

The Treasury

Foreign Trust Inquiry Information Release

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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.



4 May 2016

Mr John Shewan
c/o Suzy Morrissey
The Treasury
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Wellington 6140

Dear John

Government Enquiry into Foreign Trust Disclosure Rules

This letter constitutes our submission to the Government enquiry into the foreign trust disclosure rules. Covisory Trust is a provider of trustee services and trust advice both in relation to trust and taxation matters. We provide services to both foreign and complying trusts as defined for the purpose of the Income Tax Act 2007 (ITA 07).

While we are only trustees for two foreign trusts, we have provided advice to other trust providers and to a number of foreign trusts and we feel it appropriate to offer our view and input on the current review.

We acknowledge that the OECD has reviewed New Zealand's foreign trust regime as part of its review of the exchange of information and countering tax avoidance globally. While New Zealand may have received a clean bill of health, this is against the current standard of acceptable practice. We question whether New Zealand can adopt a best practice standard as opposed to the current acceptable standard.

To this end, we suggest that as a policy matter New Zealand needs to decide not if it keeps foreign trusts as an entity, which we feel it should, but what level of further disclosure or regulation could be made to further bolster the regime and its acceptability internationally.

As noted, we do consider the regime is beneficial and that there are a number of other examples of foreign countries which provide similar regimes, eg LLCs in the USA and conduit taxation relief for companies in Australia. Every country has some element of relief for non-residents built into their taxation system and New Zealand is no different with its foreign trusts.

If New Zealand wanted to adopt a best practice standard with regard to the administration of foreign trust regimes, consideration could be given to the following amendments to the disclosure regime:

1. The IRD should obtain a copy of the deed at the time the trust is registered, not simply the current IR607 form.

2. Each time there is a change in beneficiaries be it by way of appointment or removal, there should be a positive obligation on the trustee to notify the IRD of that change. The reason for this is that the trusts provide a mechanism to get around what are essentially bearer share rules. While bearer shares have largely been removed and replaced internationally, by having a New Zealand foreign trust own ordinary shares in a foreign company, those shares can be transferred without the knowledge of change of ownership of the foreign company by simply changing the beneficiaries and trustees of the trust. Provided the trustee remained the same, it is likely that there is no requirement for the foreign company to be notified of the change in the beneficiary. There is likely to need to be for a change in the trustee as legal ownership would change, but again this could be circumvented by simply changing the directors of a corporate trustee. Therefore, foreign trusts can be used as a substitute for bearer share structures. To this end, the IRD also needs to track who the beneficiaries of these trusts.
3. By doing this, it would also improve the disclosure from New Zealand in terms of beneficiaries under the BEPs, FATCA and GATCA regimes.
4. If this was coupled with the continuing requirements under anti-money laundering and know your client regimes for the trustee to have details of beneficiaries, that information in itself should then be available to the New Zealand IRD who could request it under the general information gathering powers under the Taxation Administration Act.
5. We question also whether the New Zealand IRD should receive a copy of the financial statements each year for each foreign trust. This would ensure that they are prepared and signed off correctly. This in itself would ensure better governance of the trusts.
6. While not a taxation matter, the whole question of trustee regulation and a statutory record of trusts is one which does warrant a wider discussion in this forum. New Zealand currently does not have a register of trusts yet it does a register of limited partnerships (albeit with limited disclosure) and companies. Perhaps it is time to also consider a register of trusts which could include foreign trusts.
7. There should also be some sort of regulation of trustees in New Zealand. While this falls outside of the scope of the current regime around disclosure, there would certainly be benefits in providing some sort of prudential supervision and registration of trustees of foreign trusts. While there are exceptions for trustees who are members of CAANZ or the New Zealand Law Society, these should probably be ramped up to be more significant.

We have endeavoured to keep our points brief without expansive discussion or submission. We would welcome the opportunity to further expand on any of these points if you felt it was relevant. We do not seek to be interviewed but would be happy to answer any specific questions that you may have.

Yours Sincerely
Covisory Trust Services Ltd



Nigel Smith
Director

