

NARRATIVE REPORT ON NEW ZEALAND



PART 1: NARRATIVE REPORT

New Zealand is not a major tax haven or financial secrecy jurisdiction. It is a small player in the global market for offshore financial services when compared with other secrecy jurisdictions, accounting for 0.12 per cent of the market. It sits relatively low on the Financial Secrecy Index with a score of 59 in 2020. Overall, New Zealand finds itself in 57th place on the 2020 index. This sits well with [New Zealand's reputation](#) as an open economy that has relatively low levels of corruption.¹

Introduction²

However, New Zealand has over the last 15 years been subject to criticisms that it is a tax haven, for reasons that include financial secrecy considerations, and in particular arising from New Zealand's tax treatment and disclosure requirements concerning 'foreign trusts'. The most overt failings of the regime were addressed in 2017 following the Panama Papers disclosures.

New Zealand's response to the Panama Papers provides a case study of how quickly jurisdictions can alter their laws to prevent or mitigate the use of trusts and other legal structures for illegitimate purposes, if media and political pressure can be brought to bear on a government and where government does not have a strong reason to support financial secrecy. This commentary will not explain the myriad legal rules and policy settings that contribute to New Zealand's secrecy score, but will: outline the features of New Zealand law which allowed the use of trusts for illegitimate purposes; describe how New Zealand became embroiled in the global fallout from the Panama Papers disclosures when the pre-2017 inadequacies came to be seen as problematic following the disclosures and high profile court cases;³ outline the response of the government and legislature; and summarise the initial effects of these reforms as at July 2017. The commentary concludes with a brief overview of the remaining and more systemic issues in New Zealand law on trusts which continue to allow their use as vehicles for tax avoidance.

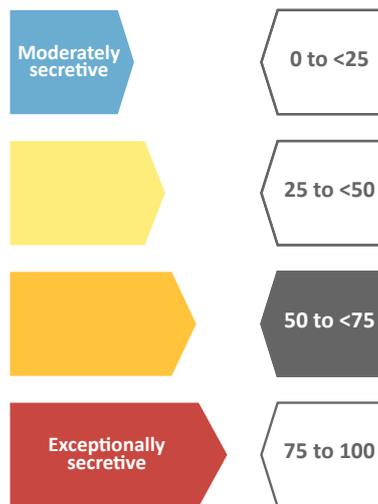
Background: The Legal Nature of a New Zealand Foreign Trust

A New Zealand Foreign Trust (NZFT) is simply a trust to which special rules of taxation apply due to the lack of connection of the settlor, beneficiaries, and income of the trust to New Zealand.⁴ A NZFT is created by the settlor (the person who 'settles' the property on the trust) as a tool for managing her wealth. The settlor will be a person who is not tax resident in New Zealand, and is in that sense 'foreign'.⁵ She arranges for her property rights to be transferred into the ownership of another person, the trustee – who is based in New Zealand. The trustee will have a title to the trust property, which will usually be an asset that is held in a foreign jurisdiction. The asset might be a controlled company or financial securities, but to not be liable to New Zealand taxation the income from those investments must have a foreign source. In addition, there must be no distribution to any beneficiary who is a New Zealand tax resident.⁶ The combination of foreign source and no New Zealand settlor or beneficiaries receiving distributions means that no tax is payable in New Zealand.⁷

Rank: 57 of 133

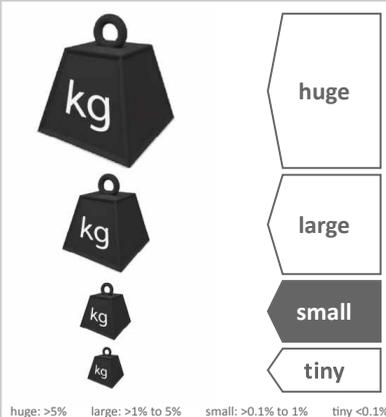
How Secretive?

59



How big?

0.12%



New Zealand accounts for 0.12 per cent of the global market for offshore financial services. This makes it a small player compared to other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.

Full data is available here: <http://www.financialsecrecyindex.com/database>.

To find out more about the Financial Secrecy Index, please visit

<http://www.financialsecrecyindex.com>.

