

DRAFT FOR CONSULTATION

Income Tax (Foreign Trusts Registration and Disclosure) Amendment Bill

Member's Bill

Explanatory note

General policy statement

This Bill imposes a registration and disclosure regime on New Zealand foreign trusts. Tax rules introduced on 1 April 1988, and currently in the Income Tax Act 2007, provide an exemption from income tax for a foreign-sourced amount derived by a New Zealand trustee of a trust settled by a non-resident. This feature, according to the Law Commission, along with the secrecy that surrounds foreign trusts, makes them an attractive vehicle for facilitating tax evasion and has contributed to New Zealand's recent listing as a tax haven.

The Bill simply requires all foreign trusts to register with the Commissioner of Inland Revenue and disclose a greater amount of information than is currently required. The trustees must disclose, and keep updated, full information about the settlors, trustees, and beneficiaries. The Commissioner will make this information available in an electronic register, other than passport numbers and tax identification numbers.

Clause by clause analysis

Clause 1 contains the Bill's title.

Clause 2 states the commencement date.

Clause 3 provides that the Income Tax Act 2007 is the Act being amended.

Clause 4 replaces section HC 11, which defines **foreign trust**, with a new section containing a new definition. The new definition provides that a foreign trust is a foreign trust only if it is registered and up-to-date with its information provision obligations.

James Shaw

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Income Tax (Foreign Trusts Registration and Disclosure) Amendment Act **2016**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Income Tax Act 2007 (the **principal Act**).

4 Section HC 11 replaced (Foreign trusts)

Replace section HC 11 with:

HC 11 Foreign trusts*Meaning*

- (1) A **foreign trust** is a trust to which the following apply:
- (a) throughout the period described in **subsection (2)**,—
 - (i) its settlor is not resident in New Zealand; or
 - (ii) none of its settlors is resident in New Zealand; and
 - (b) at the date of each distribution,—
 - (i) it is registered under **subsection (4)(a)**; and
 - (ii) its information recorded under **subsection (4)(b)** is up-to-date.

Period

- (2) The period—
- (a) starts on the later of—
 - (i) 17 December 1987; and
 - (ii) the date on which a settlement is first made on the trust; and
 - (b) ends on the date of each distribution to which **subsection (1)(b)** is applied.

How trustee goes about registering

- (3) The trustee of the trust must, in an electronic form,—
- (a) do the following:
 - (i) apply to the Commissioner asking for the trust to be registered as a foreign trust; and
 - (ii) provide the Commissioner with any information that the Commissioner requires for the purpose of completing the registration; and
 - (b) provide to the Commissioner the following information about the beneficiary or beneficiaries, the settlor or settlors, and the trustee who are natural persons:
 - (i) full name; and
 - (ii) birth date; and
 - (iii) passport number; and
 - (iv) country of residence, and
 - (v) country of residence tax identification number; and
 - (c) provide to the Commissioner the following information about the beneficiary or beneficiaries, the settlor or settlors, and the trustee who are not natural persons:
 - (i) full name; and

- (ii) date of incorporation, for bodies corporate, or formation, for unincorporated bodies; and
- (iii) country of residence; and
- (iv) country of residence tax identification number; and
- (d) provide to the Commissioner information about related parties of interest; and
- (e) provide updates of the information described in **paragraphs (b) to (d)**—
 - (i) as soon as practicable after it changes; and
 - (ii) immediately before the date of each distribution; and
- (f) if **paragraph (e)** does not apply in a year, provide information to the Commissioner at the end of the year that the information described in **paragraphs (b) to (d)** does not need to be updated.

Commissioner keeps register

- (4) The Commissioner must, in an electronic form,—
 - (a) keep a register of the trusts that have complied with **subsection (3)(a)**; and
 - (b) record in the register the information provided to the Commissioner under **subsection (3)(b) to (f)**.

Public access to specified information in register

- (5) Any person may have access to the information in the register, except for the information provided under **subsection (3)(b)(iii) and (v)** and **subsection (3)(c)(iv)**.
- (6) No fee is payable for the access to the register that is permitted under **subsection (5)**.
- (7) Access to the register under **subsection (5)** is read-only.

Commissioner reports on foreign trusts

- (8) The Commissioner must state in each annual report under section 43 of the Public Finance Act 1989 the number of foreign trusts in the register at the end of the financial year.

Defined in this Act: distribution, Commissioner, foreign trust, resident in New Zealand, settlement, settlor, trustee

Compare: 2004 No 35 s OB 1 “foreign trust”