Key Facts
LTCs

In April 2011 New Zealand introduced an elective "look through" regime for limited liability companies. The regime is designated "look through" because the company is "looked through" for income tax purposes to the shareholders.

The Basics

- Without an election to be treated as a Look Through Company ("LTC"), New Zealand companies are subject to the provisions of the Income Tax Act 1994, and if resident are subject to tax on their worldwide income, and if non-resident are subject to tax on New Zealand-sourced income.
- Once an LTC election has been made the company's income, expenses, tax credits, rebates, gains and losses are attributable to the shareholders in proportion to their shareholding. These may be used by each shareholder when calculating their income tax liability in their country of tax residence. No resident or non-resident withholding tax applies.
- New Zealand LTCs are a popular choice for international businesses, investors and wealth planners due to the intrinsic tax benefits and protection of this entity.
- LTCs offer a tax advantage that is unique among OECD nations with no other mainstream ("on-shore") options viably offering the same tax benefits for a company.

Key Features

- It retains the status of limited liability.
- It is a tax transparent entity.
- It may hold property of any kind in any location and receive any form of income.
- It must prepare annual accounts which usually do not have to be audited or publicly registered.
- It must file tax returns annually.

Formation & Filing

- The formation of a company in New Zealand is straightforward and reflects the modern corporate code which New Zealand adopted in 1991.
- Once all the necessary information and original documentation is in New Zealand, the company can be formed in 24 hours.
- The company then applies to the Inland Revenue Department to be treated under the LTC regime instead of the usual tax regime.

Once the Commissioner of Inland Revenue grants the election the company becomes an LTC. The salient features of an LTC regime which will be of interest to clients include:

- An LTC must have at least one natural person, New Zealand-resident* director (but may also have other natural person, non-resident directors) and one share.

*Or who is resident in and a director of a company incorporated in Australia.

Key Facts
LTCs

- There is no capital requirement although the shares are denominated according to a monetary value. The minimum value for a share is NZD1.
- No need for a Memorandum of Association as the LTC is deemed to have all the powers of a natural person.
- No need for Articles of Association; if required a standard form constitution regulating the administration of the LTC may be used.
- The LTC may only have five or fewer shareholders during each tax year that the LTC is part of the LTC regime.
- Shareholders may only be non-resident individuals, a trustee for a non-resident trust, another LTC or a resident company acting in a trustee or nominee capacity for a non-resident individual.
- All shares issued must be of the same class and carry the same rights and obligations for each shareholder.
- The following information (and supporting documentation) must be filed with the Registrar of Companies (the Registrar) to form an LTC. All information provided is available on the public register:
  - Proposed LTC name (subject to approval by the Registrar)
  - Full name and residential address for the directors
  - Date and place of birth of all directors (this is not part of the public record)
  - Full name and residential address for the shareholders
  - Details of any Ultimate Holding Company

Annual Returns

An annual return must be electronically submitted by an authorised person of the LTC once a year. The annual return includes:

- Date the annual return was filed
- Details of the LTC's registered address for service
- The names, residential addresses and date of appointment of the directors
- Date and place of birth of all directors (this is not part of the public record)
- The names, residential addresses and shareholding of the shareholders

Financial and Taxation Balance Date

- The default accounting balance date for all companies is 31 March, but may be changed by the directors.
- A company must have a balance date within each calendar year, with the exception of the years of its incorporation and removal from the Register.
- In the event that the company's first or last balance date is not within the same year, accounts may be prepared for a period not exceeding 15 months.
- The default taxation balance date of 31 March may not be changed but part-year first and final tax returns are allowable.

Key Facts
LTCs

Financial Statements

- From 1 April 2014 only "large"* LTCs must prepare GAAP financial statements and these must be audited (and publicly filed) unless 95% of the shareholders opt out of the audit requirement. These GAAP financial statements must be available at the registered office of the LTC within five months of balance date.
- From 1 April 2014 small to medium LTCs are required to maintain basic financial reporting only at their registered office. These must include balance sheet, profit and loss statement, statement of applicable financial policies and comparison figures.
- The director(s) of the LTC is responsible for ensuring that the financial reportings of the LTC are prepared. Where Trident Trust New Zealand is providing director services for large LTCs we will require that professional accountants are appointed to prepare the financial statements and we will arrange for the audit opt out resolutions. Where director services are provided to small-medium LTCs we will require that we be engaged to prepare and maintain the more basic financial reporting.
- If no audit is opted for, no public filing is required for either GAAP financial statements or informal financial reporting.

Taxation

An election to be treated as an LTC may be made on incorporation or, if an existing company wishes to elect, before the start of the first year in which it will be treated as an LTC, i.e., before 31 March of the preceding tax year.

*As at March 2015, for an LTC which may only have non-resident shareholders, "large" is defined as having assets in excess of NZD20 million or total revenue in excess of NZD10 million.

To ensure no New Zealand tax liability applies to the shareholders, a LTC must meet the following requirements:

- The shares are correctly owned (see requirements in the Formation & Filing section);
- All LTC income is derived outside New Zealand. (A trustee shareholder may then distribute that income tax free to the trust's beneficiaries.)

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