

# The Treasury

## Foreign Trust Inquiry Information Release

### Release Document July 2016

[www.treasury.govt.nz/publications/reviews-consultation/foreign-trust-disclosure-rules](http://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.

## Tax policy report: Foreign trusts: submissions on the proposal to introduce record keeping and filing requirements

---

<b>Date:</b>	10 September 2004	<b>Priority:</b>	<b>High</b>
<b>Security Level:</b>	Sensitive	<b>Report No:</b>	T2004/1673 PAD2004/192

### Action sought

---

	Action Sought	Deadline
Minister of Finance and Revenue	Agree to recommendations	17 September 2004
Associate Minister of Finance and Revenue (Hon David Cunliffe)	For your information	None
Associate Minister of Finance (Hon Trevor Mallard)	For your information	None

### Contact for telephone discussion (if required)

---

Name	Position	Telephone	
Michael Nutsford	Portfolio Manager	474 7169 (wk)	[2]
[4]			

10 September 2004

Minister of Finance and Revenue

cc: Associate Minister of Finance (Hon Trevor Mallard)

Associate Minister of Finance and Revenue (Hon David Cunliffe)

## **Foreign trusts: submissions on the proposal to introduce record keeping and filing requirements**

---

### **Executive summary**

---

In a report dated 17 June 2004 we recommended that the Tax Administration Act 1994 be amended to impose certain record keeping and filing requirements on all foreign trusts (T2004/957, PAD2004/092 refers). On 27 July 2004 you released a media statement to publicly announce the proposed changes. We subsequently invited interested parties to provide submissions on the proposal, and met with representatives from the New Zealand foreign trusts industry.

As a result of this consultation, we consider that the foreign trust industry in New Zealand is larger than initially thought. The industry currently employs several hundred people and has experienced strong growth over the last five years. Many New Zealand trustee companies represent institutional clients [5] that already meet stringent 'Know Your Client' requirements.

Seventeen submissions were received with respect to the proposal. All submitters oppose the current proposal. Submitters particularly oppose the requirement that the New Zealand resident trustee provide detailed information to Inland Revenue on a regular basis, on privacy grounds. Most indicated that implementation of the current proposal is likely to result in highly mobile foreign investors (including institutional clients) relocating to foreign jurisdictions that have similar foreign trust regimes but no reporting requirements.

We still consider that specific reporting and record keeping requirements should be introduced for New Zealand resident trustees of foreign trusts. However, based on the information received in submissions and in discussions with industry representatives, we consider that there is merit in developing an approach that allows for the continuation of the industry while ensuring that operators that may harm New Zealand's international reputation do not use New Zealand-based trustees.

The appropriate policy response should ensure that New Zealand is able to meet its international commitments and DTA obligations (particularly toward Australia) through the introduction of certain record keeping and reporting requirements, while allowing the foreign trust industry to develop in New Zealand. We propose that we continue to consult with industry representatives and Australian officials on the development of an alternative proposal that meets these requirements.

In June 2004, you agreed that any amendments relating to this work would be included in the November 2004 tax bill. If you agree that additional consultation should be undertaken, we recommend that any amendments be included in the tax bill scheduled for introduction in March 2005. [1]

Industry representatives have advised that announcement of the proposed information reporting and filing requirements for foreign trusts has created considerable uncertainty in the industry. Consequently, we recommend that you release a subsequent media statement to clarify the situation and provide some comfort to persons associated with current or prospective foreign trusts in New Zealand. If you agree, we will prepare a draft media statement for your approval.

Representatives from several foreign law firms indicated in their submissions that they would be happy to meet with you to discuss the foreign trusts proposal, when they are in New Zealand later in the year. We will liaise with your office to arrange a suitable meeting.

## **Recommended action**

---

We recommend that you:

- (a) **Agree** that we undertake further consultation with industry representatives and Australian officials to develop an alternative proposal for foreign trusts, which would ensure that New Zealand can meet its international commitments while allowing the foreign trust industry to develop in New Zealand.

