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Oil and gas taxation in New Zealand

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Oil and Gas Tax Guide

Tax professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Oil and Gas Tax Guides, an online series that provides information on tax regimes specific to the oil and gas industry. The Guides are intended to be a supplement to the Deloitte Taxation and Investment Guides, which can be found at www.deloitte.com/taxguides.

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1.0 Summary

The principal New Zealand taxes and rates applicable to companies in the oil and gas extraction business are:

- Corporate income tax 28%
- Goods and services tax 15%
- Non-resident withholding tax*
  - dividends 30%
  - interest 15%
  - royalties 15%

* Subject to reduction under an applicable tax treaty

New Zealand does not have an excess profits tax or alternative minimum tax. Royalties are payable to the New Zealand Government upon extraction of oil and gas, such payments are covered in Section 3.0.

2.0 Corporate income tax

2.1 In general

A New Zealand resident company is subject to tax on all income, whether derived locally or from abroad. A non-resident company is liable for tax only on income sourced from New Zealand.

The definition of residence for tax purposes encompasses any company that is incorporated in New Zealand, has its head office in New Zealand or has its center of management in New Zealand, or a company over which control is exercised by directors in New Zealand, regardless of whether they also make decisions outside New Zealand.

As New Zealand's rules defining corporate residence are broad, a company resident in New Zealand may also be resident in another country. Special consideration should be given to how any relevant tax treaties will address this situation.

Extraction activities undertaken in New Zealand, or above or within the continental shelf beyond New Zealand's territorial sea (as defined in Section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977) will be regarded as having a source in New Zealand. This essentially equates to the New Zealand "exclusive 200 mile zone".

Special rules apply to the acquisition and disposal of petroleum mining permits, exploration and development expenditure and production wells (including costs relating to failed production wells).

2.2 Rates

The corporate tax rate is 28% with effect from the beginning of the 2012 and future income years. A branch is taxed at the same rate as a subsidiary.

2.3 Taxable income

Taxable income is broadly "assessable income" less any allowable deductions. Assessable income includes amounts derived from business, and may also include amounts derived from the disposal of land if the land was acquired with the purpose of disposal or as part of dealing in such property. Assessable income also includes attributed income from controlled foreign companies ("CFCs") and foreign investment funds. Most ordinary and necessary business expenses are deductible in arriving at taxable income.

2.4 Revenue

For a New Zealand resident company, assessable income includes all worldwide income and gains. Non-residents are subject to tax on New Zealand sourced income only, subject to the provisions of relevant tax treaties.

In addition to ordinary concepts of revenue, a petroleum miner will specifically derive assessable income from the consideration received for the disposal of exploratory material or a petroleum mining asset.

2.5 Deductions and allowances

Exploration costs

Exploration costs are deductible in the year in which the expenditure is incurred. Specific rules apply where exploration costs are incurred on property which is subsequently disposed.

Petroleum exploration expenditure includes:

- exploratory well expenditure (expenditure on planning, drilling, testing, completing and abandoning an exploratory well);
- prospecting expenditure (including prospecting by electrical, geochemical, gravimetric, magnetic, radioactive, seismic or other geological methods); and
- expenditure to acquire an existing privilege, prospecting or exploration permit for petroleum.

It is important to note that certain expenditure on petroleum mining assets and 'residual expenditure' is specifically excluded from the definition of petroleum exploration expenditure. Residual expenditure includes:

- application fees payable for a petroleum permit;
- insurance premiums;
- royalties paid under the Petroleum Act 1937 or Crown Minerals Act 1991;
- rates;
- land or building lease payments;
- interest; and
- certain financial arrangements entered into before 20 May 1999.

These items are likely to be deductible under the general rules.

Development costs

A petroleum miner is allowed a deduction for petroleum development expenditure incurred by them. This expenditure may be allocated to an income year by one of two methods:

- the straight line method, whereby expenditure is allocated evenly over the seven years from the income year when the expenditure is incurred; or
- the units of production ('reserve depletion') method.

