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Information Letter

THE NEW ZEALAND FOREIGN TRUST REGIME- CHANGES CONTEMPLATED BY THE NZ GOVERNMENT AS A RESULT OF THE PANAMA PAPERS

Introduction:

Until recently New Zealand had a foreign trust regime that had proved enormously popular with non – residents of New Zealand who could establish a Trust using a New Zealand based trustee with no obligation to disclose the settlor of the Trust, no reporting requirements and with complete exemption of NZ tax on any income of the Trust so long as it was earned outside New Zealand.

As a result of the Panama Papers the NZ Government came under huge political pressure to amend the NZ Trust rules so that alleged people of questionable backgrounds (from South America particularly- one firm ran over 120 trusts for South Americans) could no longer remain anonymous. It was noteworthy too that the Panama Papers revealed correspondence from Mossack Fonseca recommending New Zealand as the preferred jurisdiction for formation of trusts and this sparked adverse comment from journalists who claimed New Zealand was a tax haven.

Government Enquiry

The Government Inquiry into Foreign Trust Disclosure Rules was released on the 27/6/16. In essence John Shewan's report concluded that the current disclosure requirements were "light handed" and reasonably likely to be facilitating the hiding of funds or evasion of tax in some instances.

The inquiry's primary recommendation is for New Zealand to adopt a more strict disclosure regime for foreign trusts. The inquiry's recommendations are attached.

In summary the changes are:

- **Information on foreign trusts to be maintained in a register** (searchable by regulatory agencies).
- Requiring **disclosure to Inland Revenue** of the name, email address, foreign residential

address, country of tax residence and tax identification number of each of the trust's: settlor or settlors, protector (if there is any) and non- resident trustees;

Details of any other natural person who has effective control of the trust (including through a chain of control or ownership)

Details of beneficiaries of fixed trusts, including the underlying beneficiary where a named beneficiary is a nominee; for discretionary trusts, each class of beneficiary should be described in sufficient detail to enable identity to be established at the time of a distribution or when vested rights are exercised.

- A requirement to **file the trust deed** when registering.
- A requirement to **file an annual return** (with accompanying financial statements) and the amount of any distributions paid/credited noted with names, foreign address, Tax Identification Number and tax residence country of the recipient beneficiaries. An annual fee will be NZ\$50.00 and there will be an initial filing fee of NZ\$270.00;
- **A revision of the Anti-Money Laundering legislation to require verification of the underlying source of funds or wealth settled on a foreign trust in all cases.**
- Revising the legislation around reporting of suspicious financial transactions that do not go through a New Zealand bank.

It should be noted that:

- (a) **There is no change to the rule that income of the Trust earned outside New Zealand is exempt from NZ tax.**
- (b) **There will be a transitional or grace period for existing trusts who will have to supply the information by the 30/6/2017 but otherwise new trusts must comply when the new legislation is passed, probably by the end of 2016 but may be earlier;**
- (c) **While it is possible there may be some changes to the legislation the NZ Government has said it supports all the recommendations that are outlined in the attached recommendations. When the final legislation is passed we will advise all our clients.**

Comment:

In our view the proposals are draconian, more restrictive than almost all other trust jurisdictions and even if settlors of trusts are law abiding citizens and tax compliant, few would wish, or see the need, to reveal information that may in many cases be confidential to them and family members, even if it is on a restricted register.

Of particular note is the requirement to file an annual return with financial statements. While we always recommend that a Trust prepare some annual accounts, many private trusts do not do so on the grounds of costs and the time involved in record keeping. Nor is it defined what kind of accounts are required although it seems a Trust will likely prepare accounts subject the law where assets are situated.

Note too that a settlor will have to undertake to supply all information required under legislation implementing common reporting standards (“ CRS”) although if a trust has no bank account in NZ it is difficult to see how such an undertaking could be enforced in NZ.

The new Foreign Trust Disclosure Rules raise many other issues which we will not go into here but suffice to say we believe the new rules will deter new trusts from being set up in NZ and force some existing trusts to consider a change of jurisdiction to such locations as Hong Kong, Seychelles, or even jurisdictions such as Delaware and other US tax haven states. CRS will of course also influence the choice of jurisdiction. As an example, Hong Kong will only implement CRS in regard to countries with which it has a double tax treaty.

We are able to offer advice to clients who have existing NZ based trusts or advise on jurisdictions that may suit individual circumstances.

Please feel free to contact us with any questions.

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