

Establishment of the Government Inquiry into Foreign Trust Disclosure Rules

Pursuant to section 6(3) of the Inquiries Act 2013, The Honourable Simon William English, Minister of Finance, and The Honourable Michael Woodhouse, Minister of Revenue, hereby establish the Government Inquiry into Foreign Trust Disclosure Rules (“Inquiry”).

Background

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, in its combined Phase 1 and Phase 2 Peer Review Report of 2013, rated New Zealand “compliant” – the highest possible ranking.

As a result of the recent release of documents known as the ‘Panama Papers’, concerns have been raised about rules covering foreign trusts registered in New Zealand.

Cabinet has decided to initiate a review of New Zealand’s disclosure rules relating to foreign trusts registered in New Zealand to ensure New Zealand’s reputation is maintained.

Membership

John Shewan is appointed to and constitutes the Inquiry.

Terms of Reference

The Inquiry will inquire into, report upon, and make any recommendations it considers appropriate relating to:

- a. New Zealand’s existing foreign trust disclosure rules in the following areas:
 - i. record-keeping requirements, including records required to be provided to the New Zealand Government;
 - ii. enforcement of the rules;
 - iii. exchange of information with foreign jurisdictions; and
 - iv. practices for complying with the rules;
- b. whether the existing foreign trust disclosure rules and the enforcement of those rules are sufficient to ensure New Zealand’s reputation is maintained, when considered alongside New Zealand’s:
 - i. commitment to the OECD action plan on base erosion and profit shifting (BEPS);
 - ii. commitment to the Convention on Mutual Administrative Assistance in Tax Matters;
 - iii. commitment to implementing the global standard for the automatic exchange of information (AEOD);
 - iv. existing and planned bilateral tax treaty network (including tax information exchange agreements);
 - v. anti-money laundering and countering financing of terrorism laws; and
 - vi. other related regimes; and
- c. options for enhancements to New Zealand’s foreign trust disclosure rules and enforcement of those rules, including any practical improvements that could be made or other actions that could be taken.

In these terms of reference:

foreign trust has the meaning given to that term by the Income Tax Act 2007; and

foreign trust disclosure rules means:

- any laws of New Zealand requiring trustees of a foreign trust, or their agents or advisors, to provide information to any New Zealand government agency, and includes (without limitation):
 - laws for the enforcement of those requirements; and
 - the reporting and disclosure obligations of a resident foreign trustee (as defined in the Tax Administration Act 1994) of a foreign trust; and
- the New Zealand Government’s obligations to provide information it holds about foreign trusts to tax authorities from other jurisdictions.

Restrictions on Access to Certain Evidence or Submissions Presented to the Inquiry

To recognise the longstanding statutory limitations applicable to provision of information from or on behalf of the Commissioner of Inland Revenue, public access is restricted to any evidence or submissions received by the Inquiry from or on behalf of the Commissioner which identifies any person or their affairs or which the Commissioner otherwise identifies as confidential, as if sections 81 and 87 of the Tax Administration Act 1994

applied to the evidence or submission. The Inquiry must make such orders under section 15 of the Inquiries Act 2013 as are necessary, and take other steps as are necessary (including having any officers of the Inquiry or other persons assisting the Inquiry enter into appropriate confidentiality agreements), to give effect to that restriction.

For the same reasons the Inquiry must not identify in its report, and must not otherwise disclose or report on (including to appointing Ministers), the identity of any persons whose affairs may have been disclosed by the Commissioner as part of any evidence or submission or disclose confidential evidence or submissions from the Commissioner.

Reporting

The Inquiry is to report findings and opinions to the appointing Ministers in writing by **30 June 2016**.

Before that date, there shall be at least one interim meeting with one or both appointing Ministers to discuss progress.

Consideration of Evidence

The Inquiry may begin considering evidence on and from **19 April 2016**.

Relevant Department

For the purposes of section 4 of the Inquiries Act 2013, the Treasury is the relevant department for the Inquiry and responsible for administrative matters relating to the Inquiry.

Dated at Wellington this 18th day of April 2016.

HON SIMON WILLIAM ENGLISH, Minister of Finance.

HON MICHAEL WOODHOUSE, Minister of Revenue.