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Since 1989, and before 2017, foreigners had been able to gain greater secrecy for their affairs by establishing a trust in New Zealand, but generally without becoming liable to New Zealand taxation.⁸ ‘New Zealand Foreign Trusts’ therefore become popular over the last quarter century.

The origins and uses of the NZFT Regime

Despite some suggestions that New Zealand Trusts were a loophole intentionally created to help the wealthy avoid taxation, the NZFT taxation regime is better seen as the by-product of a legitimate policy choice in international taxation.⁹ The policy rationale articulated in 1989, when it was conceived, was that a trustee is, in economic terms, merely an agent for the settlor, achieving the settlor’s purposes in a way that the settlor (for practical or legal reasons) could not.¹⁰ From the perspective of New Zealand tax authorities, there was a concern that foreign trusts established in other jurisdictions by New Zealand settlors would erode the tax base unless their income was taxed.¹¹ If we view the settlor as a person who has set up an offshore structure to hold wealth that may have otherwise been invested – and its income taxed – in New Zealand, then it makes sense to attribute the income to the settlor for tax purposes, unless that income is clearly never going to find its way into the hands of the settlor. Consistently, if a foreign settlor invests wealth in foreign income generating assets, and that income is regarded either as accruing to them or the trust’s foreign beneficiaries, then it seems consistent to not tax that income in New Zealand.¹² The New Zealand resident trustee should not be taxed on this income, as they cannot use it for their own benefit.

Yet the foreseeable side-effect of this policy of non-taxation of NZFTs was that they were an attractive option for people who wished to take advantage of the trust structure – for example those who come from civil law countries that do not recognise the trust. Simply by transferring ownership to the New Zealand trustee along with the requisite payment and paperwork, the settlor could utilise the trust institution. The reasons for setting up a trust that the promoters of NZFTs gave to prospective clients included protecting the property from government confiscation, claims from former spouses / partners, forced heirship claims, and claims from creditors.¹³

Whether foreigners should be enabled to create trusts to avoid these liabilities of ownership is one question. Another is whether those who used NZFTs in this way should have been able to have hidden this avoidance from their home jurisdiction. For it seemed that an equally attractive reason

for establishing a NZFT was to have added further secrecy to the existence and parties of the trust. After all, the trust property owned under the NZFT was likely to have been held in a jurisdiction such as the Cayman Islands or British Virgin Islands, where the trust was a recognised legal institution but with no taxation of trust income; both perceived as desirable features of NZFTs. Beyond any further tax or regulatory arbitrage that may have been enabled by using the NZFT as a further structure over wealth management, a key feature of the NZFT, prior to the 2017 changes, was the layer of secrecy it provided without tax consequences in New Zealand.

This structuring of asset ownership through multiple layers based in different jurisdictions is called ‘[laddering](#)’, and is a well-known means of making beneficial ownership harder to identify.¹⁴ The suspicion that secrecy is a reason for the use of NZFTs was given anecdotal support by the example of the use of foreign trusts by Australians ‘drying up’ when further disclosures were introduced for trusts with Australian settlors.¹⁵ With this evident desire for secrecy came the charge that New Zealand was a tax haven where people could hide their wealth from their jurisdiction of tax residence. This ‘tax haven’ concern had been on the agenda of the New Zealand Inland Revenue Department (IRD) for many years, as documents released in relation to the Inquiry demonstrate (see below). Indeed, despite the increased disclosure and record-keeping requirements introduced in 2006, the IRD had continued to be worried about the international pressures concerning the NZFT regime. A [2014 IR tax policy report](#) noted international perceptions that New Zealand was a tax haven in this respect, which were “damaging to New Zealand’s ‘clean’ international reputation”.¹⁶ That the NZFT regime may be seen in this light was also the conclusion of Professor Michael Littlewood, whose [submission](#) stated that:¹⁷

“New Zealand law allows non-residents to use trusts established in New Zealand to avoid the tax they would otherwise have to pay in their home country. [...] A] tax haven is “a jurisdiction that allows itself to be used by non-residents as a means of avoiding the tax that they would otherwise have to pay in their home countries”. By this definition, New Zealand is plainly a tax haven.”