Agreed/Not agreed

- (b) **Agree** that any legislative amendments relating to this work be included in the tax bill scheduled for introduction in March 2005, rather than the November 2004 tax bill.

Agreed/Not agreed

- (c) **Agree** that a subsequent media statement be released to clarify the situation and provide some comfort to persons associated with current or prospective New Zealand-based foreign trusts. If you agree, we will prepare a draft media statement for your consideration.

Agreed/Not agreed

- (d) **Note** that representatives from several foreign law firms indicated in their submissions that they would be happy to meet with you to discuss the foreign trusts proposal. We will liaise with your office to arrange a meeting.

Noted

**Stephen Glover**  
for Secretary to the Treasury

**Michael Nutsford**  
Portfolio Manager  
Inland Revenue Department

**Hon Dr Michael Cullen**  
Minister of Finance and Revenue

## **Background**

---

1. Under current tax law, the New Zealand resident trustee of a foreign trust (being a trust that has no New Zealand resident settlor) that does not receive New Zealand sourced income is not required to provide information to Inland Revenue, or keep records for New Zealand tax purposes. Consequently, there is a risk that New Zealand may be unable to supply its double tax agreement (DTA) partners with information relating to certain foreign trusts if requested. This has been identified as an area of considerable concern by Australian tax authorities.
2. In a report dated 17 June 2004 we recommended that the Tax Administration Act 1994 be amended to impose certain record keeping and filing requirements on all foreign trusts (T2004/957, PAD2004/092 refers). On 27 July 2004 you released a media statement to publicly announce the proposed changes. Officials from Inland Revenue subsequently invited interested parties to provide submissions on the proposal.
3. This report outlines the main concerns that were expressed during consultation, develops a framework for considering New Zealand's response to the concerns raised in submissions, and outlines an alternative proposal that would address many of these concerns.

## **The New Zealand foreign trust industry**

---

4. Industry representatives have indicated that, while the number of foreign trusts in New Zealand cannot be quantified, the New Zealand foreign trust industry currently employs several hundred people and has experienced strong growth over the last five years. Many New Zealand trustee companies represent institutional clients [5] that already meet stringent "Know Your Client" requirements.
5. There are a number of factors that may give New Zealand a competitive advantage over other foreign jurisdictions and contribute to making New Zealand a relatively attractive proposition for the establishment of trusts. These include New Zealand's political and economic stability, common law culture, independent judiciary, the existence of a reliable and competent professional service sector and a reliable banking sector.

## **Policy framework**

---

6. To assess New Zealand's position and response to the proposal to improve reporting and record keeping requirements for foreign trusts, we consider it necessary to develop a policy framework. This framework requires the following factors to be considered:
  - New Zealand's obligations as a member of the international community and member of international organisations such as the Organisation for Economic Co-operation and Development (OECD);
  - New Zealand's obligations as a signatory to twenty-nine DTAs which require information to be exchanged between signatory countries;

- New Zealand’s obligations toward, and on-going favourable relationship with Australia under the Closer Economic Relations framework; and
- The economic benefits to the New Zealand economy of New Zealand-based trustees providing trustee services to trusts established by non-resident settlors.

7. This framework requires New Zealand to balance the trade-off between its international commitments and the need to maintain a favourable relationship with Australia, and the possible economic benefits to New Zealand of this activity.

8. Based on the information received in submissions and in discussions with industry representatives, we consider that a significant part of the industry provides trustee services to institutional firms <sup>[5]</sup> who already have “Know Your Client” requirements in place.

9. Industry representatives have indicated that imposing rules such as those outlined in the media statement will result in the industry moving to jurisdictions that do not have such reporting and record keeping requirements. Therefore, this proposal has the potential to damage the industry in New Zealand.

10. The movement of this industry off-shore would not contribute to New Zealand’s ability to meet its international obligations. New Zealand may be better able to meet these obligations and maintain and enhance its international relationships, by creating an environment for this industry to operate in New Zealand, so information on trusts can be accessed and provided.