The reserve depletion method allows all petroleum development expenditure to be allocated over the life of the field (based on proven and probable 2P reserves) as the petroleum reserves deplete. In this way, deductions for petroleum development expenditure better match the field's decline in value. However this method is only able to be used:

- once the field commences production, and
- only in relation to petroleum development expenditure incurred from the first year the field goes into production.

It is also important to note that any election to use this method is irrevocable.

Development expenditure allocated to future income years may become deductible in full in the income year in which the permit is relinquished or disposed of for consideration. Special provisions will apply if the permit is disposed of to an associated person or a person holding the permit on behalf of the petroleum miner.

Costs relating to failed or dry production wells are deductible in the year of abandonment, instead of deductions being spread over seven years. A deduction for any remaining well development expenditure can be claimed in the year that the production well ceases producing and is abandoned, if the taxpayer is allocating development expenditure under the reserve depletion method.

Depletion

Where a well ceases to produce petroleum in commercial quantities and is abandoned, and the petroleum miner is deducting development expenditure incurred on the reserve depletion basis, the remaining deduction which is unallocated to an income year is deductible in the income year that the well is abandoned.

Removal or restoration costs

A petroleum miner is allowed a deduction for expenditure that they incur on removal or restoration operations, including abandonment.

Where this deduction results in a tax loss available to be carried forward, the amount of the deduction may be spread backwards to offset taxable income in earlier income years (as discussed at point 2.6 below).

In circumstances where deductions are not allowed via the spreading method above, but the expenditure is incurred in relation to the monitoring, mitigation or restoration of harm incurred as a result of the discharge of a contaminant, a deduction will be allowed in the year the amount is incurred.

Petroleum mining outside New Zealand

Prior to 4 March 2008, a petroleum miner carrying on petroleum mining operations outside New Zealand through a branch or a CFC could apply New Zealand tax provisions to the foreign operations and deduct expenditure incurred outside New Zealand on exploration or development activities against New Zealand-sourced income where the foreign operations were of substantially the same nature as the New Zealand activities.

However, this position has since been revised and any expenditure incurred in relation to a foreign petroleum mining operation on or after 4 March 2008 can only be offset against foreign-sourced income from petroleum mining operations.

General deductions

A deduction from assessable income is allowed for expenditure or losses incurred in deriving assessable or excluded income, or carrying on a business for the purpose of deriving assessable income or excluded income. This general rule is subject to certain limitations. For example, capital expenditure (with the exception of certain expenses of petroleum miners), expenditure of a private or domestic nature, expenditure incurred in producing exempt income and expenditure relating to employment are generally not allowed as deductions. In addition, expenditure that relates to exempt income or to the derivation of non-resident passive income is also not deductible.

Allowable deductions include normal business expenditure of a non-capital nature (including interest and royalty payments), employee accident-compensation premiums, property taxes (i.e. rates), Fringe Benefits Tax ("FBT") and depreciation on certain assets.

Entertainment expenditure, including business entertaining within New Zealand, is limited to a 50% deduction. Entertainment expenses incurred overseas, however, are 100% deductible. The limit does not apply to staff cafeteria subsidies.

Interest incurred by a company is generally deductible. However, thin capitalization rules apply to limit interest expenditure incurred in certain situations where there is a proportionately high level of debt funding in relation to worldwide expenditure (see Section 5.2).

Legal fees incurred are deductible provided they are not of a capital nature.

A deduction for expenditure is only allowable for tax purposes to the extent to which the expenditure is "incurred" for tax purposes. This means that there must be a definitive commitment to the expenditure or that there is a legal obligation to pay such expenditure. Accordingly, no deduction is allowable for provisions or reserves set aside to cover possible expenditure that might arise for which there is no definitive commitment.

Leasehold costs

Generally, leasehold costs are deductible where they are incurred in carrying on a business for the purposes of producing assessable income.

Expenditure in acquiring a leasehold interest is generally deductible over the life of the leasehold interest on a straight line basis.