Key problem: inadequate disclosure requirements

As noted above, the key feature of the NZFT regime that made it useful for those who desired secrecy

was the lack of disclosure of information about NZFTs to the New Zealand IRD and the consequent lack of sharing of any such information with tax authorities in jurisdictions where the individuals involved are tax resident. [Prior to 2006](#), NZFTs had not been required to provide any information to IRD or to keep financial records for New Zealand tax purposes.¹⁸ IRD itself identified problems in this situation, with a [2004 policy report](#) stating that: “there is a risk that New Zealand may be unable to supply its double tax agreement (DTA) partners with information relating to certain foreign trusts if requested.”¹⁹ Indeed, it was the concern of the [Australian tax officials](#) that NZFTs were causing problems for the collection of tax in that jurisdiction that was the catalyst for action on further disclosure.²⁰

[Essentially](#) all that was required to be disclosed on the establishment of the trust was the name of the trust, the name and contact details of the [New Zealand trustee](#), and whether the settlor of the trust was Australian.²¹ This disclosure regime was, in the words of a leading tax expert, “[almost completely useless](#)” due to the lack of information gathered.²² Similarly, Professor Craig Elliffe commented that:²³

“The reality is that information held by the New Zealand Inland Revenue is unlikely to be specific enough to be helpful to a foreign revenue authority unless they already have a significant amount of information about their non-compliant taxpayer. ... Countries outside of Australia may struggle to identify situations where the New Zealand foreign trust regime is being used by their residents because it is doubtful whether the New Zealand Inland Revenue would have access to the information to be able to appropriately respond to their query.”

For a number of years, therefore, there had been a concern that NZFTs were used as vehicles for illegitimate activities such as tax evasion. There had been some reforms since the inception of the NZFT regime, including disclosure and automatic sharing of information relating to NZFTs that have self-declared that they have Australian settlors.

Ongoing Australian concerns

Some of the earliest concerns about NZFTs were expressed by the Australian tax authorities, who identified NZFTs as vehicles for tax avoidance by Australian taxpayers.²⁴ This prompted the first major reform response by New Zealand: the introduction of a requirement for the disclosure by NZFT trustees of information if the settlor of the trust was

Australian. While this seemed to dissuade the worst kinds of tax evasion – with industry insiders saying that Australian NZFT business dried up after this reform²⁵ – this did not completely allay Australia’s concerns. [In 2012](#), the Australian Taxation Office (ATO) targeted the use of NZFTs by Australians, in the context of a major tax avoidance prevention review.²⁶ [It warned Australian taxpayers](#) that the use of NZFTs to avoid income tax payable on Australian-sourced income might be ineffective, and the trust income may be still taxable in Australia.²⁷ The structure of a common scheme was [reported](#) to be as follows: “According to the ATO, the schemes being investigated involve establishing a foreign trust to provide administration to an Australian business for a fee which usually includes a mark-up of 20 per cent to 30 per cent above cost. The fee, excluding the mark up, is paid to the trust to cover the administration costs. The mark up, however, may be paid indirectly by the business to the owner of the business. The income, including the mark up, is not reported in either Australia or New Zealand for tax purposes.”²⁸ The fact that the ATO saw fit to release this advice demonstrates the continuing possibilities for misusing the NZFT regime. However, it should be remembered that, as long as the disclosure requirements are followed, the ATO should be able to request information from the New Zealand tax authorities in order to check whether an Australian taxpayer is using NZFTs in this way.

The Panama Papers and other media stories

In 2016 the previously identified concerns about NZFTs exploded into a scandal after the Panama Papers leak, high profile cases, and media stories linking New Zealand trusts with alleged corruption overseas.²⁹

New Zealand was [implicated](#) in the Panama Papers as soon as the story broke.³⁰ The major focus of New Zealand media interest was the possible [use of the NZFT](#) regime for the purposes of tax avoidance or evasion.³¹ This was not a new concern: in addition to the Australian concerns noted already, there had been significant criticism of the use of the NZFT regime [in the print](#) and television media in 2012.³² But the Panama Papers news stories of early 2016 [painted a more vivid picture](#) of overseas (often Latin American) wealth being held through New Zealand trusts as a safe, secret and tax-free structure for the assets.³³ One of the [major stories](#), published in the Australian Financial Review,³⁴ stated that a “wave of South American money” had flowed into the management of NZFTs, with South Americans attracted by New Zealand’s clean reputation as well as the secrecy and tax benefits that could be

achieved. One notable case of this sort concerned allegations of corruption on the part of a Mexican construction tycoon who had undertaken building work for Mexican government ministers.³⁵ [Another story](#) detailed the use of a NZFT by a Brazilian politician accused of being part of the Lavo Jato (Car Wash) corruption.³⁶ This media interest prompted a number of [informative articles](#) and blog posts explaining the workings of the regime and its possible failings to the layperson, with [academic tax experts explaining the regime](#) to the media and public.³⁷

