

Proposed Changes to the New Zealand Foreign Trust Regime – the Death Knell for New Zealand Trusts?

Many will have heard about proposed changes to the New Zealand foreign trust regime. The reaction of most to the announcement was initially one of surprise. Would changes to the regime, popular with clients from all over the world (including Asia and Latin America), signal the end of New Zealand trusts?

It is no secret that the growth of New Zealand's international trust industry grew largely as a result of New Zealand's policy to tax trusts based on the residence of the Settlor rather than the Trustee – resulting in a legitimate planning technique for foreigners, to have a trust with a New Zealand trustee, with no New Zealand tax. From a trust perspective this is not unusual, and many other jurisdictions (including Singapore, Bahamas and Hong Kong) adopt similar treatment that has led to the growth of the trust industry in these countries. However, the changes proposed in New Zealand relate to an area that many clients feel particularly sensitive about – confidentiality.

Currently, a New Zealand trustee is required to provide information to the New Zealand tax authorities when a trust is established, and this usually includes the name of the trust and trustee. The New Zealand Trustee is also required to keep books and records relating to the trust, encompassing the usual “know your client” and due diligence information. Books and records may need to be provided to the New Zealand tax authorities, but only on specific request. Outside of this, there is no formal registration process or register for trusts in New Zealand.

The new standards will require a resident trustee to:

- (i) register the trust in New Zealand and provide certain information to the New Zealand tax authorities on specific persons including the settlor, protector and beneficiary class;
- (ii) provide a signed declaration that the specific persons about whom information is provided have agreed to provide the information;
- (iii) annually file an information return with the New Zealand tax authorities in relation to the trust, including the date and amount of distributions made during the year.

Trusts which pre-date the new rules will have to register by 30 June 2017. A failure to register or provide the required information could, if not remedied, result in the foreign trust losing its tax exemption status in New Zealand.

The new requirements could easily deter many clients from establishing New Zealand trusts with a resident trustee, especially give the sensitive nature of the information to be disclosed. However, we are operating in a time of common reporting standards, where automatic exchange of information will become the norm. New Zealand has committed to implement the G20/OECD standard for automatic exchange of information. As the new requirements will not result in information flows beyond those already contemplated under common reporting standards, the proposals should not be a real deterrent to establishing a trust in New Zealand.

Another factor in New Zealand's favor is that it is also in the process of modernizing its trust laws, with a draft proposals having been already been released for comment. The proposals include an increase to the existing perpetuities period from 80 to 150 years for non-charitable trusts, codifying the situations in which a trustee must disclose information to a beneficiary, as well as confirming the persons who may remove and appoint a trustee, where the trust deed is silent.

The proposals are still at consultation stage, however, these could become operative during 2017 if reviewed and accepted. As a result, wealth owners should be provided with a clearer set of rules that will potentially not only allow a New Zealand Trust to span several generations, but will also require a trustee to proactively provide information to certain beneficiaries about the existence of the trust. These measures should provide more comfort for wealth owners, especially those who are not familiar with the trust concept, as well as Trustees, who will now have clearer rules regarding information disclosure obligations. Providing a clear framework for the appointment and removal of Trustees will also give more clarity to clients who may be considering the use of a New Zealand trust.

So, to return to the question originally posed, will the proposed changes to New Zealand's foreign trust regime be the death knell for New Zealand trusts? The answer would seem to be "no".

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