2.6 Losses

Tax losses may be carried forward indefinitely, provided a continuity of shareholding test is met at all times from the beginning of the year of loss to the end of the year of carry-forward (the continuity period). Generally a company may only carry forward a loss balance if there is the same group of persons with minimum voting interests of at least 49% during the continuity period. An exception is currently granted to the mineral mining industry, which allows these losses to be offset against future taxable income that is attributable to the mining permit, even if shareholder continuity is broken. These rules do not apply to petroleum miners. There are certain concessions applicable to public or widely held companies in applying the shareholder continuity rules.

Where petroleum miners relinquish a petroleum permit or incur expenditure on the removal or restoration of operations for which they have claimed a deduction, the amount of tax loss available to be carried forward is offset by those deductions. The amount deducted may then be spread backwards to offset taxable income in earlier income years.

Companies may elect to offset or subvent tax losses to other companies within the same tax group where there is sufficient common ownership. A group of companies generally means two or more companies in which a group of persons holds at least 66% of the common voting interests.

To make a valid loss offset, the loss company must be able to carry forward the loss as it has sufficient continuity of shareholders (as discussed above) and the requisite commonality (66%) is met. Where a change in shareholding occurs part way through a year it is possible to carry forward any losses suffered following the shareholding change.

2.7 Foreign entity taxation

Non-resident entities are subject to tax at 28% on their New Zealand sourced income, less allowable deductions, to the extent that such income is not treaty protected or subject to final withholding taxes. Branches are taxed at the same rate as subsidiaries in New Zealand. There is currently a limited exemption for non-resident companies providing services to the petroleum industry involving the operation of a ship to provide seismic survey readings or the drilling of an exploratory or other well.

An amount of income derived by a non-resident company from these activities in an offshore permit area is exempt income if it is derived in a period which starts on the beginning of the 2005-06 income year and ends on 31 December 2014.

3.0 Other corporate income tax

3.1 Additional taxation

There are no other notable direct taxes on businesses. However, royalties are payable to the Crown on petroleum mining activities.

The Crown Minerals Act 1991 governs the allocation of rights to and the management of all petroleum in its natural state. The Crown Minerals (Royalties for Petroleum) Regulations 2013 (the "Regulations") issued pursuant to the Crown Minerals Act 1991 set out the rates and provisions for the payment of royalties on petroleum production from initial permits granted after 24 May 2013. Permits granted prior to 24 May 2013 are managed under the program applicable at the time, until a change to the permit is requested or the permit holder opts into the new Petroleum Programme. The Regulations also set out royalty statement and royalty return requirements for all petroleum permit holders.

The Regulations stipulate the payment of either an ad valorem royalty (AVR) or an accounting profits royalty (APR), whichever is the greater in any given year.

The royalty rates are either:

- 5% AVR, which is 5% of the net revenues obtained from the sale of petroleum; or
- 20% APR, which is 20% of the accounting profit of petroleum production.

If a discovery was made between 30 June 2004 and 31 December 2009, the following applies:

- AVR of 1% for natural gas;
- APR of 15% on the first New Zealand Dollar ("NZD") 750 million cumulative gross (offshore) or 15% on the first NZD250 million cumulative gross (onshore).

In calculating the accounting profit, deductions are made and may include associated production costs, capital costs (exploration costs, development costs, permit maintenance and consent costs and feasibility study costs), indirect costs, decommissioning costs, operating and capital overhead allowance, operating costs and capital costs carried forward and decommissioning costs carried back.

4.0 Tax incentives

4.1 General incentives

There are no specific tax incentives (apart from those stated above) available to the petroleum mining industry in New Zealand.

