NEW ZEALAND 'LOOK THROUGH COMPANY – 'LTC'

An LTC is a fiscally transparent tax entity which came into effect in New Zealand on April 1 2011.

This new development has been introduced at a time of prolific success for New Zealand as it cements itself as a credible and preferred hub for structuring wealth for non-residents of New Zealand such as hedge fund billionaires and Middle Eastern sheikhs. The use of a LTC affords its shareholders separate corporate identity, is supported by New Zealand's respected company law, and makes use of New Zealand's OECD status and perception as the world's (joint-) least corrupt country while being tax neutral.

Historically, companies registered in New Zealand have been taxable in New Zealand on their worldwide income at the prevailing tax rate of the time and the company tax rate for income in New Zealand is currently 28% (down from 30% since April).

Features of an LTC

An LTC is typically a regular limited liability company under the Companies Act 1993. However, for New Zealand tax purposes, the shareholders of an LTC (instead of the company) are deemed to:

- Carry on the LTC's activities and have the status, intention, and purpose of the LTC;
- Hold the LTC's property in proportion to their effective look-through interest;
- Be a party to any arrangement that the LTC is a party to, in proportion to their effective look-through interest;
- Do a thing and be entitled to do a thing that the LTC does or is entitled to do, in proportion to their effective look-through interest.

In effect, it could be said that for tax purposes an LTC is viewed as a partnership. This means that the shareholders of an LTC are deemed to derive and incur the income and expenses of the LTC.

For example, if an LTC produces a taxable income of $150,000, that $150,000 is taxed as if it had been derived directly by the shareholder.

New Zealand resident shareholders will pay tax on the company's profits and use losses at their marginal tax rate. The look through treatment applies for income tax purposes only - there is no general capital gains tax in New Zealand nor are there any inheritance or estate taxes or stamp duty land taxes.

A foreign shareholder of an LTC that only receives foreign-sourced income will not have any New Zealand tax liability. If the shareholder is a New Zealand foreign trust (i.e a trust with a foreign settlor and New Zealand trustee), the trustee will not be taxed on its share of the foreign sourced income of the LTC, including income of any underlying foreign company.

In a fiscal sense, the shareholders of the "look through company" are regarded as holding company assets directly and carrying on the activities of the company personally. Therefore, in the normal course of events, a sale of shares in a "look through company" is treated as a sale of the underlying asset.

An LTC is not required to deduct non-resident withholding tax (NRWT) or resident withholding tax (RWT) from distributions made to its owners, such as a New Zealand-resident trustee of a foreign trust. There are, however, few instances in which an LTC will be required to deduct NRWT and RWT from interest payments.

LTCs meanwhile provide all of the benefits of an ordinary limited liability company for legal purposes which include:

- Limitation of Liability
- Ability to protect shareholder loans by assigning them to a trust;
- Ability to change ownership to underlying assets from a legal perspective by moving shares

LTC Company Requirements:

In order for a New Zealand company to be treated as a LTC it must:

- Have 5 or fewer shareholders;
- Be New Zealand resident for tax purposes;
- Issue only shares that have the same voting and participation rights; and
- Have only natural persons or trustees as shareholders.

LTC Filing Requirements

The LTC will be required to file an annual income tax return showing the allocation of income and deductions to each shareholder. Each shareholder must file an income tax return taking into account the amounts allocated in the LTC's return. There may be exemptions to this rule which we at Palladium consider on a case-by-case basis.

Becoming and LTC

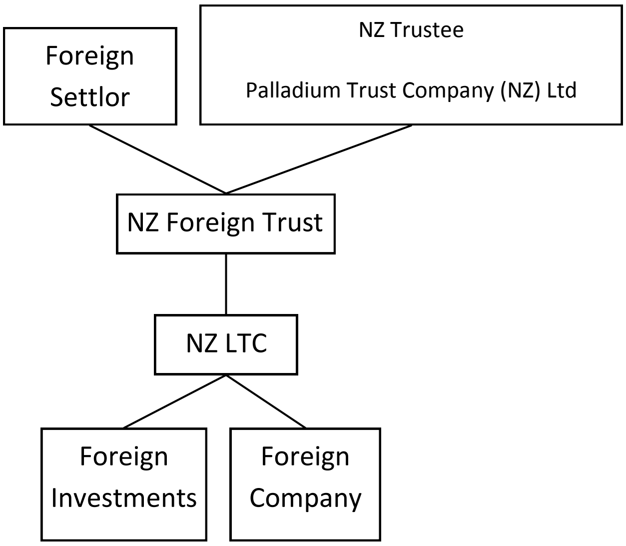
A new company may elect to become an LTC, as may an existing New Zealand company.

Once an LTC, a company will maintain that status until a shareholder revokes the election or the company otherwise losses eligibility (for example, where it has a non-qualifying shareholder or excessive number of shareholders).

Wealth Structuring Applications

While LTCs offer the fiscal transparency benefits of a limited partnership, they also provide the widely recognised legal form of a company and will complement the New Zealand limited partnership and "foreign" trust for international wealth structuring. In some cases LTCs will be used in conjunction with either or both of those vehicles rather than as an alternative as has already been the case for Palladium clients.

A New Zealand LTC owned by our New Zealand foreign trust is a vehicle Palladium would recommend for residents of certain countries to hold foreign investments, including shares in foreign investment companies and foreign trading companies. An example of this structure is illustrated on the following page:



As indicated above, the LTC should exploit the enviable reputation of New Zealand as an OECD alternative to oft vilified "offshore" companies such as BVI Business Companies. In practice, LTCs are more of a Delaware LLC style entity than a BVI company but the likely uses will be similar, such as for trading, investment holding and introducing broking.

Like any other entities in New Zealand commercially involved with financial services, LTCs with these objects should register via Palladium on the newly launched New Zealand Financial Service Providers Register providing a light touch but sensible regime for the comfort of clients, customers and intermediaries.

Please note that like all New Zealand companies, it is widely expected that LTCs will be required to have a New Zealand resident director or "agent". It is not yet clear whether this will be a fully fledged directorship requirement or a looser agency or company secretary requirement – and if the latter, what the powers and duties of that office will be.

For further information, please contact Palladium.

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