

New Zealand to enact tighter foreign trust disclosure rules

17 FEBRUARY 2017

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The New Zealand Parliament has passed a Bill which, following royal assent, will meaningfully increase disclosure obligations for NZ resident trustees of NZ foreign trusts. The Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill, was passed by Parliament on 14 February 2017.

The Bill contains important provisions relating to disclosure requirements, annual returns, the payment of fees and automatic exchange of information.

Arguably the Bill makes New Zealand less attractive for the establishment of foreign trusts than previously as most of the disclosure provisions are not required by competitor jurisdictions and the penalties imposed on trustees and their officers for failure to comply can be onerous. For those who wish to retain their NZ trust, there are immediate steps for a NZ resident trustee to take, which are described below.

The disclosure aspects of the Bill follow the Shewan Inquiry into the practices and uses of the New Zealand Foreign Trust regime as a result of public dismay at numerous New Zealand connections to the Panama Papers data leak in April 2016 and the perceived lack of transparency of foreign trusts established under New Zealand law.

The disclosure provisions of the Bill will run parallel to the Common Reporting Standards of which New Zealand is a signatory.

The Bill introduces disclosure requirements for foreign trusts, (which were previously confidential), requiring trustees to register the Trust with the Inland Revenue Department and providing the following information:

- name of the trust;
- details of each trust settlement;
- the name, email address, physical residential or business address, jurisdiction of tax residence, taxpayer identification number of every settlor or controller of the trust;
- for a *fixed trust*, the name, age, and taxpayer identification number of the beneficiary;
- for a *discretionary trust*, details of each beneficiary or class of beneficiary sufficient for the IRD to determine, when a distribution is made under the trust, whether a person is a beneficiary;
- a copy of the trust deed and, going forward, all amendments or additions to it.
- a trust annual return, which must be accompanied by the filing of annual financial statements if the trustee prepares financial statements or is required to prepare financial statements as well as details of trust distributions made and to whom.

It is important to note that the trustee will have to register any foreign trusts they act as trustee for by 30 June 2017, and thereafter notify any changes within 30 days of becoming aware of them. There will be a prescribed fee of \$270 for this registration and an annual fee of \$50. These costs will be in addition to the increased administrative cost to effect the disclosures.

The issue of disclosure is significant given the global debate concerning public registers of beneficial ownership. In a move that will be applauded by privacy advocates, the Bill has limited disclosure to 'a person who is a member of the New Zealand Police or an officer, employee, or agent of the Department of Internal Affairs'. On the flip side, the onerous one time and annual disclosure obligations far exceed those of other offshore and 'mid-shore' jurisdictions. As such, clients should be encouraged to review their position and consider whether the new provisions sway their thinking to consider other jurisdictions.

The bill also enables the country's participation in the G20/OECD Common Reporting Standard for automatic international exchange of financial account information.