5.0 Payments to related parties

5.1 Transfer pricing

New Zealand's transfer pricing rules are set out in legislation and are broadly based on Organisation for Economic Co-operation and Development ("OECD") guidelines, although there are some differences. There are no special rules for the oil and gas sector. The Inland Revenue has issued transfer pricing guidelines that set out expectations for how taxpayers should calculate transfer prices, and deal with transactions for tangible and intangible assets and cost sharing. The rules aim to prevent companies from avoiding taxes by fixing artificial prices in transactions between related companies in different tax jurisdictions. Limited risk entities and material financing transactions are a significant focus area for the Inland Revenue's transfer pricing group. For intragroup non-core services, the tax authorities apply a safe harbor of cost plus a mark-up of 7.5%, and on matters not addressed in the transfer pricing guidelines, the OECD guidelines are generally followed. Transfer pricing documentation must be prepared at a minimum to support any cross-border associated party transactions, and unilateral advance pricing agreements are considered to be best practice.

In respect of branch operations, the New Zealand tax authorities do not follow the OECD authorized approach for the attribution of profits to a permanent establishment on the grounds that the updated Article 7 has not been incorporated into any of New Zealand's tax treaties and the Inland Revenue considers it is unlikely that this will happen in the near future.

5.2 Thin capitalization

The funding of oil and gas companies in New Zealand is subject to the same thin capitalization rules as any other New Zealand entity.

The aim of New Zealand's thin capitalization rules is to limit the deductibility of interest on debt of a foreign controlled New Zealand entity or a foreign taxpayer in New Zealand to the extent that the ratio of interest bearing debt to assets of the entity's New Zealand group exceeds the greater of 60% or 110% of the ratio of debt to assets of the company's worldwide group.

The thin capitalization rules apply to all debt, not only related party debt.

The debt percentage calculation for thin capitalization purposes is prepared on a New Zealand group basis. Special rules apply to the calculation of the New Zealand debt-to-assets ratio, the group's worldwide debt-to-assets ratio and the total group assets.

The thin capitalization rules in New Zealand are currently under review and are expected to be modified to become stricter with effect from the 2015/16 income year. Amendments are proposed to extend the application of the rules from non-resident controlled entities to entities majority owned by non-residents (in certain circumstances). Worldwide group tests are also expected to be amended to exclude shareholder debt from worldwide debt calculations.

The thin capitalization rules are also extended to New Zealand residents that have an income interest in a CFC (subject to certain exemptions). Also known as "interest allocation" these rules are designed to prevent an excessive amount of debt from being allocated against the New Zealand tax base. The safe harbor threshold is 75% New Zealand group debt to assets (ignoring investments in foreign equity) and 110% of the worldwide percentage.

An outbound entity would typically not be subject to the interest allocation rules unless the New Zealand group assets are less than 90% of the worldwide group and the total interest deductions of the New Zealand group are more than NZD250,000. In addition there is an adjustment mechanism for outbound entities with finance costs of less than NZD2 million that provides some relief from these rules.

5.3 Interest deductibility

Interest incurred by a company is generally deductible. There are no unique interest deductibility rules or limitations that apply specifically to oil and gas companies. However, thin capitalization rules apply to limit interest expenditure incurred in certain situations where there is a proportionately high level of debt funding in relation to worldwide expenditure and transfer pricing rules may intervene where interest paid to a related party is in excess of an "arm's length" amount.

6.0 Transactions

6.1 Capital gains

New Zealand does not have a general capital gains tax. However, gains on the sale of personal property are taxable where the taxpayer is a dealer in the property, has acquired it for resale or disposal or sold it as part of a scheme or arrangement to derive a profit. Special rules apply to the sale of real property, including land acquired for resale and certain land subject to development.

As discussed at Section 6.2, the sales proceeds from all petroleum mining assets are subject to tax as income of the petroleum miner.

6.2 Asset disposals

In New Zealand, consideration derived from the disposal of all or part of a petroleum mining asset is income of the petroleum miner. Petroleum mining assets exclude land but include:

- petroleum permits;
- assets required for the purpose of undertaking specified activities in a permit area and which have an estimated useful life that depends on, and is not longer than, the remaining life of the permit area; and
- a share or partial interest in the above.

Specified activities for the purpose of the petroleum mining asset definition are activities carried out in connection with:

- developing a permit area for producing petroleum;
- producing petroleum;
- processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user; and
- removal or restoration operations.

