

Distributions to beneficiaries of things other than beneficiary income can also be subject to tax. This will depend on the classification of the trust in relation to that distribution. For instance, if the trust is a 'non-complying trust', distributions of accumulated trustee income and capital gains to a beneficiary are taxed at a rate of 45%. There are complex rules to determine the clarification of the trust and the source of the distribution.

Taxation of Partnerships and Limited Partnerships

A partnership and limited partnership are not in themselves liable for income tax. However, they are required to file a tax return for information purposes. It is the individual partners in

a partnership who will be taxed on their share of partnership income at their individual tax rates. Losses incurred by the partnership will also be passed through directly to partners. There are no restrictions based on residence and the number of entitlements of the flow-through tax treatment under the partnership rules. However, limited partners in limited partnerships can be restricted with regard to the amount of losses they can utilise.

Goods and Service Tax

GST is a consumption tax imposed on the supply of goods and services in New Zealand, and on imported goods. Although the tax is generally levied at the standard rate (currently 15%), some supplies are taxed at a nil rate (zero-rated) and a small number of specified supplies are exempt from the tax. All commodities, with the exception of money, are subject to GST.

GST is not a tax on business profits or turnover but on consumption of goods and services, and is ultimately paid by the consumer or end user. The tax is paid at each step along the chain of ownership, until the goods or services reach the end user. Registered businesses and other organisations account for the GST they have collected, and claim a credit for the GST on business inputs, including capital items such as plant and equipment that they have paid. Through the operation of this credit offset system, a net figure is returned by registered entities in their GST returns that must be lodged at monthly, 2-monthly or 6-monthly intervals. Businesses must register for GST where their annual turnover exceeds NZ\$ 60,000.

Zero-Rated Supplies

As GST is confined to consumption of goods and services in New Zealand, certain export transactions are zero-rated. These include:

- Exported goods
- Supply of goods situated out of New Zealand
- Exported services such as international transportation and freight, services performed outside New Zealand and certain services supplied to non-residents.

In addition, transactions involving land between two GST registered persons can generally be zero-rated.

Exempt Supplies

There are a limited number of exemptions from GST:

- Financial and banking services (extensively defined)
- Supplies by charities and other non-profit organisations of goods and services received as donations
- Residential property rentals and the associated sale or lease of freehold or leasehold residential property
- Sale of precious metals, e.g. gold or silver as a commodity. The exemption does not apply to the manufacture and sale of jewellery and other collectables.

Gift Duty

Gift duty was abolished from 1 October 2011.

Excise Duty

Excise duty, in addition to GST, is imposed on certain goods manufactured in New Zealand, being beer, wine, alcohol, tobacco products and fuels.

Customs Duty

Customs duty refers to a number of imports, including:

- Excise duty and excise-equivalent duty payable on a variety of goods such as alcohol and tobacco
- Duty imposed on certain imports under the Tariff Act, 1988
- Anti-dumping and countervailing duties that can be imposed where it is considered that goods are being 'dumped' in New Zealand or they have been subsidised by a foreign government, respectively
- GST imposed on imports.

The New Zealand Customs Service collects these duties. The rate of duty payable is determined by the classification of the goods under the Customs and Excise Act, 1996.

Stamp Duty

Stamp duty has been abolished in New Zealand since 20 May 2009.

Estate Duty

No estate or death duties are payable in New Zealand.

Transfer Pricing and Thin Capitalisation

New Zealand's transfer pricing rules attempt to protect the New Zealand tax base by ensuring that cross-border transactions are priced on an arm's-length basis. New Zealand also has thin capitalisation rules that disallow certain interest deductions for a foreign-owned New Zealand group, depending on their debt/equity ratio.

Regulation on Foreign Investments in New Zealand

New Zealand's regulations governing foreign investment are liberal by international standards. There are no rules on the maximum level of equity interest a foreign investor may take in a New Zealand enterprise, except with respect to ownership of domestic fishing quotas, Telecom and Air New Zealand.

The Overseas Investment Commission (OIC) is a statutory body with responsibility for approving certain classes of investment proposals by prospective overseas investors.

There are no restrictions on the movement of funds in or out of New Zealand, including the repatriation of profits. No additional performance measures are imposed on foreign-owned enterprises. An application to the OIC must be made by non-residents planning to invest more than NZ\$ 100 million establishing a business, or to purchase an equity share of >25% in a New Zealand company worth more than NZ\$ 100 million. OIC approval is also required to invest in some land over 5 hectares, islands, and any foreshore or reserve land over 0.4 hectares.

Clearance considerations for acquisitions other than those of a sensitive nature include:

- The prospective investor's relevant business experience
- Confirmation that it is their own capital at risk
- Absence of a criminal record that would disqualify the prospective investor from obtaining permanent residence in New Zealand.

