

# The Treasury

## Foreign Trust Inquiry Information Release

### Release Document July 2016

[www.treasury.govt.nz/publications/reviews-consultation/foreign-trust-disclosure-rules](http://www.treasury.govt.nz/publications/reviews-consultation/foreign-trust-disclosure-rules)

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[1]	to prevent prejudice to the security or defence of New Zealand or the international relations of the government	6(a)
[2]	to protect the privacy of natural persons, including deceased people	9(2)(a)
[3]	to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials	9(2)(f)(iv)
[4]	to maintain the effective conduct of public affairs through the free and frank expression of opinions	9(2)(g)(i)
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In preparing this Information Release, the Treasury has considered the public interest considerations in section 9 and section 18 of the Official Information Act.

29 July 2016

Mr John Shewan  
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Dear Mr Shewan

## **Government Inquiry into Foreign Trust Disclosure Rules**

### Background

Thank you for your 20 April email regarding BusinessNZ's contribution to the government inquiry into foreign trust disclosure rules.

We emailed our membership base on 27 April requesting comments on the five questions you provided by 13 May but received only a small number of replies. However, those replies do go some way towards answering questions about the extent to which the business community sees current foreign trust disclosure rules as a reputational risk to New Zealand – in other words, the business community does not see the existing foreign trust disclosure rules as inadequate. But this does not mean questions cannot be asked and improvements made where justified.

Given the first principles stance BusinessNZ takes to policy development, we believe a primary question is whether there is a financial benefit to New Zealand from allowing foreign trusts to exist. Our own feedback and recent related public discussion would indicate that this is the case, especially as a number of professions across the business community have dealings with foreign trusts for legitimate reasons. Therefore, BusinessNZ does not believe any kind of knee-jerk reaction, such as banning foreign owned trusts, is needed. Even if there are isolated instances of foreign trusts established for unwelcome purposes, most have legitimate reasons for their existence and should be retained.

Looking more broadly, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Review Report of 2013 rated New Zealand as “compliant”, the highest possible ranking. New Zealand is typically viewed as a stable, transparent and consistent country with which to make financial transactions. Any swift and unnecessary changes to tax policies that are not evidenced-based and considered would in all likelihood damage that position.

## Response to questions asked

Taking into account our comments above, of the five questions asked comments received were primarily in relation to the first two, involving the obligation to capture and, where required, disclose to government authorities.

Since the release of the 'Panama Papers', there have been suggestions that foreign trusts in New Zealand have been used for money laundering, or for concealing either taxable assets, or taxable income from foreign tax authorities. Obviously, we have to ensure that the required reporting is sufficient to identify any potential for these activities. It is critical from an international point of view that New Zealand is not looked upon as a jurisdiction that facilitates tax avoidance.

In examining the tax avoidance issue, it will be important to determine whether the current rules are sufficiently transparent so that the IRD can report effectively on the data required under the particular tax agreement. If that is the case, the argument for additional reporting is not strong. However, if the rules are currently inadequate, then the possibility of enhancement to ensure New Zealand can meet its tax agreement obligations for information sharing will need to be examined.

With question 4, seeking our recommendations for changes to the foreign trust disclosure rules or their enforcement, the answer, if any change is required, would most likely involve increased transparency. This could mean establishing a register of foreign trusts and having New Zealand authorities be more proactive in providing details of overseas owned trusts to their home government(s) as a matter of course, rather than reactively on request as is currently the case.

Another issue we would like the review to consider is whether there is a consistency of obligations across professions in New Zealand. In other words, whether those with the largest exposure to, and involvement with, foreign trusts have appropriate responsibility (with oversight and enforcement if not) to identify and disclose the trusts' existence and activities. If one sector of the business community has prescribed obligations that are rigorously applied, while others do not, then inevitably there will be occasions where inappropriate behaviour could arise.

Question 5 asks what other actions might be taken and we would presume the review will consider overseas investment screening. A New Zealand example of this concerns overseas investment in farmland, whereby the Overseas Investment Office (OIO) goes to considerable lengths to identify the actual buyers (i.e., the people behind the trusts) and apply good character tests to them. While it is almost impossible to ensure a perfect outcome in every case, BusinessNZ notes that the OIO, with additional resources following a review of fees, is currently reviewing its processes to provide greater levels of assurance around the reputation of offshore buyers.

Last, from a wider perspective we would like to point out that the release of the 'Panama Papers' has caused a whirlwind of political and media frenzy that the Government has been forced to respond to. Therefore, we expect any recommendations to come out of this inquiry to be measured, and not to look beyond what any evidence might clearly reveal.

Yours sincerely

A handwritten signature in black ink, appearing to be 'KH', with a small dot at the end of the final stroke.

Kirk Hope  
CEO  
BusinessNZ