

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.

April 2016

DRAFT 2006 REFORMS

1. What prompted us to reform our requirements in terms of disclosure etc in relation to foreign trusts?

We improved our regulation of foreign trusts with legislation passed in 2006. (The process of reform started in 2004.) The new legislation imposed record keeping requirements on foreign trusts and required them to disclose to Inland Revenue the existence of the foreign trust and the name of the trustees. We also required the trustee to disclose if the settlor was Australian resident.

We were indeed responding to concerns expressed by the Australian Government. [1]

Concerns had also been raised more widely – particularly in relation to the OECD’s work on ‘harmful tax practices’. The foreign trust regime was not a “harmful tax practice”. However, February 2003 the OECD agreed that all trustees should be required to maintain accounting records and related source documents as a minimum standard. It was also decided that the country of the residence of the trustee should prescribe these standards in law. The 2006 reforms were designed to meet the OECD minimum standard.

Apart from the commitment to automatically exchange the information regarding the existence of a trust settled by an Australian resident with Australia, the legislation we passed was generic and applied in respect of all our treaty partners.

2. How would another country know to make an inquiry if it didn’t know the name of the trust or the New Zealand trustee?

There are a couple of possibilities. The jurisdiction may pick up the existence of a New Zealand trust through its own investigations. That is, in the context of its own compliance activity, the jurisdiction sees a New Zealand trust in the documented structure.

Another possibility is that New Zealand has made a spontaneous exchange with a jurisdiction about the existence of a foreign trust in New Zealand. Inland Revenue does investigate foreign trust providers from time to time. It does this to ensure the trusts are indeed foreign trusts among other things. If, in the course of investigations of client files leads the Inland Revenue to believe there is information that would be of interest to a treaty partner it will spontaneously exchange information. That exchange will provide the relevant information at hand (not just the name of the trustee).

3 What countries have been provided with information about foreign trusts?

As far as we can readily ascertain without reviewing all our exchange of information files, we have provided information on foreign trusts to over 20 of our tax treaty partners, some of which have come back to us requesting additional information to assist them in the inquiries they have made as a result of the information we exchanged in first instance.