

# Taxation Treatment of Non Resident Company Investors

## Introduction

All Forest Enterprises investments released since October 1992 are structured as partnerships of companies, more precisely qualifying companies. The Investors are company shareholders.

Tax law is inherently complex and often dependent on a taxpayer's personal circumstances. The position is further complicated when the taxpayer is a 'non resident'. These Notes are therefore intended as a guide only and reflect Forest Enterprises' understanding and interpretation of the applicable New Zealand tax laws and the professional advice we have obtained.

Although some general indications are provided as to the likely taxation treatment of non residents forestry transactions in their country of residence, you are encouraged to seek advice from your own taxation adviser to clarify the position specific to your circumstances and your country of residence.

## Definition of a Non-Resident

A person is a non-resident for New Zealand taxation purposes if he or she:

- is away from New Zealand for more than 325 days in any 12 month period, or
- is in New Zealand for less than 183 days in any 12 month period, and

does not have an enduring relationship with New Zealand such as a permanent place of abode.

There are separate rules for determining whether a trust is a non-resident.

## Companies and Taxation

Under New Zealand law, a company is a separate legal and therefore a separate taxation entity. A qualifying company (and a Loss Attributing Qualifying Company – a further variation) is a creature of New Zealand tax law and for New Zealand taxation purposes, is treated in many respects similar to a New Zealand partnership. Specifically, any company tax losses pass through the company to the shareholders.

## Non Residents and the New Zealand Inland Revenue

Only persons (individuals and some family trusts) who have a New Zealand Inland Revenue Department (IRD) number can invest in one of our company based forestry investments.

Non-residents who receive New Zealand derived 'income' must file a Non-Resident New Zealand Tax Return (IR3NR) with the IRD. In this taxation context, 'income' is defined to capture both 'taxable profit' and 'taxable losses'. If a non-resident's only New Zealand income is from interest, dividends or royalties that have had Non-Resident Withholding Tax (NRWT) deducted at source at the correct rate, a Tax Return need not be filed.

A non-resident forestry Investor will therefore probably be required to file an IR3NR most years of their investment as in all years preceding harvest they should have tax losses, even if only from the rates, insurance, management fees etc. An IR3NR contains a section specifically for returning losses from loss attributing qualifying companies.

## Tax Losses – New Zealand Tax Position

New Zealand tax law defines most expenditure incurred in the establishment, tending and management of a Radiata pine plantation forest as a deductible expense. During the years preceding harvest the forestry company will therefore normally make a net loss. At the end of the accounting year, each shareholder (Investor) is allocated/attributed their pro rata share of this loss and must account for it individually with the IRD.

As noted earlier, a non-resident is required to file a New Zealand Tax Return as the definition of income captures losses. As a qualifying company is a creature of New Zealand tax law, it is possible that the IRD could take punitive action (late filing fees can be charged) against a non-resident not filing a return, even though there is no tax lost to the New Zealand IRD.



If a non-resident has New Zealand income other than interest, dividends or royalties, the attributed qualifying company loss can be deducted from this other income and consequently reduce the non-residents New Zealand tax liability. If a non-resident does not have New Zealand income against which to deduct the attributed qualifying company loss, the loss is carried forward to future tax years. The Tax Return filed annually by Forest Enterprises with the New Zealand IRD discloses the forestry tax loss attributed to individual Investors together with their New Zealand IRD number.

## **Tax Losses – Country of Residence Tax Position**

As noted in the Introduction, the treatment of a non-resident's New Zealand forestry transactions in their country of residence is a matter each Investor should seek their own advice on. In general terms, we would not expect New Zealand company tax losses attributed to shareholders to be recognised in an Investor's country of residence (for immediate deduction or carried forward for future deduction) because in general terms, the only 'taxable activity' between a company and its shareholders is the payment of a dividend.

It is possible that some countries may treat the investment in a New Zealand forestry company the same as an investment in an 'overseas investment fund', in which case the question of deductibility of the funds losses could be viewed differently.

## **Harvest Income – New Zealand Tax Position**

At harvest, a non-resident Investor will receive their share of the harvest proceeds as a New Zealand dividend.

Under current New Zealand tax law, the company will have paid company tax on every dollar available for dividend distribution at 33% less an amount called a Foreign Investor Tax Credit (FITC). The FITC is approximately 11.82% (the formula is rather complicated), therefore every dividend dollar payable to a non-resident will have had company tax equivalent to a net 21.18% paid to the New Zealand IRD (the residual 78.82% is the non-residents 'taxable' dividend).

Dividends payable to non-residents are then subject to NRWT. Provided the New Zealand dividend is fully imputed (the full company tax has been paid) the rate is 15%. At 15%, the quantum of the NRWT is by design of the FITC scheme, the same as the FITC amount deducted from the company tax payable. As a consequence, the amount of the net dividend paid to a non-resident is 67% of every dividend dollar payable (the same amount as is paid to resident Investors).

If a non-resident's only New Zealand income is a forestry investment company dividend (that has had NRWT deducted), there is no further New Zealand tax liability in respect of this income and a New Zealand Tax Return is specifically not required.

As NRWT is a final tax, it is not refundable in whole or part. Any other New Zealand losses available to a non-resident (forestry losses carried forward or losses from other sources) cannot be offset against an Investor's harvest income dividends.

## **Harvest Income – Country of Residence Tax Position**

As noted in the Introduction, the treatment of a non-resident's New Zealand forestry transactions in their country of residence is a matter each Investor should seek their own advice on.

In general, we would expect the New Zealand forestry dividends to be declared by the non-resident in their country of residence within their worldwide transactions. The quantum of the dividend income declared will be the 78.82% 'taxable' dividend and will be subject to country of residence tax at the Investor's applicable tax rate. Provided a Double Tax Agreement (DTA) exists with New Zealand, the amount of NRWT paid in New Zealand will then be deducted from this calculated liability and the balance will be the tax payable in the country of residence. The nature of DTA's is that the tax already paid overseas counts as a credit against any tax payable locally (in the country of residence).

If the resulting 'tax payable' is negative (i.e. more tax has been paid in New Zealand than the local tax payable), it is not usual for the overseas tax paid to be refundable as this would represent the local government repaying tax collected and retained by another country.