In certain circumstances the consideration received as a result of damage to a petroleum mining asset will also constitute income to the petroleum miner.

Where an asset is disposed of to an associated party or exploration expenditure is incurred in the disposal of an asset, a deduction is allowed to the extent that the deduction is utilized to offset disposal income derived from the disposal.

6.3 Like-kind exchanges and involuntary conversions

There are no specific rules for these types of transactions in New Zealand.

6.4 Abandonment

For income tax purposes, abandonment is the disposal of an asset without consideration. Generally, costs incurred on disposal are deductible and no adverse income tax obligations will arise from abandonment of an asset.

Petroleum mining assets will likely be subject to permit conditions which will require the removal of assets and restoration of the permit area.

6.5 Sharing arrangements and farm-outs

Expenditure incurred by the farm in party under a farm out arrangement is deductible where this expenditure would be classified as exploratory expenditure, development expenditure or prospecting expenditure if incurred by the farm out party. Conversely this expenditure is treated as excluded income of the farm out party.

7.0 Withholding taxes

7.1 Overview

New Zealand has withholding taxes payable on dividends, interest, royalties, and payments to non-resident contractors. Withholding taxes will vary depending whether a payment is made to a New Zealand resident or not.

Non-resident withholding tax ("NRWT") must be deducted from payments of dividends, interest and royalties to non-residents.

7.2 Dividends

Resident withholding tax ("RWT") must be deducted at source from certain types of dividend and interest payments made to New Zealand residents. The rate of RWT withheld from dividends paid to resident individuals and companies is 33%.

Dividends paid to a non-resident are subject to a 30% NRWT to the extent not fully imputed. Fully imputed dividends are subject to a 0% NRWT rate where the non-resident has a 10% or more voting interest in the company. In most other cases, the NRWT rate will be 15%. Rates may be subject to further reduction under an applicable tax treaty.

A supplementary dividend can be paid to a non-resident investing with a less than 10% direct voting interest in the company. This supplementary dividend can have the economic effect of removing the NRWT payable.

7.3 Interest

The rate of RWT withheld from interest payments to individuals is 10.5%, 17.5%, 30% or 33% depending on the individual's marginal tax rate and whether a rate election has been made. For companies it is either 28% or 33%. The liability to withhold primarily rests with the person making the payment to account for this withholding tax. Certain recipients may be eligible for an exemption from having this tax withheld.

Interest paid to a non-resident is subject to a 15% NRWT, which may be subject to further reduction under an applicable tax treaty. New Zealand also has an approved issuer levy ("AIL") regime that allows an approved issuer to pay a 2% levy instead of NRWT on registered securities where the parties are not associated.

7.4 Rents and royalties

Royalties paid to a non-resident are subject to a 15% NRWT, which may be subject to further reduction under an applicable tax treaty.

Technical service fees for the provision of services (i.e. not know-how) generally do not fall under the definition of royalties and therefore are not subject to NRWT when paid to a non-resident (except to the extent that the services are connected with the application or enjoyment of 'royalties').

7.5 Other

Payments made to a non-resident for services that have been physically performed in New Zealand, or for the use of personal property in New Zealand, are subject to the 15% non-resident contractors' tax ("NRCT") withheld at source. An exemption certificate can be obtained if the recipient is not subject to tax in New Zealand as a result of the application of a double tax agreement. General exemptions also apply for short-term and low value contracts. Payments of management fees to an associated company offshore will often attract a NRCT liability if offshore employees have been physically present in New Zealand performing management services.

7.6 Tax treaties

Unilateral relief

A foreign tax credit may be allowed against New Zealand income tax applicable to the overseas income, but the credit is limited to the lesser of the actual overseas tax paid on the overseas income and the New Zealand tax applicable to that income.