It is rare for investment applications to be declined.

The Fisheries Act 1996 contains specific restrictions on overseas investment in fishing. Only a resident may own a fishing quota (entitlement to take fish).

Banking and Finance

Raising Capital in New Zealand

The most common types of funding available for business development and growth are summarised below.

Personal equity, friends and family: A high proportion of businesses are funded by the business owner's own equity (capital), i.e. savings and/or a loan or mortgage raised against the owner's home. Further capital can be raised from friends and family.

Personal equity can also include the cash flow or savings that have built up in a business. While cost-effective funding is available, this often takes an extended period of time to build up.

Banks are the second most common source of funding for business development. This funding can take various forms, such as short-term funding (for instance, an overdraft) to meet immediate commitments, or longer-term funding for capital items (such as plant and machinery).

Angel investors are people prepared to invest in a promising business venture, often at a relatively early stage of the business life cycle. The investor typically requires some equity (ownership) in the business to offset their investment risk and expects at least a 30% return on their money. See www.bizangels.co.nz or www.angelassociation.co.nz.

Venture capitalists are investment companies or fund managers that provide cash in return for part-ownership of a business. They are typically only interested in investments that exceed NZ\$ 1 million due to the time and cost associated with due diligence procedures. They may also expect to take an active management role, which explains why their return expectations are higher (30–50% per annum) on their investment. See: www.vcapital.com.

Banking

The bank manages monetary policy to maintain price stability, promotes the maintenance of a sound and efficient financial system, and supplies New Zealand's banknotes and coins.

All 21 banks operating in New Zealand must be registered with the Reserve Bank of New Zealand and are required by law to disclose their financial condition each quarter. The banks with the largest presence are:

- ANZ National Bank
- ASB Bank
- Bank of New Zealand
- Westpac New Zealand
- Kiwibank

Kiwibank is owned and operated through New Zealand's national postal operator, NZ Post. The rest are owned by larger Australian banks.

The 16 other registered banks are:

- Australia and New Zealand Banking Group*
- Bank of Baroda (New Zealand)
- Bank of India (New Zealand)
- Citibank NA
- Commonwealth Bank of Australia*
- Deutsche Bank*
- JP Morgan Chase Bank*
- Kookmin Bank*
- Rabobank Nederland*
- Rabobank New Zealand
- Southland Building Society
- The Bank of Tokyo-Mitsubishi UFJ*
- The Co-operative Bank
- The Hongkong and Shanghai Banking Corporation HSBC*
- TSB Bank
- Westpac Banking Corporation*

*Branches of overseas-incorporated banks.

Capital Markets

New Zealand has a small but well-developed capital market, on which securities are actively traded. The New Zealand Exchange (NZX) is the only registered securities exchange and regulates three primary markets:

- i. New Zealand Stock Market (NZSX), the premier equities market for large and established enterprises. To list on the NZSX market the company must, among other things, have an appropriately qualified board of directors, ≥ 500 shareholders who hold $\geq 25\%$ of the class of securities between them, and comply fully with NZX disclosure and other requirements. NZX also recommends that such companies have annual revenue of at least NZ\$ 50 million.
- ii. New Zealand Alternative Market (NZAX), for fast-growing small and medium enterprises (SMEs) looking for additional sources of capital. To list on the NZAX market the company must, among other things, have ≥ 50 shareholders. NZAX also recommends that such companies have annual turnover of between NZ\$ 5 and 50 million.

- iii. New Zealand Debt Market (NZDX), for corporate and government bonds, fixed-income and other debt securities.

The primary regulators of New Zealand's capital markets are the Financial Markets Authority (FMA), NZX and the Takeovers Panel.

Government Support

New Zealand Trade and Enterprise (NZTE) is the government department responsible for helping New Zealand businesses grow and compete internationally via a range of services, programmes and information.

- NZTE Capability Development Vouchers can be used to access subsidised services (up to 50%) that will help build management capability within the business, which in turn may accelerate the growth of your business. These services are primarily delivered through one-on-one coaching or workshops.
- Ministry of Science and Innovation (MSI) Research and Development. Business R&D is a key driver of innovation, business success and economic growth. Therefore a range of MSI services are available to help businesses grow through all stages of R&D. Funding can range from NZ\$ 1,000 to over NZ\$ 1 million.
- Industry Capability Network (ICN). The Industry Capability Network (ICN) exists to help local businesses get involved with major projects in New Zealand and Australia. ICN New Zealand also helps the New Zealand businesses it works with to become more capable and build relationships that will take them into other international markets.
- The Manufacturing+ Programme offers selected high-growth businesses the opportunity to participate in Manufacturing+ workshops to help them achieve peak performance. Some businesses may also be eligible for more intensive in-house training sessions to help them embed Manufacturing+ principles into their business.

