

The Treasury

Foreign Trust Inquiry Information Release

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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.

THE NZ TRUSTEE COMPANIES ASSOCIATION LIMITED

NZ Trustee Companies Association Limited Submission to the Government Inquiry into Foreign Trust Disclosure Rules

This submission is on behalf of the NZ Trustee Companies Association Limited (“TCA”). The TCA comprises New Zealand’s leading managers of what are generally termed “foreign trusts”. In general terms these foreign trusts are established under New Zealand law and managed in New Zealand.

The New Zealand industry is built around long-standing relationships, stability and trust – we are a safe haven for the management of high net wealth family assets. That is especially important for families from less stable regions of the world. By having family wealth managed by a New Zealand foreign trust, families from unstable regions can guard against unfair expropriation of wealth, better protect family safety from, for example, criminal cartel violence, and better ensure smooth inheritance and succession given the uncertain inheritance laws applying in many overseas countries.

In effect New Zealand foreign trusts export high value wealth management and family counselling services. New Zealand tax is paid on the income this generates. Bell Gully, in a report published in 2014, estimated the gross income earned in New Zealand by this service industry to be about \$25 million per annum. We consider this to be a low estimate (more likely more than double this).

This is still a relatively small niche business. It is one of the few areas young New Zealand professionals can stay in New Zealand and be involved with international financial markets and develop skills in that area. This should have spin-off benefits in terms of developing our own capital markets the thinness of which has often been cited as one reason for New Zealand’s history relatively low productivity improvement. New Zealand foreign trusts also provide New Zealand with a valuable link between our economy and international high wealth families facilitating overseas investment into New Zealand.

Any portrayal of New Zealand foreign trusts as vehicles for international tax evasion is wrong. A service industry exporting family wealth management relies on trust and safety – our political stability, honest government, respect for property rights and high quality professionals. It is necessary for the industry that New Zealand not impose an extra layer of income tax on offshore wealth merely because the family chooses to have it managed from New Zealand. There are many other countries that also try to offer the same services without an extra layer of tax including the UK and USA. No additional New Zealand tax on non-New Zealand income derived by non-residents is a pre-requisite for the industry locating here but not the real reason which is safety and trustworthiness.

New Zealand’s international reputation is also of paramount importance to TCA. TCA supports reasonable measures shown to be desirable in order to protect that reputation. In terms of the Inquiry’s terms of reference, TCA supports New Zealand actively participating in multilateral efforts to enforce taxation laws.

Our submissions in response to the specific questions you have asked are as follows:

- 1. Are the existing foreign trust disclosure rules adequate to ensure New Zealand's reputation as a country that co-operates with other jurisdictions to deter abusive tax practices is maintained?***

In TCA's view New Zealand information disclosure rules should be such that they are fully sufficient to enable the Inland Revenue Department to meet all its requirements under best international practice. Best international practice continues to evolve. Current best international practice is the Automatic Exchange of Information ("AEOI") a Common Reporting Standard ("CRS") as developed by the OECD. Current disclosure requirements on foreign trusts have become outdated as this new standard has developed. However, officials are currently working on CRS rules for New Zealand the aim of which is to meet AEOI requirements. TCA is co-operating with officials on this work and supports it.

TCA supports the comments in the submission by Olivershaw on the need to consider whether some additional reporting requirements to Inland Revenue would be desirable in order for IRD to be confident that it has all the information it requires meeting its international information exchange obligations.

Disclosure rules need to be buttressed with an administrative capacity and willingness on the part of IRD to ensure that information disclosed is exchanged as envisioned by AEOI. We are confident in Inland Revenue in that regard. OECD has reported that jurisdictions with which New Zealand has exchange of information obligations generally consider New Zealand to be an exceptional 'exchange of information' partner¹.

- 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 (AML/CFT) legislation is able and sufficient to address such concerns?***

TCA considers that our AML /CFT law is able and sufficient to address any concerns in this area. TCA agrees with the comments in the Olivershaw submission that the consideration should be given to the current exemption for accountants, lawyers, and real estate agents.

- 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?***

¹ Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer reviews: New Zealand 2011, OECD, p 76.

Not applicable.

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

In TCA's view it is critical that existing rules protecting the privacy of information provided to IRD continue. Public disclosure of sensitive commercial or private information held by New Zealand foreign trusts would be likely to create intra-family difficulties as well as expose overseas high wealth families with assets managed by such trusts open to the threat of unfair expropriation and the threat of physical violence that has led such families to use New Zealand as a safe haven for the management of their wealth. Without doubt, if New Zealand were to consider public disclosure of family information the funds would move to other countries that protected their rights to privacy but are less likely to be as co-operative as New Zealand in combating tax evasion and illicit activities. This would be detrimental to international efforts to improve international tax enforcement.

5. *What other actions might be taken?*

Measures to ensure that information is disclosed to the revenue and other appropriate authorities are effective only to the extent to which such disclosure requirements are complied with. Any laws face the possibility of a degree of non-compliance. The appropriate response is to ensure that there is someone in New Zealand that can be held to account for any non-compliance. In that regard current law seems to be deficient. A foreign trust can be established in New Zealand and not comply with disclosure or other rules. The current sanction is that the trust becomes taxable on its worldwide income but this can be avoided by then moving out of New Zealand.

TCA thus supports a review of the current regulatory regime along the following lines:

- There should be a register of foreign trusts operating in New Zealand. This register will record the name of the trustee, its address, and place where trust documents may be inspected.
- The registrar could be Inland Revenue, or the Companies Office.
- A requirement of registration should be that one trustee is licensed to be a trustee of foreign trusts. The licensing requirements could be along the lines of the current requirements for a "qualifying resident foreign trustee" although it may be appropriate for the licensor to refuse to license a particular person whose professional association otherwise might entitle them to be licensed. It should be mandatory that there should be a qualifying resident trustee for every foreign trust. This means that at least one trustee, or director of a trustee company, must be professionally qualified.
- If the trustees of a trust hold the trust out to be a registered foreign trust when it is not so registered or when it is not qualified to be registered the trust should be subject to a monetary fine. This fine could be incremental for repeated and substantial offending. This type of regulation is probably best handled by the Registrar of Companies.

- If the trustees of a trust hold the trust out to be a registered foreign trust **knowing** that it is not so registered or **knowing** that it is not qualified to be registered, the trust should lose its tax exemption on foreign income from the time the trustees falsely held the trust out to be a registered foreign trust. The inclusion of the knowledge requirement is to prevent clerical or technical errors resulting in the imposition of significant and disproportional tax liabilities, with a time for rectification for inadvertent non-registration.
- Given the personal and family confidences involved in many foreign trusts, information as to the trust deeds, settlor(s) and beneficiary(ies) needs to be kept confidential unless there is a need to disclose to an appropriate authority as is now the case. Failure to keep proper records will result in a fine with disqualification for a serious breach.
- If there is a need to offset government costs of managing these rules a modest annual registration fee could be charged. We would suggest \$350 per year, per trust.

Rules along these lines are modelled on those of some other respected jurisdictions, such as the USA, in particular the States of New York, New Hampshire, Washington, Wisconsin, South Dakota and Delaware.