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.

April 2016 MoR.

Foreign trusts

Background

- New Zealand's approach to taxing trusts is in a general sense, principle-based and reflects good policy.
- However, our rules differ from international norms.
  - Most countries tax trusts based on the residence of the **trustee.** New Zealand taxes trusts based on the residence of the **settlor.**
- A "foreign trust" in this context (the news article) is a trust administered by a New Zealand resident trustee but only has foreign settlors.
- These trusts will not be taxed in New Zealand if their income is foreign-sourced (assuming no NZ resident beneficiaries).
- The foreign trust industry in New Zealand allows non-resident settlors to accumulate assets and income in foreign trust with no New Zealand tax. Advisors/firms in NZ establish and manage foreign trusts for a fee.
- The industry in NZ is worth about $24 million per annum (value of fees, employment income etc), contributing to an average $3 million per annum to NZ's tax take (income tax on fees, PAYE paid, GST etc).

We are not a tax haven because....

- Over the years we have improved the regulation of the industry. Resident trustees of foreign trusts must register with IRD and keep appropriate records in New Zealand.
- Tax havens are all about secrecy. We exchange information under our tax treaties, and we have disclosure and record-keeping requirements.
- We have implemented FATCA and will also be implementing the OECD Common Reporting Standard for automatic exchange of financial account information.
- The OECD has previously scrutinised out foreign trust rules and identified no issues with it. In addition, the Global Forum on Transparency and Exchange of Information for Tax Purposes has reviewed New Zealand and found us compliant with OECD standards.

Current status/next steps

- Given wider government priorities, the Government indicated in mid-2015 that it would not be considering regulatory reform of the rules at this stage.
- That said the Government has an ongoing responsibility to consider whether its regulatory settings are facilitating inappropriate behaviour in other jurisdictions.
- It is possible that that responsibility may require a review of the regulatory requirements applying to different types of investment or business vehicles available under New Zealand law.
- We are currently reviewing our tax work programme for the next 18 months.
- We will also be reviewing the tax treatment of foreign trusts in light of our work on the OECD Hybrids Report (Action 2 of the OECD BEPS Programme).

Key points

- A recent article suggests that New Zealand foreign trusts are being used to keep tax information secret.

- The tax treatment allows non-resident settlors to accumulate assets and income in foreign trusts with no New Zealand tax. This is based the underlying framework for how New Zealand taxes all trusts and so is the result of principled tax policy. However, it also has also led to the development of a foreign trust industry in New Zealand.

- Over the years we have improved the regulation of the industry to increase disclosure. Resident trustees of foreign trusts must register with IRD and keep appropriate records in New Zealand.

- Notwithstanding these improvements, concerns continue to be raised with regard to the foreign trust industry, particularly in regards to secrecy of the trusts and non-compliance with registration requirements.

- On the other hand, there is some overall value to the New Zealand economy generated by this industry.

- Given wider government priorities, the Government decided last year that it would not be considering further regulatory reform of the rules at this stage. That said, the Government has an on-going responsibility to consider whether its regulatory settings are facilitating inappropriate behaviour in other jurisdictions, which may require a review of the regulatory requirements applying to different types of investment or business vehicles available under New Zealand law.