Tax treaties

New Zealand has a network of 37 double tax treaties ("DTTs") in force with its main trading and investment partners. New Zealand's DTTs generally follow OECD standards. New Zealand adopts the exemption method in its DTTs to resolve double taxation. All of New Zealand's DTTs contain an exchange of information rule based on Article 26 of the OECD convention. In addition, New Zealand has concluded Tax Information Exchange Agreements with 21 offshore financial centres as part of the commitment to the OECD's "Harmful Tax Practices Initiative".

New Zealand Tax Treaty Network			
Australia	France	Mexico	Switzerland
Austria	Germany	Netherlands	Taiwan
Belgium	Hong Kong	Norway	Thailand
Canada	India	Philippines	Turkey
Chile	Indonesia	Poland	United Arab Emirates
China	Ireland	Russian Federation	United Kingdom
Czech Republic	Italy	Singapore	United States
Denmark	Japan	South Africa	
Fiji	Korea	Spain	
Finland	Malaysia	Sweden	

8.0 Indirect taxes

8.1 Goods and services tax

The broad aim of the goods and services tax ("GST") is to tax, at a single rate, all final consumption that takes place in New Zealand. This means that all supplies of goods and services in New Zealand, regardless of whether they are supplied to New Zealand residents or tourists, are taxed at the standard rate of 15% (increased from 12.5% on 1 October 2010).

The broadly based GST applies at a single rate to the total value of goods and services, whether intermediate or final, and includes imported goods and, in some cases, imported services. Financial transactions, residential property leases and sales are exempt. Exports are subject to GST but at 0%, therefore ensuring that exporters can recover GST incurred on their costs. In addition, certain transfers of commercial land (and related assets) between GST registered parties are zero-rated.

A registered person must charge GST "output tax" on all taxable supplies made in New Zealand. This amount of GST must be returned to the Inland Revenue. A registered person is allowed to claim back GST "input tax" on their costs based on the intended actual usage of these costs in making taxable supplies.

8.2 Import, export, and customs duties

In addition to GST, Customs Duty may be payable on certain goods coming into New Zealand. The rate is between 5% to 10% on most goods. Some concessions and duty-free allowances may apply.

New Zealand levies selective taxes on alcoholic beverages, tobacco products, fuels and betting. Customs also collects anti-dumping and countervailing duties.

8.3 Fringe benefit tax ("FBT")

FBT is payable in respect of the provision of employee benefits, such as the private use of company cars, loans, subsidised transport, medical insurance and travel. Employers generally have an option to pay a flat rate of 49.25% per quarter or 43% for three quarters and perform a "square-up" calculation in the fourth quarter. This calculation requires certain benefits to be attributed to the employee who used or received the benefit.

FBT is a deductible expense against assessable business income.

8.4 Excise tax

Excise duty is a tax on certain types of goods or services produced or manufactured in New Zealand, including alcohol, tobacco and petroleum products. Excise duty on refined petroleum products which are not exported is generally NZD0.53524 per litre.

8.5 Stamp tax

New Zealand does not have stamp duty.

9.0 Other

9.1 Choice of business entity

Most New Zealand businesses are similar in form to those in other Western countries. The Companies Act 1993 governs the creation of a company. The most common form of entity for foreign investors is the Limited Liability Company. New Zealand also has a limited partnership regime governed by the Limited Partnerships Act 2008. Limited partnerships have separate legal entity status and limited liability for investing partners. Other legal business structures include general partnerships, joint ventures and trusts.

Unincorporated joint ventures

With exploration and production activities, it is common for these activities to be conducted in an unincorporated joint venture ("UJV"). In these circumstances, the UJV is normally regarded as transparent for tax purposes. Accordingly, each participant should return their proportionate share of a UJV's net income/loss for the year, noting:

- contributions made to the UJV are not assessable income;
- other income is assessable under ordinary concepts (e.g. interest income); and
- deductions will only arise when the UJV incurs expenditure.

