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## **NEW ZEALAND LIMITED PARTNERSHIPS AS FOREIGN PROPERTY HOLDING VEHICLES**

In many jurisdictions, stamp duty and other forms of transfer taxes are charged to either one or both of the parties to sale and purchase transactions involving real property and, sometimes, even securities.

Generally such taxes are applied to a proportion of the sale price over and above a threshold specified by the applicable revenue authority. Where the property or securities in question are of a high value then the taxes imposed can be significant.

Many commercial (and some residential) buildings are owned by syndicates of investors. Individual investment holdings within such syndicates can change regularly and, from time to time, investors enter and exit the investment and/or outright ownership of the underlying real property changes altogether. Similarly, investors sometimes die before they have transferred registered ownership of their investment. Such transactions can give rise to costly charges which can denigrate the value of the investment.

One way of ensuring continuity of legal ownership (and thereby potentially reducing transaction charges) is through the use of a company or other legal entity as a property holding vehicle. Trusts (including unit trusts), Limited Partnerships and ordinary Partnerships are also frequently used as property holding vehicles. In many cases these entities or legal arrangements are established and/or registered in a jurisdiction different from that in which the property is situated.

Sometimes the use of such vehicles to hold the property can reduce or defer stamp duty and other transfer taxes when the underlying property is transferred from one owner to another or when investors vary their individual interests.

Obviously the revenue authorities in most countries have well developed anti-avoidance legislation at their disposal. Nevertheless there may at least be some tax deferral benefits available from such investment holding arrangements. Even where transfer taxes are still applicable there can be other benefits to investors than simply holding the property through more traditional means. Such benefits might be of an administrative nature or arise from the provision of a neutral legal and tax venue to investors who each come from different countries.

A Limited Partnership is an increasingly attractive alternative to the trust, foundation and even investment holding company because it can offer similar (and often enhanced) levels of flexibility, confidentiality, asset protection, estate planning and investment opportunities. Limited Partnerships are also generally well recognised in civil law countries and may, in some circumstances, be more tax efficient.

If a Limited Partnership is established in an appropriate jurisdiction then it may not be subject to tax in that jurisdiction on income arising outside of that jurisdiction.

### **Limited Partnerships in New Zealand**



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The Limited Partnerships Act 2008 established a legislative and regulatory regime for the formation and registration of limited partnerships in New Zealand ("NZ"). The NZ Limited Partnership is a welcome companion to the NZ "foreign" trust and further enhances the credentials of NZ as a wealth structuring jurisdiction of choice for discerning high net worth individuals and their advisers.

## **NZ as a wealth structuring jurisdiction**

Private banks and trust companies resident in "offshore" financial centres are increasingly faced with obstacles when structuring for their international clients due to negative perception and, in some cases, "blacklisting" by central governments, revenue authorities and supra-national organisations such as the G20, OECD and FATF. Harsh and often unfair measures are taken against "offshore" financial service providers to punish their "tax haven" status and the perceived lack of transparency in the "offshore" financial centres.

Unfortunately, this also has the effect of preventing quite legitimate wealth structuring using many of these very reputable, well regulated and fiscally transparent jurisdictions.

On the other hand, certain common law jurisdictions, such as NZ are not subject to any of the punitive measures nor negative perceptions affecting the "offshore" jurisdictions.

NZ has grown in prominence as an international wealth structuring jurisdiction over recent years for a variety of reasons including its tax neutrality as regards "foreign" trusts and limited partnerships and its economic and political stability. NZ is a respected OECD and FATF member jurisdiction with a solid commercial, professional and judicial framework.

## **Key features of the NZ Limited Partnerships regime**

A NZ Limited Partnership is a separate legal person and has the legal capacity to exercise all the powers of a natural person or company, subject of course to the laws of NZ and any restrictions contained within the partnership agreement. A NZ Limited Partnership may exist in perpetuity.

A NZ Limited Partnership is an incorporated entity, separate from its partners, having at least one general partner ("GP") and at least one limited partner ("LP"). Any person or body corporate (whether resident or non-resident of NZ) can be a partner, and there is no limit on the number of partners.

The GP is responsible for the management and administration of the NZ Limited Partnership and is jointly and severally liable with the NZ Limited Partnership for all the debts and liabilities of the NZ Limited Partnership. A GP is normally a limited liability company with no significant capital of its own and is not required to make a capital contribution to the NZ Limited Partnership.

The LP's liability is similar to that of a company shareholder in that it is limited to its capital contribution. A LP that participates in the day to day management may lose its limited liability status and become jointly and severally liable for the debts and liabilities of the NZ Limited Partnership. There are, however, certain specified "safe harbour" activities in which an LP may

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participate without losing its limited liability. These activities are similar to those actions which normally require a special resolution by shareholders of a company.

