

Government Inquiry into Foreign Trust Disclosure Rules: Government's response

Issue	Inquiry's recommendation	Government's response	When will the proposal be actioned?
Registration	Foreign trusts be required to register on establishment using an expanded version of the current disclosure form, IR 607.	Agree	Tax bill to be introduced in August 2016
Information exchange with other New Zealand government agencies	A register of foreign trusts, searchable only by regulatory agencies, be maintained.	<p>Agree, with modification.</p> <p>Inland Revenue will initially administer the register. The agencies who can search the register, at this stage, should be the Department of Internal Affairs and the Police.</p>	Tax bill to be introduced in August 2016
Declaration to be provided upon registration	<p>The registration document include a signed declaration that the person establishing the foreign trust, the settlor(s) and the trustees have been advised of and have agreed to provide the information to comply with-</p> <ul style="list-style-type: none"> • the record keeping requirements in the Tax Administration Act • the Anti-Money Laundering and Countering Financing of Terrorism Act and Regulations 	Agree	Tax bill to be introduced in August 2016

- the Automatic Exchange of Information/Common Reporting Standard requirements (once enacted).

Application date of new registration requirements

The registration requirement should apply to all trusts formed after enactment of the enabling legislation.

Agree

Tax bill to be introduced in August 2016

A transitional rule that requires existing foreign trusts to register, and to supply the information required by 30 June 2017.

Review of which government agency should be responsible for administration

The registration process be the responsibility of IRD initially. This to be reviewed in the context of the rapidly expanding reporting requirements imposed by international agreements to which New Zealand is a signatory. It is possible that another agency such as the Companies Office (within the Ministry of Business, Innovation and Employment) may be better placed to act as the registering and supervisory agency.

Agree

Registration process to be included in the August 2016 tax bill. The review of which agency should act as the registering and supervisory agency should be undertaken after the new disclosure rules have bedded in.

Information to be supplied to Inland Revenue upon initial disclosure / registration

The information required to be disclosed to IRD when a foreign trust registers be expanded from the current IR 607 disclosures to include the name, email address, foreign residential address, country of tax residence and Tax Identification Number of-

Agree

Tax bill to be introduced in August 2016

- the settlor or settlors;
- the protector (if there is any);
- non-resident trustees;
- any other natural person who has effective control of the trust (including through a chain of control or ownership); and

- beneficiaries of fixed trusts, including the underlying beneficiary where a named beneficiary is a nominee.

For discretionary trusts,

1- any class of beneficiary not listed on the trust deed must be listed, and

2- each class of beneficiary be described in sufficient detail to enable identity to be established at the time of a distribution or when vested rights are exercised (the naming of discretionary beneficiaries being impractical).

The trust deed be required to be filed with the registration form.

Sanction for non-compliance: when worldwide income of foreign trust is taxable

The exemption from New Zealand tax on foreign source income apply only to a foreign trust that has registered and fulfilled the associated disclosure obligations at that time.

Agree, with modification.

The exemption will still be available if the non-registration or lack of disclosure was unintentional and remedied immediately.

Tax bill to be introduced in August 2016

Annual returns

Foreign trusts be required to file an annual return with IRD that includes:-

- any changes to the information provided at registration
- the trust's annual financial statements
- the amount of any distributions paid or credited and the names, foreign address, Tax Identification Number and country of tax residence of the recipient beneficiaries.

Agree, with modification.

1. Annual returns will also include the amount of any settlements on the trust in the relevant period and the names, foreign address, TIN and country of tax residence of that settlor.
2. The balance date will be 31 March or a date nominated by the trust. The trust should have 3 months after their balance date to file.

