



# Commonwealth of opportunity

HENRY BRANDTS-GIESEN AND SARAH KELLY OUTLINE THE RULES ON FOREIGN INVESTMENT AND PERMANENT RESIDENCY IN NEW ZEALAND

## ➤ KEY POINTS

### WHAT IS THE ISSUE?

For some high-net-worth individuals (HNWIs), immigration is a consideration when setting investment strategy. Though foreign direct investment in New Zealand is generally encouraged, there are restrictions on 'overseas persons' wishing to acquire interests in 'significant business assets', 'sensitive land' and fishing quotas in New Zealand.

### WHAT DOES IT MEAN FOR ME?

There are two investment categories that, subject to qualifying criteria, can result in New Zealand resident visas being granted to a principal applicant, their partner and any dependent children.

### WHAT CAN I TAKE AWAY?

With no restrictions on the movement of funds in or out of New Zealand, or on repatriation of profits, and with a competitive tax regime, investment in New Zealand by corporates and individuals is relatively attractive. Nevertheless, overseas persons who wish to acquire such interests in New Zealand assets must be alive to the consent requirements imposed by the *Overseas Investment Act 2005*.

NEW ZEALAND HAS an open, export-driven and competitive economy that works on free-market principles. Though foreign direct investment in New Zealand is generally encouraged, there are restrictions imposed by the *Overseas Investment Act 2005* (OIA) and enforced by the Overseas Investment Office (OIO). The OIA's purpose is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets. The OIA requires overseas persons to obtain consent where they wish to acquire interests in 'significant business assets', 'sensitive land' and fishing quotas. The OIO has wide discretion to refuse consent to an application, or to grant it with or without conditions.

The OIA applies to 'overseas persons': those who are not New Zealand citizens or ordinarily resident in New Zealand; companies incorporated outside New Zealand; and companies or other entities that are at least 25 per cent owned or controlled by an overseas person(s). It also applies to 'associates' of overseas persons, defined widely in order to identify those ultimately controlling investments.

## OBTAINING CONSENT

To obtain consent, the applicant must meet the 'investor test'. This requires the applicant to demonstrate financial commitment to the transaction, and satisfy the OIO that the 'individuals with control' of the 'relevant overseas persons':

- have business acumen and experience relevant to the transaction;
- have demonstrated financial commitment to the investment; and
- are of good character.

### 'SIGNIFICANT BUSINESS ASSETS'

If the proposed investment is expected to exceed NZD100 million (whether by one transaction or through a series of related transactions), or the overseas person acquires 25 per cent ownership/control of an entity with gross New Zealand assets exceeding NZD100 million, then OIO consent must be obtained.

### AN INTEREST IN 'SENSITIVE LAND'

Consent will be required where an overseas person (directly or indirectly) wishes to purchase or acquire an interest (for greater than three years) in land that is 'sensitive', as defined in the OIA. If a sensitive land application is required, the ➤



---

*New Zealand has in force a network of double-taxation agreements with its main trading partners'*

applicant will need to satisfy the same 'investor test' described above, and also prove that:

- the transaction will, or is likely to, benefit New Zealand when compared to the counterfactual (i.e. the situation absent the transaction); or
- the relevant overseas person intends to reside in New Zealand indefinitely.

Demonstrating benefits to New Zealand is a complicated process, and is measured against many factors.

#### SPECIAL LAND, FARMLAND AND FISHING QUOTAS

In certain situations, 'special land' (qualifying foreshore, seabed, riverbed or lakebed) must be offered for sale back to the Crown. Farmland must be offered for acquisition on the open market before consent can be granted. Regulations set out requirements for farmland advertising.

Consent is also required for overseas persons acquiring an interest in New Zealand fishing quotas.

#### IMMIGRATION BY INVESTMENT

For some high-net-worth individuals (HNWIs), particularly those living in high-tax jurisdictions or volatile regions, immigration is a consideration when setting investment strategy. Recently, New Zealand has become more attractive to HNWIs and their families, and applications for permanent residency are increasingly common.

There are two investment categories that, subject to qualifying criteria being satisfied, can result in New Zealand resident visas being granted to a principal applicant, their partner and any dependent children.

