

The Treasury

Foreign Trust Inquiry Information Release

Release Document July 2016

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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)
[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)

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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.



Mr John Shewan
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The Treasury
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20 May 2016

Government Inquiry into Foreign Trust Disclosure Rules

Dear Mr Shewan,

We refer to your email of 20 April 2016 inviting feedback on the Government Inquiry into Foreign Trust Disclosure Rules (the Inquiry).

General comments

Taxing trusts based on the residence of the settlor and the source of income rather than the location of the trustee remains the appropriate policy setting in New Zealand. The question is whether the manner in which New Zealand applies those rules is conducive to the operation of the international tax system, both to promote the integrity of that system and to preserve New Zealand's valuable reputation in international affairs.

It is not New Zealand's role to be the prime enforcer of other countries' tax systems. However New Zealand should be in a position to provide reasonable assistance to other countries with the enforcement of their laws when requested, just as New Zealand seeks assistance from other jurisdictions.

In our view, the two key matters to be addressed from the Inquiry are:

- ensuring adequate information is collected on trusts administered in New Zealand so Inland Revenue can discharge its obligations under international treaties and other agreements to provide appropriate support to foreign revenue authorities; and
- enforcement of anti-money laundering (AML) rules to address the risk of illegitimate funds being administered from New Zealand.

We address these points further by responding to the specific questions you set out.

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Responses to specific questions

1. *Whether you consider the existing foreign trust disclosure rules are adequate to ensure New Zealand's reputation as a country that cooperates with other jurisdictions to deter abusive tax practices?*

There are two aspects to the existing disclosure rules that may need to be addressed. The first is that in the absence of collecting information regarding the settlor and beneficiaries of a trust, Inland Revenue's ability to discharge the Government's obligations to provide assistance to foreign revenue authorities is limited.

The second is that there needs to be sufficient enforcement of the existing record keeping requirements, and consequences for not complying, to ensure there is a strong incentive for voluntary compliance. There appears to have been minimal enforcement activity to date.

New Zealand's disclosure rules will be bolstered with effect from 1 July 2017 with the introduction of the Common Reporting Standard under the Automatic Exchange of Information rules (AEOI) developed by the OECD in conjunction with numerous non-OECD countries, including low tax jurisdictions. Critically, the AEOI rules will require disclosure of settlor and beneficiary details to Inland Revenue for automatic sharing with home countries under the agreed mechanism.

In our view, AEOI should be the focus for disclosure regarding foreign trusts.

We expect most, if not all, foreign trusts will (and certainly should) be subject to the AEOI regime either by virtue of having a professional trustee or because the money within the trust is managed by a person in the business of managing money. However, we recommend the Government takes advice to ensure foreign trusts will fall within the AEOI regime, and makes any necessary legislative changes to ensure this is the case. This should be supported by a proactive programme of enforcement by Inland Revenue.

To facilitate efficient enforcement activities, consideration should also be given to require persons providing professional trustee services to non-residents to be registered or licensed.

2. *Concerns have been raised that foreign trusts may be used as vehicles to hide investments that might not have a legitimate source. Do you consider that the existing anti-money laundering/countering foreign terrorism legislation is able and sufficient to address such concerns?*

The AML regime is crucial in protecting New Zealand from being a conduit for illegitimate funds. The AML regime is governed by the Anti-Money Laundering and Countering Finance of Terrorism Act 2009 (AML Act). Prima facie the AML Act should require professional trustees of foreign trusts to undertake detailed AML due diligence on settlors, beneficiaries and the source of funds within a trust.

However, our perception is that some professional trustees of foreign trusts may believe that they are excluded from AML under the exemptions for lawyers and accountants. The latter view appears to be shared by some Government agencies.



John Shewan
20 May 2016

We recommend the Government takes advice on the requirement for professional trustees to apply the AML rules, and if necessary, make changes to ensure there is no doubt over the application of those rules. Again, enforcement of these requirements is then vital to support voluntary compliance.

3. *If no to either of the above questions, is this because the law is not adequate or because the enforcement is not sufficiently rigorous?*

As mentioned above, it is important to ensure that both the AEOI and AML rules apply to professional trustees servicing non-residents. If necessary, this may require amendments to current rules. The integrity of both systems relies on there then being rigorous enforcement of those rules.

4. *What changes to the foreign trust disclosure rules or their enforcement do you recommend?*

We have covered this in the answers to earlier questions.

5. *What other actions might be taken?*

We have covered this in the answers to earlier questions.

We are happy to elaborate on any of these points in greater detail if that is helpful to the Inquiry.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'G. Nightingale'.

Geof Nightingale
[2]

A handwritten signature in blue ink, appearing to be 'M. Russell'.

Mark Russell
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