NZ Limited Partnerships must have a written partnership agreement which is similar to a contract made between the GP and each LP. The agreement must contain provisions which provide for such matters as:

- assignment and disposal of LP interests
- restrictions on activities that may be undertaken by the partners
- entitlements to distributions
- termination of the NZ Limited Partnership
- entry and exit of partners
- procedure as regards partnership meetings

The partnership agreement is not publicly registered.

The GP owes specific fiduciary obligations to the NZ Limited Partnership. Conversely, LPs do not owe fiduciary obligations unless specifically imposed by the partnership agreement.

A NZ Limited Partnership is formed on registration with the Registrar of Companies in NZ and not on the earlier signing of the partnership agreement.

The GP has the authority to bind the NZ Limited Partnership. Similar to companies, third parties contracting with the GP need not inquire as to the limits of the NZ Limited Partnership's authority.

Both the GP and the LP can contribute to the NZ Limited Partnership. Capital contributions can take any form (including services) but loans are excluded as capital contributions.

Partners who have made capital contributions are entitled to receive distributions. Payment of distributions is subject to a similar solvency test to that applied to companies.

Registration details for the NZ Limited Partnership and the GP are publicly available from the Registrar of Companies. However, information about the LP is confidential and cannot be publicly accessed.

The interests of the LPs can be very flexible depending on the partnership agreement and can provide for collective investment by any number of investors in any type of property or securities.

## **Taxation of Limited Partnerships in NZ**

NZ Limited Partnerships are fiscally transparent for NZ tax purposes and are not taxed in NZ at the partnership level.

Generally, the NZ Limited Partnership will be structured so that only the LPs are entitled to receive income. LPs who are not resident in NZ will not be subject to tax in NZ on their share of

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the income generated by the NZ Limited Partnership - provided that the income does not have an NZ source.

For the income not to have a NZ source it is normal for the NZ Limited Partnership's assets to solely comprise investments held outside of NZ. Such investments might consist of commercial buildings, farms, factories or upmarket residential dwellings in any jurisdiction in which stamp duty land taxes or other forms of transfer taxes are applicable on the sale and purchase of real property.

## Practical uses

A syndicate of sophisticated investors ("**Investors**") from the BRIC countries (Brazil, Russia, India and China) decide to invest in a high value commercial building ("**Building**") situated in the CBD of the capital city of a country in which transfer taxes are applied to the sale and purchase of real property. Some of the Investors are also concerned about inheritance taxes and death duties to which they may be subject should they die whilst still invested in the Building.

The investors decide to form a NZ Limited Partnership through a NZ trust company or law firm ("**NZ Service Provider**").

The NZ Service Provider then incorporates a NZ limited liability company to be the GP which in turn establishes the NZ Limited Partnership.

The terms of the partnership agreement state the reasons for the partnership being formed and investment criteria to which the GP is required to adhere. The board of directors of the GP can be provided by representative(s) of the NZ Service Provider and the investors/their advisors.

The NZ Limited Partnership will then execute the investment strategy by completing an agreement for sale and purchase of the Building. It is important to remember that in order to maintain its tax neutrality in NZ there should be no income earning assets situated in NZ. There is nothing to prevent the NZ Limited Partnership owning real property or other income producing assets in NZ – but tax will be payable in NZ on income arising in NZ.

The GP will generally delegate day to day management of the Building to a commercial property manager resident in the jurisdiction in which the Building is situated.

The Investors would normally be the LPs - either directly or through companies or trusts in which they have interests. The partnership agreement should be specific to the Investors and provide for how, when, to whom and in what proportions distributions can be made to the LPs. Normally investment returns will be in proportion to capital contributions.

The tax laws to which the Investors and the Building are subject will change constantly. It is therefore essential that tax advice be taken in all relevant jurisdictions and on a regular basis. However, as the NZ Limited Partnership is essentially a "pass through" vehicle then each Investor should be taxed only on the distributions it receives from the NZ Limited Partnership in the jurisdiction(s) to which she or he is resident for tax purposes.



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There will be no tax payable in NZ unless there is income earned in NZ.

Crucially, when any one or more of the Investors decide to sell all or some of their interests in the Building there **may** not be any transfer taxes payable to the revenue authority in the jurisdiction in which the building is situated. This is because the Building itself will not be sold and purchased.

Instead it will be the respective limited partnership interests held by the investors in the NZ Limited Partnership which are transferred.

The diagram on the following page illustrates a possible NZ Limited Partnership structure for the purposes of holding foreign real property.

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