#### INVESTOR 1 CATEGORY

Investor 1 is New Zealand's premium residency visa. The key requirements under the Investor 1 regime are:

- a minimum investment of NZD10 million in New Zealand over three years; and
- at least 88 days spent in New Zealand over the three-year investment period.<sup>1</sup>

#### INVESTOR 2 CATEGORY

The Investor 2 regime is based on a points system, whereby applicants must submit

an 'expression of interest' (EOI) to Immigration New Zealand and go into a selection pool. Points are awarded based on the applicant's age, level of investment funds, English language ability and business experience. If the EOI is successful, Immigration New Zealand will invite the applicant, and their partner and dependent children, to apply for New Zealand residence.

The key requirements under the Investor 2 regime are:

- a minimum investment of NZD3 million in New Zealand over four years;
- a minimum of three years' business experience;
- satisfying English language requirements;
- being under 65 years of age; and
- at least 438 days spent in New Zealand over the four-year investment period.<sup>2</sup>

#### ACCEPTABLE INVESTMENTS

The funds (for both investor categories) need to be invested in 'acceptable investments'. This is an investment that:

- is capable of making a commercial return;
- is not for the applicant's personal use;
- is invested in New Zealand in New Zealand dollars;
- is invested in lawful enterprises or managed funds that comply with all relevant laws in force in New Zealand;
- contributes, or has the potential to contribute, to New Zealand's economy; and
- comprises:
  - bonds issued by the New Zealand government;
  - bonds issued by New Zealand firms traded on the New Zealand Debt Securities Market;
  - bonds issued by New Zealand firms with at least a BBB- or equivalent rating from internationally recognised credit rating agencies;
  - bonds issued by New Zealand registered banks;
  - bonds in finance companies;
  - equity in New Zealand firms (public or private, including managed funds);

- equities in New Zealand registered banks;
- residential property development;
- eligible New Zealand venture capital funds;
- commercial property;
- philanthropic investment (no more than 15 per cent of investment funds); and/or
- 'angel fund' or 'angel network' investments.

#### TAX IN NEW ZEALAND

There are currently no gift duties, stamp duties, land taxes or inheritance/wealth taxes in New Zealand. Capital gains tax applies only in limited circumstances.

#### TRANSITIONAL RESIDENTS

A first-time resident, or a returning expatriate who has been absent for a continuous period of ten years or more, is entitled to a tax exemption when moving to live in New Zealand. With very few exceptions (for example, income from employment or provision of services), all foreign-sourced income of the transitional resident is exempt from tax in New Zealand – even if it is remitted into New Zealand. Concessions also apply in respect of the transitional resident's interests in controlled foreign companies, foreign investment funds and offshore trusts.

#### NEW ZEALAND TAX RESIDENT

A person will be considered a New Zealand tax resident, and taxed on their worldwide income, if they:

- are in New Zealand for more than 183 days in any 12-month period and have not become a non-resident;
- have a 'permanent place of abode' in New Zealand; or

- are away from New Zealand in the service of the New Zealand government.

#### DOUBLE-TAXATION AGREEMENTS

To eliminate situations where an individual may be subject to double taxation, New Zealand has in force a network of double-taxation agreements with its main trading and investment partners.

#### PERSONAL TAX RATES

New Zealand residents are taxed on worldwide income, and non-residents are taxed on New Zealand sourced income. New Zealand's highest tax rate (applicable to income earned over NZD70,000) is currently 33 per cent.

The company tax rate is currently 28 per cent. Income earned by trusts is currently taxed at a rate of 33 per cent, unless it is distributed to beneficiaries in the same tax year as it arises, in which case it is taxed at the relevant beneficiary's marginal tax rate.

#### CONCLUSION

With no restrictions on the movement of funds into or out of New Zealand, or on repatriation of profits, and with a competitive tax regime, investment in New Zealand by corporates and individuals is relatively attractive. This article has, hopefully, provided some practical guidance for foreign advisors, investors and migrants. Nonetheless, as with any engagement with, or investment in, a foreign jurisdiction, caution and local expertise are essential.

<sup>1</sup> Where at least 25 per cent of the investor's funds are made outside of New Zealand bonds <sup>2</sup> Where at least 25 per cent of the investor's funds are made outside of New Zealand bonds



HENRY BRANDTS-GIESEN IS A PARTNER, AND SARAH KELLY IS A SOLICITOR, AT KENSINGTON SWAN IN AUCKLAND, NEW ZEALAND