

Reference: 20220072

5 April 2022



Dear 

Thank you for your Official Information Act request, received on 8 March 2022. You requested the following:

Treasury Report T2022/22: New Zealand's addition to the United States 'Excepted Foreign States' list

Information being released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	20 January 2022	Treasury Report T2022/22: United States' identification of New Zealand as an 'excepted foreign state'.	Release in part

I have decided to release the relevant parts of the documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- under section 6(a) – to protect the security or defence of New Zealand or the international relations of the Government of New Zealand
- under section 9(2)(g)(ii) – to maintain the effective conduct of public affairs through protecting Ministers, members of government organisations, officers and employees from improper pressure or harassment,
- under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's website.

I have decided to withhold the letter attached in Appendix 1 in full under section 6(a) of the Official Information Act.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Conor McBride
Manager

20220072 TOIA Binder

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TE TAI ŌHANGA
THE TREASURY

Treasury Report: United States' identification of New Zealand as an 'excepted foreign state'

Date:	20/01/2022	Report No:	T2022/22
		File Number:	IM-3-4

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Agree to send the attached letter to Secretary Yellen.	25 January 2022

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Lachy Stark	Analyst, International	s9(2)(k)	s9(2)(g)(ii) ✓
Conor McBride	Manager, International		

Minister's Office actions (if required)

<p>Return the signed report to Treasury.</p> <p>Send the attached letter to Secretary Yellen.</p> <p>Forward the report to Minister Parker's Office.</p>

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: Update to New Zealand's eligibility for the United States 'excepted foreign state' list

Purpose of Report

1. The purpose of this report is to:
 - update you on the Committee on Foreign Investment in the United States (CFIUS) recent identification of New Zealand as eligible for 'excepted foreign state' and 'excepted real estate foreign state' status, and
 - seek your agreement to send the attached letter to Secretary Yellen acknowledging this decision.

Background

2. The Committee on Foreign Investment in the United States (CFIUS) sits within the United States Department of the Treasury and regulates foreign investment, similar to New Zealand's Overseas Investment Office.
3. The regulations governing CFIUS allow it to limit the application of its rules over certain investments by certain foreign persons. These persons are defined as "excepted investors" and 'excepted real estate investors' and are defined in part based on their close ties to certain 'excepted foreign states' and 'excepted real estate foreign states,' respectively.
4. The CFIUS' definition of 'excepted foreign state' has two parts¹:
 - First, a foreign country must be identified by CFIUS as an 'eligible foreign state.'
 - Second, CFIUS must confirm whether the eligible foreign state "has established and is effectively utilizing a robust process" to assess foreign investments for national security risks and to support coordination with the United States government on matters relating to investment security.
5. Australia, Canada and the United Kingdom were identified as eligible foreign states in 2020. On 5 January 2022 the U.S. Department of the Treasury announced that Australia and Canada have been confirmed as 'excepted foreign states' and 'excepted real estate foreign states', and that New Zealand has been identified as eligible for both categories. It is likely that a final determination of New Zealand's (and the United Kingdom's) status will be made in early 2023.
6. CFIUS stated that it "identified New Zealand as eligible based, among other factors, on its intelligence-sharing relationship with the United States and its collective defence arrangement and cooperation with the United States."² It is also likely that the recent reforms of New Zealand's Overseas Investment Act contributed to this decision.
7. Although New Zealand's 'excepted' status has not been confirmed, CFIUS has deemed New Zealand to be an 'excepted foreign state' and 'excepted real estate foreign state' in the interim. This will provide immediate benefits to New Zealand investors seeking to invest in the United States, through lower regulatory barriers.

¹ 'Excepted real estate foreign states' must pass a similar two-part test.

² <https://home.treasury.gov/system/files/206/Fact-Sheet-Final-Rule-Revising-EFS-Definitions-2.pdf>

8. The benefits of this decision for certain New Zealand investors are that they will be exempt from aspects of the expanded 2018 CFIUS regulations. Specifically, they will be exempt from certain filings relating to investments in critical technology, infrastructure or sensitive data assets and certain real estate transactions for land near sensitive government facilities and activities, provided they meet other criteria that qualify them as “excepted investors”. The tests for ‘excepted investor’ status include having a board with less than 25 percent representation by foreign nationals from non-excepted states, and an ownership limit for an individual investor from a non-excepted state of 10 percent.
9. Given the additional criteria needed to be met by “excepted investors” the decision may not have a significant impact on the level of New Zealand investment in the US.
s6(a)
10. The Treasury have drafted a letter for you to send to Secretary Yellen, acknowledging this decision and recognising the strong economic links between the United States and New Zealand, which is attached at **Annex 1**.

Next Steps

11. Pending your agreement, your office will send the letter attached at **Annex 1** to Secretary Yellen.

Recommendations

We recommend that you:

- a **agree** to send the attached letter to Secretary Yellen

Agree / disagree.

Conor McBride
Manager, International

Hon Grant Robertson
Minister of Finance

The attached letter has been withheld in full under section 6(a).