Formalities for setting up a company

The process is relatively simple and inexpensive. The first step in setting up a company is to apply to the Companies Office to have the company name reserved. Once the company name is reserved, the incorporation process must be completed within 20 working days. The application for incorporation involves providing essential details about the company such as addresses, shares, shareholders and directors and whether the company should be registered for tax purposes. A company can be incorporated with or without a constitution. Once the company is incorporated, Director and Shareholder consent forms will be required to be signed and submitted.

Requirements for limited liability companies

There is no distinction between public or private companies; most companies are limited liability companies. Unlimited liability companies are rarely used.

Capital. There are no minimum capital or legal reserve requirements. Liquidity ratios have replaced minimum capital requirements as the measurement of corporate financial standing. In special circumstances, equity may be supplied in non-cash form (e.g. machinery, equipment or patents).

Founders, shareholders. There are no nationality limitations. For any company, a minimum of one shareholder applies.

Directors and management. At least one director must be appointed. Alternative directors may be appointed to act on behalf of actual directors. On 2 July 2014, the Companies Amendment Act 2014 and Limited Partnership Amendment Act 2014 received royal assent. These Acts strengthen the rules applying to the governance, registration, and reconstruction of companies, and the registration of limited partnerships in order to protect New Zealand's reputation as a place to do business. One significant change is a new requirement that all New Zealand incorporated companies will be required to have at least one director that:

- lives in New Zealand; or
- lives in an "enforcement country" **and** is a director of a company that is registered in that enforcement country (Australia is the only currently anticipated enforcement country).

Directors of companies will also now be required to provide their date and place of birth to the Registrar when they are appointed and companies will need to disclose the details of their ultimate holding company if they have one. These changes are expected to come into effect by order in council (yet to be passed), although for existing companies, there will be a further six month grace period before the rules will apply.

Companies listed on New Zealand's stock exchange are required to have at least three directors on the board, with at least two independent directors. The roles and duties of the board's chair are separate from those of the chief executive officer, and an audit committee must be established with at least three members and an independent majority. Companies that fail to comply with the listing rules or the corporate governance best practice principles in the New Zealand Stock Exchange Corporate Governance Best Practice Code must disclose such non-compliance in their annual report.

Labour. No special requirements.

Disclosure. The Financial Reporting Act 1993 applies. Generally, companies are required to prepare an annual report and financial statements. For reporting periods starting on or after 1 January 2007, entities must comply with New Zealand International Financial Reporting Standards ("IFRS"). Reduced reporting standards apply to entities that are not publicly accountable and that meet certain other criteria.

There is currently a bill before Parliament which proposes to change this regime. The proposed new Accounting Standards Framework involves a two sector, multi-standard, tiered approach

Branch of a foreign corporation

Overseas companies wishing to conduct business in New Zealand must register with the Companies Office in order to establish branch operations. It is necessary to reserve the exact name of the company as it is registered in its country of incorporation.

A branch must register the overseas name and provide information about the place where the head office is incorporated, its directors and a copy of its constitution. Registration of a branch must be made within ten working days after the start of business in New Zealand.

The cost to register an overseas company online is NZD160 and the required paperwork is more complex than for registration of a subsidiary. Information similar to that required for a subsidiary must be submitted, but it must be backed by additional material about the incorporation of the head office of the branch.

Under the Financial Reporting Act 1993, a branch must file accounts for the worldwide activities of the head office and a set of accounts for the branch; in contrast, a subsidiary only has to file accounts for the local operation. A company operating as a branch might also find it more onerous to comply with the requirement to notify the Registrar of Companies of any changes to incorporation or branch documents.

9.2 Foreign currency

An entity in New Zealand must calculate their taxable income in NZD (transactions denominated in foreign currencies will need to be translated into NZD in accordance with applicable translation rules). Generally foreign exchange gains and losses (both realised and unrealised) are taxable/deductible.

No specific treatment is afforded to the oil and gas industry on the treatment of foreign currency gains or losses.