For more information on NZTE and how they assist New Zealand businesses, visit www.nzte.govt.nz.

Living in New Zealand

Visa Requirements

New Zealand has a reasonably open-door immigration policy, particularly for skilled migrants and for entrepreneurs with the resources and capital to contribute to the economy by setting up a business in New Zealand.

If you are not a New Zealand/Australian national, you will need a visa to work in New Zealand. Visa types include:

- Temporary work visa
- Long-term business visa
- Residence visa.

Applicants for any visa must be of good character and hold a valid passport that expires ≥3 months after the proposed date of departure.

Temporary Work Visa

Work visas are time-limited and can be issued for a period of up to 3 years. To qualify, foreign nationals must have a job offer:

- For an occupation on the skills shortage list; or
- From a New Zealand employer who:
 - Is accredited or has approval to recruit foreign workers, or
 - Can prove there are no suitable New Zealand applicants for the job.

An applicant may also be eligible when coming here for a specific purpose that will be of benefit to New Zealand.

Employees of a business which is relocating to New Zealand can also apply for a work permit and, later, for residence under the 'Employee of a Relocating Company' category, if they do not meet any other criteria for residence.

Long-Term Business Visa

Individuals wanting to establish their own business, or to buy a minimum 25% stake in an existing business, can apply for a long-term business visa or permit. As well as satisfying English language, health and character requirements, applicants must have:

- Sufficient funds to support their business, themselves and their family
- A sound business plan with realistic financial forecasts which shows how the grant of the visa will be of benefit to New Zealand by:
 - Creating new employment opportunities

- Saving a failed or failing company
- Improving exports, or
- Introducing new (or expanding on existing) business concepts, technologies, services or products.
- Relevant business experience or other expertise, including occupational registration where appropriate
- A good record: no business failures in the previous 5 years, and never any involvement in business fraud or wrongdoing.

The long-term business permit is issued initially for 9 months, but will be extended to 3 years provided the holder has started the business within the initial visa period. Two years after establishing the business, the applicant may begin an application for residence under the entrepreneur category.

Residence Visa

The main paths to New Zealand residence are through the following categories:

- Skilled migrant
- Investor
- Entrepreneur
- Family.

Skilled Migrant Category

The skilled migrant category operates on a points system with points awarded for qualifications, work experience, age, whether the person has a job offer, and other settlement factors. In addition, applicants must satisfy health, character and English language proficiency standards. Only those who meet the appropriate criteria are invited to apply for residence.

Investor Category

There are two investor categories:

- Investor 1 Category (Investor Plus): requires an investment of NZ\$ 10 million for 3 years. No age restriction or English language requirement. Must stay in the country for ≥ 73 days in each of the last 2 years of the 3-year period
- Investor 2 Category (Investor): requires an investment of NZ\$ 1.5 million for 4 years with settlement funds of NZ\$ 1 million. The applicant must be aged < 65 years, have ≥ 3 years' business experience and have some English language skills. Must stay in the country ≥ 146 days in each of the last 3 years of the 4-year period.

Entrepreneur Category

Persons who have a successful business that has been in operation for 2 years and who have decided that they wish to live in New Zealand permanently can apply directly for a residence permit under the entrepreneur category.

Family Category

Applicants may be able to apply for residence depending on their family connections in New Zealand. The three options are:

- **Partner:** living for 12 months with a New Zealand resident or citizen creates an opportunity to apply for residence on partnership grounds
- **Parent:** the parents of a New Zealand citizen or resident may be eligible to apply for residence if they have an equal or greater number of children living permanently in New Zealand than in any other country
- **Adult child/sibling:** an adult child or sibling who is alone in their home country may be eligible for residence if sponsored by an elder sibling or parent.

Hospital and Medical

New Zealand's public health system is good by world standards. Comprehensive medical care is available to everyone. All essential health care is provided free through the public health system. While some routine services, such as visits to local doctors and dentists, have to be paid for, more costly services, such as hospital treatment are, with minor exceptions, available free to all residents. The government also provides subsidies for visits to the local doctor and prescriptions for young children, people who require frequent healthcare and those on low incomes.

Education

The government-funded schooling system provides a comprehensive curriculum of academic, sporting and skills-based learning options. Most schools have their own playing fields, gymnasiums and swimming pools. With few exceptions, all children in New Zealand must attend school between the ages of 5 and 16. There are also a number of education and care options available to parents with children aged ≤ 5 years. New Zealand's tertiary (higher) education system includes universities, polytechnics, colleges of education and private training establishments.

The Next Step

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