

The Treasury

Foreign Trust Inquiry Information Release

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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)
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Inland Revenue
Te Tari Taake

POLICY ADVICE DIVISION

PAD report: Global Forum Review of New Zealand

Date:	13 October 2011	Priority:	Medium
Security Level:	Sensitive	Report No:	PAD2011/235

Action sought

	Action Sought	Deadline
Minister of Revenue	Note the contents of this report Refer copy of report to the Minister of Commerce	None

Contact for telephone discussion (if required)

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13 October 2011

Minister of Revenue

Global Forum Review of New Zealand

In 2009, the G-20 directed the OECD to establish the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum). The membership of the Global Forum currently stands at 102, and continues to increase. A core activity of the Global Forum is to conduct peer reviews of members, so as to ensure compliance with international standards on transparency and tax-related exchange of information. The peer review of New Zealand is now complete, and the Global Forum published a report on New Zealand, the *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: New Zealand 2011: Combined: Phase 1 + Phase 2* (the Global Forum Report), on 2 June 2011. A copy of the Global Forum Report is attached, for your information.

This present report (PAD2011/235) updates you on progress made to date in addressing the recommendations that were made in the Global Forum Report, and is for your information only. However, we recommend that you refer a copy of this report to the Minister of Commerce, for his information.

The Global Forum Report is a very good outcome for New Zealand. It gives a very positive assessment of New Zealand's legal and regulatory framework, and it concludes that all essential elements are in place for full transparency and effective exchange of information in tax matters. Moreover, based on peer input from our tax treaty partners, New Zealand's practices for exchange of information are assessed as being of a very high standard. (We also note that the Global Forum Report on New Zealand compares favourably with a similar Global Forum Report on Australia, published in January this year.)

However, the Global Forum Report does identify a small number of minor concerns, and it includes recommendations for rectifying these issues. The recommendations are as follows:

I. Nominees

An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.

II. Company registrations

New Zealand should implement a proposal currently being progressed by the Ministry of Economic Development to tighten the requirements around company directors and company registration (for example, to require companies to have at least one resident director or local agent).

III. Liquidated companies

New Zealand should require that accounting records and underlying documentation be maintained for liquidated companies for at least 5 years.

In addition, the report includes a generic recommendation (made to all jurisdictions except those with an existing large network of exchange of information treaty arrangements).

IV. Exchange of information network

New Zealand should continue to develop its exchange of information network with all relevant partners.

Under the Global Forum's methodology for the review process, New Zealand has a year to take steps to address these recommendations and to report back to the Global Forum.

We consider that New Zealand should comply with the recommendations. The key reasons for doing so are as follows:

- ◊ The recommendations are minor. Only recommendations I and III (nominees and liquidations) require any specific action. We understand that, in fact, these two recommendations are generally being complied with for other reasons, and that our only deficiency is merely the lack of an express requirement under domestic law.¹
- ◊ As a member of the Global Forum, and having committed to the international standards for transparency and exchange of information, New Zealand has an obligation to comply with Global Forum requirements.
- ◊ New Zealand has been a strong supporter of the work of the Global Forum and, before that, of the work on OECD harmful tax practices. It is in our interests for other jurisdictions to improve their practices for transparency and exchange of information, as this can be expected to culminate in improved compliance by our tax residents. To this end, New Zealand itself needs to fully comply with the standards.

¹ For example, although there is no express requirement under New Zealand for a nominee to know who he or she is acting for, this information would normally be held as a consequence of the general fiduciary obligation owed by the nominee to the beneficial owner.

- Although the Global Forum is not able to impose sanctions for non-compliance, the Global Forum reports back to the G-20, and G-20 leaders have made clear statements that they will impose sanctions against non-complying jurisdictions to protect public finances and financial systems. The fact that, in 2009, this threat induced even the most recalcitrant jurisdictions to commit to the international standards demonstrates that countries are taking the G-20 seriously on this issue.

Recommendations I to III concern aspects of company law (which is administered by the Ministry of Economic Development). We have engaged with the Ministry of Economic Development (MED) and the Ministry of Justice throughout the peer-review process. In addition, since the publication of the Global Forum Report, we have discussed the implementation of the recommendations with MED. The outcome of those discussions is as follows:

- As regards recommendation I (nominees), MED is giving active consideration to this issue as part of a wider programme of work arising from the strategy document *Strengthening New Zealand's Resistance to Organised Crime: An All-of-Government Response*, August 2011. MED expects to have a work plan in place for the nominees issue by the end of October 2011.
- As regards recommendation II (local director or agent), MED advises that the proposal to which the recommendation relates will be progressed in the Companies and Limited Partnerships Amendment Bill, approval for introduction of this Bill was granted on 6 October 2011.
- As regards recommendation III (liquidations), MED advises that the current requirement is two years, but that Cabinet has agreed to increase it to six years, which will comply with the recommendation. [3]

The feedback received from MED indicates that work to address recommendations I, II and III is currently in train. As noted, recommendation IV (exchange of information network) does not require any specific action (it merely requires New Zealand to continue to develop its exchange of information network with all relevant partners).

On the issue of recommendation I (nominees), a key issue that Inland Revenue faces is not that the information on beneficial owners is unavailable but that it is currently difficult to ascertain whether registered shareholders hold their shares beneficially or as nominees. If this issue is addressed as part of New Zealand's response to the Global Forum recommendation, Inland Revenue will also benefit.

We will report to you further on this matter in due course.

Recommendation

We recommend that you:

- (a) **Note** the contents of this report.

Noted

- (b) **Refer** a copy of this report to the Minister of Commerce, for his information.

Referred

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Policy Advice Division

Hon Peter Dunne
Minister of Revenue