9.3 Employee rights and remuneration

Employment in New Zealand is governed by both common law and statute. A primary aim of the Employment Relations Act ("ERA") 2000 is to ensure "good faith" bargaining, meaning that both parties must show an honest desire to reach an agreement and adopt specific codes guiding negotiation conduct. Under the ERA, only unions can negotiate collective agreements, although union membership remains voluntary. New staff workers have 30 days to choose between joining a union and staying on an individual contract. Until they decide, they are covered by the union agreement.

The ERA makes it possible to strike in support of a bid to negotiate a multi-employer collective agreement. Employees not involved in strikes or lockouts may not be forced to do the work of affected workers, and replacement workers may not be hired in a dispute unless for health and safety reasons. The ERA established an Employment Relations Authority to investigate and settle issues speedily and effectively, focusing on practical solutions and reducing the number of disputes referred to the courts.

The Employment Relations Law Reform Act 2003 increases protection for workers upon the sale of a business and strengthens employee rights and collective bargaining procedures.

An employer is legally required to provide a written employment agreement before an employee commences work. All employment agreements must provide for effective procedures to handle grievances over discrimination, unjustified dismissal, sexual harassment and similar matters. It is unlawful to discriminate in New Zealand on grounds of race, colour, ethnicity, sex, religion, age, sexual orientation or marital status.

The Parental Leave and Employment Protection Act sets out entitlements, procedures and rights for employees having a baby.

Working hours

The normal work week is 37.5 to 40 hours over five equal days, (35 hours for workers in mining and some other industries). Overtime work may attract a premium, typically 50%, although this varies by industry. There are limits in some industries on the hours worked (primarily for safety reasons).

As from 1 April 2011 an employer can employ new employees on a trial period of up to 90 calendar days provided both parties agree to the trial in good faith and it is included in the employment agreement.

Health and Safety

The Health and Safety in Employment Act 1992 promotes the prevention of harm to all people at work, and others in, or in the vicinity of, places of work. The Act applies to all New Zealand workplaces and places duties on employers, the self-employed, employees, principals and others who are in a position to manage or control hazards. The emphasis of the law is on the systematic management of health and safety at work. It requires employers and others to maintain safe working environments, and implement sound practice.

9.4 Environmental taxes

While not a tax as such, New Zealand does operate an Emissions Trading Scheme. Those in certain activities that create greenhouse emissions are charged for them. The scheme’s intent is to create an incentive to change behaviour and create a market around reducing emissions.

Effectively, one New Zealand Unit (“NZU”) is the right to emit one ton of carbon dioxide, or the equivalent amount of certain other greenhouse gases. The New Zealand scheme covers emissions of the following six greenhouse gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride. These are the greenhouse gases covered by the Kyoto Protocol to which New Zealand is a signatory.

The industries that have obligations under these rules include the energy, synthetic gas, liquid fossil fuel, waste, and forestry and agriculture industries. Some businesses have a legal obligation to acquire and surrender emission units to cover their direct greenhouse gas emissions or the emissions associated with their products. These participants are generally 'upstream' operators, for example transport fuel producers or importers bringing in products to New Zealand. Some businesses have the choice to opt in to the scheme if they carry out a relevant activity. Other businesses receive free emission units that can be used to meet their own obligations or to sell to other firms, for example landowners with forests planted before 1990.

The Emissions Trading Scheme was amended in 2009 in order to moderate its impact during the global financial crisis. A transitional phase was introduced for the period 1 July 2010 to 31 December 2012 whereby participants in several industries including oil and gas are only required to surrender one NZU for every two tons of emissions produced. The transitional phase was subsequently extended beyond 2012 and will continue to apply until further notice.

It is possible to also surrender a Kyoto unit or an overseas unit (approved by the New Zealand Registry) rather than NZUs.

Most businesses and consumers do not participate directly in the scheme. They may notice a small increase in energy prices as organisations that emit gases pass on their increased costs. Others may choose to trade emission units in the same way that stockbrokers or real estate agents trade in their respective markets. These are secondary market traders. They may have specialist expertise in linking those who can reduce their emissions and have spare emission units with those wishing to buy these units.

10.0 Oil and Gas Contact Information

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