Tax bill to be introduced in August 2016

Application date of new annual return requirements	The annual return requirement to apply to foreign trusts formed after the enactment date and to all foreign trusts from the income year commencing 1 April 2017.	Agree	Tax bill to be introduced in August 2016
Grace period for new migrants	No recommendation	There will be a grace period of the same time (2 years) before a trustee who is a new migrant individual and who is not in the business of providing trustee services is required to register or file.	Tax bill to be introduced in August 2016
Sanction for non-compliance: Safe harbour for qualifying resident foreign trustees	The basis for foreign trusts that have a <i>qualifying</i> resident foreign trustee being exposed to lesser sanctions than other foreign trusts (“the qualifying resident foreign trustee safe harbour”) be reviewed to determine whether it should remain.	Agree. Officials have reviewed this issue and the safe-harbour for qualifying resident foreign trustees will be removed.	Tax bill to be introduced in August 2016
Registration and annual filing fee	Foreign trusts be required to pay a registration and annual filing fee to recover the costs to the Crown of administering the foreign trust regime. The Inquiry considers a fee of \$500 at registration and an annual fee of the same amount would be reasonable.	Agree, with modification. The registration fee will be \$270 with an annual filing fee of \$50, because of the cost to the Crown of administering the foreign trust regime. The level of fees will be able to be modified by Order in Council to reflect future changes in costs.	Tax bill to be introduced in August 2016
AML: Early revocation of current exemption for lawyers and accountants from AML/CFT reporting requirements	For services provided to foreign trusts, consideration be given to the removal by Order in Council in the short term (prior to 31 December 2016) of the regulation that excludes lawyers and accountants from AML reporting requirements. The proposed removal of this exclusion when phase 2 of the AML regime is implemented, as announced by the Government in May 2016, will address this recommendation but may not be effective until towards the end of 2017 or later.	Lawyers and accountants will be included in AML/CFT requirements as soon as practicable, but there are issues surrounding legal privilege and regime supervision that can only be dealt with through primary legislation and not regulation. Removal of the exclusion for lawyers and accountants will therefore be progressed as part of the more substantial AML/CFT reform programme underway.	The revocation of the exemption will occur as part of the AML/CFT Phase II reforms. Legislation will be introduced later in 2016, and is expected to be passed in the first half of 2017.

AML: Mandatory requirement to verify in all cases the underlying source of funds	The AML legislation or regulations be revised to include a mandatory requirement to verify in all cases the underlying source of funds or wealth settled on a foreign trust.	Agree	Consider as part of the AML/CFT Phase II reforms.
AML: guidelines for customer due diligence	Expanded guidelines be issued explaining the scope of customer due diligence required in establishing and verifying beneficial ownership, effective control and source of funds in complex multi-layered trust structures. These should include a series of detailed worked examples.	Agree	Currently drafting. Note impact of FATF and the AML/CFT Phase II reforms.
AML: Suspicious transaction reporting not through a New Zealand bank	The legislation or regulations that govern suspicious transaction reporting to the Financial Intelligence Unit of the New Zealand Police be revised to facilitate the reporting of actual or proposed transactions that have not or will not necessarily go through a New Zealand bank.	Agree	Consider as part of the AML/CFT Phase II reforms.
AML: Greater profile for suspicious transaction reporting	Greater profile, coupled with training recommendations, be given to the obligation on trust service providers to report suspicious transactions.	Agree	On-going
Review of current legislative arrangements for the sharing of information between New Zealand government agencies	A review be undertaken of the current legislative arrangements for the sharing of information between the three agencies (IRD, Financial Intelligence Unit of the New Zealand Police and Department of Internal Affairs) with supervisory responsibility for disclosures by foreign trusts (and other entities). The purpose of the review, which could coincide with the introduction of phase 2 of the AML regime, would be to determine the financial and efficiency gains and other implications (including secrecy considerations) of sharing strategic intelligence and other information between agencies.	Agree. Note that it may be appropriate to also include other relevant agencies in the review.	No immediate legislative change required. This review to be undertaken after the initial changes to the disclosure rules have bedded in and possibly coincide with phase 2 of the AML regime/ reform of tax secrecy rules.