

# 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)

Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

[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)
[5]	that the making available of the information requested would be contrary to the provisions of a specified enactment [the Tax Administration Act 1994]	18(c)(i)

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [2] appearing where information has been withheld in a release document refers to section 9(2)(a).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9 and section 18 of the Official Information Act.

April 2016

## Foreign trusts - background note

- Trust rules are designed to ensure that New Zealand residents pay tax on their worldwide income and can't hide money offshore
- Rules have been in place since 1988
- Disclosure requirement took effect in 2006 and was backed by Labour, National and NZ First
- At the time, Dr Cullen said: "The government has sought to develop policy that works for all concerned, one that enables New Zealand to co-operate with other tax jurisdictions while not disrupting the legitimate financial transactions of foreign trusts."
- Initial disclosure required is for trustee to provide IRD with trustee's details and the name of the trust (this information is automatically shared with Aus.)
- [4] because their treatment is consistent with our tax framework and we have a strong record of information exchange
- Trustee legally required to keep lots of detail, including the trust deed, details of settlors and beneficiaries, and details of the trust assets
- If a treaty partner requests information on a trust:
  - Under domestic law, IRD can require this information to be handed over and
  - Can then share it with the foreign tax authority
- IRD regularly audits NZ companies that provide trustee services
- [4]
- To the question of "how does a foreign tax authority know to come to NZ" Many ways"?:
  - Like us, tax authorities do their jobs by conducting audits and getting access to relevant documents held by taxpayers and/or their tax advisors
  - The documents may include descriptions and diagrams of structures that show the existence of a trust.
  - Under a trust arrangement, the NZ trustee or the trust will appear as part of the documented structure.
  - The tax authority may check banking information and see an account held by a New Zealand trust receiving funds.
  - Indeed, a foreign tax authority may only know about a transfer of funds to a New Zealand bank account and may ask us to inquire as to the ownership of that account and discover a New Zealand trust that way.
  - The foreign tax authority may find out about the foreign trust because IRD actually told them about it – without them even asking.
  - However, they get that information, the tax authority will ask IRD about that trust/trustee
  - IRD has always been able to comply with such requests (information has been provided to over 20 treaty partners)
  - Tax authorities do not tend to go on "fishing expeditions"
- These foreign trusts do not owe tax in NZ – any risk is reputational
- OECD Global Forum has reviewed our transparency and information exchange practices – including in respect of foreign trusts and we have been given the highest grade: compliant. The 2013 report did highlight some minor deficiencies in our non-trust laws, which have since been rectified

- IRD and Treasury have raised concerns about our disclosure rules, but also pointed out that any work in this area would “divert compliance resources away from the general business of collecting NZ tax”.
- In terms of the BEPS work programme, the Government has prioritised initiatives, that would actually increase NZ's tax take
- This is reasonable given that clear implication from the OECD report is that our reputational risk is low
- The tax policy work programme contains a number of items designed to firm up our domestic base and this work is progressing well
- As the PM has repeatedly said, if the international community does raise concerns with us, we would be happy to reconsider our disclosure rules