11. We consider that there is merit in developing an approach that allows for the continuation of the industry while ensuring that operators that may harm New Zealand’s international reputation do not use New Zealand-based trustees. The appropriate policy response should ensure that New Zealand is able to meet its international commitments (and meet any reasonable requests from Australia) through the introduction of certain record keeping and reporting requirements, while allowing the foreign trust industry to develop in New Zealand.

## **Summary of submissions**

---

12. Seventeen submissions were received by, or shortly after, the closing date of 20 August 2004. A list of the submitters is attached.

13. All submitters oppose the current proposal to introduce record keeping and filing requirements for all New Zealand-based foreign trusts, although many indicate that they appreciate the reasons for the proposed introduction of such rules. Submitters particularly oppose the requirement that the New Zealand resident trustee provide detailed information to Inland Revenue on a regular basis, on privacy grounds.

14. A number of submitters suggest, as an alternative, a regulatory registration regime which would require a physical presence in New Zealand of the trustee or director of the trustee company. They support the keeping of accounting records in New Zealand by the trustee or director, and the provision of this information to Inland Revenue on request to comply with

exchange of information requests from DTA signatory countries. This approach would address privacy concerns as sensitive information would be held by the trust, rather than Inland Revenue.

15. Several submitters raised concerns regarding New Zealand's ability to supply detailed information on certain foreign trusts to Australia on an annual basis, under our DTA. Further work is required to determine the validity of these concerns.

## **Meeting with NZTCA and STEP**

---

16. We met with representatives from the New Zealand Trustee Companies Association (NZTCA) and the Society of Trusts and Estate Practitioners (STEP) to further discuss their concerns. NZTCA represent the majority of trust companies and individuals administering foreign trusts in New Zealand and many of the submissions received refer to, and support NZTCA's position.

17. NZTCA and STEP indicated that if the existing proposal is implemented, highly mobile foreign investors (including institutional clients that already meet stringent reporting requirements) are expected to leave New Zealand and relocate to foreign jurisdictions that have similar foreign trust regimes but no reporting requirements (such as Singapore).

18. The proposed requirements to identify the settlor of the trust and provide financial information to Inland Revenue on a regular basis are likely to be of particular concern to foreign investors on privacy grounds. NZTCA and STEP indicated that new investment through New Zealand effectively ceased following the release of the media statement which outlined the proposed changes, and existing clients are considering their future in New Zealand.

### **NZTCA's proposal**

19. In response to their concerns, NZTCA have developed an alternative proposal that they consider would allow New Zealand to meet its exchange of information obligations with DTA signatory countries, while being acceptable to their clients. NZTCA's proposal is modelled on the United States qualifying intermediary rules.

20. Briefly, NZTCA propose that the law be amended to require at least one trustee (an individual or a company) of each foreign trust to be resident in New Zealand, hold a recognised professional qualification, maintain a genuine place of business in New Zealand and retain core trust documents at these premises. A New Zealand resident trustee who meets these criteria should then enter into an agreement with the government to supply information when required, on just cause being shown.

21. The implementation of such a regulatory regime for trustees offering trustee services to non-resident settlors is a wider public policy issue and not a specific tax issue. Officials consider that allowing the New Zealand resident trustee to *elect* to enter into an agreement to provide information to the government is unlikely to improve New Zealand's ability to meet its exchange of information obligations in respect of certain foreign trusts.

## **Alternative proposal**

---

22. Certain aspects of NZTCA's proposal suggest that a mutually agreeable compromise can be reached, that is consistent with the framework. For instance, NZTCA and STEP have indicated that their clients would be prepared to provide certain information to Inland Revenue up-front, maintain records for New Zealand tax purposes and comply with reasonable requests for additional information by Inland Revenue.

23. Therefore, a possible solution is that all foreign trusts that have a New Zealand resident trustee be required to register with Inland Revenue when the trust is first established in New Zealand or a New Zealand trustee is appointed.

24. At that time the trustee would provide Inland Revenue with the name and postal address of the trust, contact details for the trustee(s), and the country of residence of the settlor. NZTCA and STEP have indicated that providing this information about the settlor would not give rise to privacy concerns. The New Zealand resident trustee would be obliged to inform Inland Revenue if any of the details change, so the trust register could be updated.

