

The Treasury

Foreign Trust Inquiry Information Release

Release Document July 2016

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.



M&H Chartered Accountants & Advisors

27 May 2016

Mr John Shewan
c/- Suzy Morrissey
The Treasury
P O Box 3724
WELLINGTON 6140

Level 4,
16 Viaduct Harbour Ave
PO Box 5549 Wellesley St
Auckland 1141, New Zealand
p. 09 377 7027
f. 09 307 0307
e. mail@mthtax.com
w. www.mthtax.com

GOVERNMENT INQUIRY INTO FOREIGN TRUST DISCLOSURE RULES - SUBMISSIONS

Introduction/Background:

1. Southwest Trustees Limited and SHRM Trustees (NZ) Limited (for the purposes of this letter collectively known as “Southwest”) are a small provider of trustee services in the foreign trust industry. Southwest is a “qualifying foreign resident trustee” as defined under the Tax Administration Act 1994 and has provided trustee services to the foreign trust industry for over 10 years.
2. Through our involvement with the Society of Trust and Estate Practitioners (“STEP”) NZ Branch we are aware of (and have reviewed) the submissions made by STEP to your Inquiry dated 20 May 2016.

Support/Submission:

We wholly endorse and support all of the submissions made by STEP and, in particular:

1. We are not aware of our (small) client base using the New Zealand foreign trust regime to abuse the tax base of either NZ or their home jurisdiction and/or that funds invested through NZ Foreign Trusts are of dubious or criminal origins. Our “Know your Client” (“KYC”) due diligence and Application Processes are as rigorous as they can be and at least equal to other reputable jurisdictions and we seek confirmation from our clients that tax compliance advice has been taken in the home jurisdiction. We understand anecdotally from other (larger) providers that their experience is similar to ours.
2. The Automatic Exchange of Information (“AEOI”) to be implemented with the CRS Regime in mid 2017 should alleviate any disclosure concerns in respect to NZ Foreign Trusts. However, it is conceded that the current lack of disclosure of the Settlor in the IR607 disclosure could be considered a weakness (noting, of course, that when applying for an IRD number for a domestic complying trust there is no current requirement for Settlor disclosure ie imposition of a Settlor disclosure regime on NZ

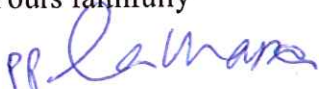
Foreign Trusts would impose a greater level of disclosure than that afforded to residents). M&H Chartered Accountants & Advisors

3. The existing AML/CFT legislation is adequate to address concerns that funds held by NZ Foreign Trusts are not from legitimate sources.
4. The implementation of a publicly searchable register concerning NZ foreign trusts would be a “knee jerk” over-reaction and the practical considerations of implementation would be extremely difficult if workable at all. For example, what disclosure rules would apply to discretionary beneficiaries who may never participate in the Trust Fund at all? One cannot currently ascertain trust ownership of companies on the Companies Register and why should NZ Foreign Trust information be publicly available/searchable when domestic trust information is not (given that domestic resident trusts and/or companies could equally be used for nefarious purposes either in NZ or abroad)? Further, any register could presumably be easily “worked around” for asset ownership via the use of nominee companies or bare trustee arrangements. We are not aware of any jurisdiction in the world that has a publicly searchable register of private fiduciary relationships.

Finally, and in conclusion, we consider tax law should not be influenced by the “populist” press. New Zealand has never taxed non NZ tax residents on foreign sourced income or required disclosure of financial or family affairs that have no NZ source/connection. With the benefit of hindsight the initial press claims regarding NZ involvement were wildly inaccurate and over-stated and a detailed search of the “Panama Papers” suggests limited involvement by New Zealanders and at levels much less than initially claimed by the press. No hard evidence (or in fact, any evidence at all) has been produced that NZ Foreign Trusts are being used for nefarious or criminal purposes and that they are being used for tax planning other than that afforded by Statute both in NZ and abroad. Further, it is not up to New Zealand and its revenue authorities to assist foreign revenue authorities, at our cost, with tax compliance of non NZ residents in the foreign jurisdiction other than to the extent of our extensive network of double tax agreements and tax information exchange agreements.

Thank you for providing us with an opportunity to submit and should you require clarification of the above please do not hesitate to contact us.

Yours faithfully



Craig Stobo, Richard Johnston and Ian Masson FCA
on behalf of Southwest Trustees Limited