### **Record keeping requirements**

25. The New Zealand resident trustee would be required to retain in New Zealand, business records that enable the financial position of the foreign trust to be ascertained for a period of seven years after the end of the tax year to which they relate. If a foreign trust ceases to have a New Zealand resident trustee the requirement to keep records for seven years would remain. The proposed record keeping requirements are in accordance with domestic tax law.

26. The use of information provided by foreign trusts will be subject to the existing tax secrecy laws.

### **The OECD's proposed minimum standards**

27. The OECD has established a Trust Technical Sub-group to consider, among other things, the maintenance of accounting records and the source documents that comprise accounting records, by certain entities such as trusts. If the Sub-group recommends more onerous reporting requirements, it may be necessary to revisit any proposal introduced to ensure it satisfies these requirements.

### **Requests for information from Australia**

28. We will work with Australian officials in developing this proposal, to ensure that New Zealand can meet any reasonable request for information from Australia.

## Comment

---

29. We still consider that specific reporting and record keeping rules should be devised and implemented for New Zealand resident trustees of foreign trusts, along the lines of those proposed in paragraphs 22-26.

30. We propose that we continue to consult with industry representatives and Australian officials on the changes, and the implementation of a proposal that will allow New Zealand to:

- Meet its international commitments and DTA obligations;
- Meet its obligations toward, and continue to develop an on-going favourable relationship with Australia; and
- Allow for the continuation and development of the foreign trust industry in a way that allows New Zealand to meet these obligations and commitments.

31. We also propose to develop rules to create the necessary incentives for New Zealand resident trustees of foreign trusts to provide information to Inland Revenue.

32. Further work is also required to ensure that New Zealand can supply detailed information on certain foreign trusts to DTA signatory countries (particularly Australia) under the terms of our DTA agreements.

33. Finally, we understand that the Ministry of Justice is in the process of developing a proposal for the creation of a supervisory framework, intended to monitor compliance with anti-money laundering and countering the financing of terrorism obligations by financial institutions. Trustee services will be covered by this proposal. Therefore, we propose to discuss with officials from the Ministry of Justice, the inter-relationship between their proposal and the foreign trusts proposal.

34. [1]

## ext steps

---

35. In June 2004, you agreed that any legislative amendments relating to this work would be included in the November 2004 tax bill. If you agree that additional consultation should be undertaken on this issue, we recommend that any amendments be included in the tax bill scheduled for introduction in March 2005. The Australian Taxation Office and the Australian Treasury were consulted [1]

36. Representatives from NZTCA and STEP have advised officials that announcing the proposed information reporting and filing requirements for foreign trusts has created considerable

uncertainty in the industry. Consequently, officials recommend the release of a subsequent media statement to clarify the situation and provide some comfort to persons associated with current or prospective New Zealand-based foreign trusts. If you agree, officials will prepare a draft media statement for your consideration.

37. Representatives from several foreign law firms indicated in their submissions that they would be happy to meet with you to discuss the foreign trusts proposal, when they are in New Zealand later in the year. We will liaise with your office to arrange a meeting.

## **Consultation**

---

38. The Ministry of Justice have been consulted in the preparation of this report and have indicated that they agree with the proposed recommendations.

39. The Ministry of Foreign Affairs and Trade have also been consulted, but due to our time constraints did not provide comment.

## **List of submitters**

---

The Society of Trust and Estate Practitioners  
The New Zealand Trustee Companies Association  
The New Zealand Law Society  
Geoffrey Denis Clews, Barrister  
Cone & Co  
R&H Trust Co (NZ) Limited  
PricewaterhouseCoopers  
Withers LLP  
Bell Gully  
Anchor Trustee Limited  
Buddle Findlay  
Stikeman Elliott  
Taylor Grant Tesiram  
Institute of Chartered Accountants of New Zealand  
Monaco Corporate Secretariat  
Citco Trustees (New Zealand) Limited  
HSBC Private Bank