A further story related to alleged corruption in Malta.³⁸ [One of these stories](#) concerns banks established in Malta that do business for offshore companies owned by the Maltese Energy Minister, and the Prime Minister's chief of staff.³⁹ This involved transfers of large amounts of money from figures associated with the Azerbaijan government to these offshore companies, with the allegation that this was [corruption associated with oil deals between Malta and Azerbaijan](#). Many of the offshore companies, located in Dubai and Panama, were owned by NZFTs.⁴⁰ [It is alleged](#) that the use of NZFTs was to ensure that these Politically Exposed Persons were not identified as shareholders of the companies.⁴¹ The lack of disclosure of information about NZFTs has often been [promoted as a key attraction](#).⁴² Those involved have [admitted that they breached Maltese income tax laws](#) by not declaring the NZ trusts.⁴³ A Financial Intelligence Analysis Unit investigation found evidence grounding a reasonable suspicion of money laundering.⁴⁴ The [accusations of corruption](#) broadened to include the Prime Minister's wife, who is said to be a beneficiary of a Panama company.⁴⁵ ['Magisterial' inquiries](#) into many of these allegations were still in process as at July 2017.⁴⁶

Another noteworthy case concerned a Malaysian businessman, Low Taek Jho, who was being pursued by the US Justice Department for allegedly taking over \$4.5 billion US dollars of money from the Malaysian government development company [1Malaysia Development Berhad](#) (1MDB).⁴⁷ The alleged corruption flowed to associates of the Malaysian Prime Minister, Najib Razak, who set up the development company. The scandal came to light after a former employee of an oil company that did business with 1MDB leaked [227,000 emails and numerous other documents](#).⁴⁸ [The US Department of Justice](#) stated that:⁴⁹

“Using fraudulent documents and representations, the co-conspirators allegedly laundered the funds through a

series of complex transactions and shell companies with bank accounts located in the United States and abroad. These transactions allegedly served to conceal the origin, source and ownership of the funds, and ultimately passed through US financial institutions to then be used to acquire and invest in assets located in the United States and overseas.”

This news story dominated Malaysian domestic headlines in 2016, as well as being [reported](#) on widely in the international media, some dubbing it the “worlds biggest financial scandal”.⁵⁰ This scandal's link with New Zealand was that Jho Low's relatives were the beneficiaries of property of a combined value of [\\$232 million held in NZFTs](#).⁵¹ These relatives were successful in [replacing the New Zealand trustees](#) with trustees who are prepared to fight the US Department of Justice's civil forfeiture claims against the trust assets.⁵² These claims are ongoing, and in June 2017 the Department of Justice commenced [further civil forfeiture claims](#).⁵³

New Zealand response: reforming the NZFT regime

While the [government initially defended](#) the present system of taxation of foreign trusts,⁵⁴ it decided, following intense media and political pressure, to [set up an inquiry](#) tasked with assessing the accuracy of the criticisms that had been made.⁵⁵

The inquiry was undertaken by John Shewan, an experienced New Zealand taxation expert. Although critical of the current NZFT disclosure regime, the inquiry's report sought to balance the competing concerns about tax abuse and legitimate offshore planning business, rejecting the suggestion that NZFTs had no legitimate use and should be abolished. Echoing submissions from providers of foreign trust services, the report observed that many offshore trust users are compliant with their home jurisdiction's tax rules, and argued that New Zealand should remain an attractive and safe place for international financial investment.

However, the report ultimately concluded that the rules of the current regime “are not fit for purpose in the context of preserving New Zealand's reputation as a country that cooperates with other jurisdictions to counter money laundering and aggressive tax practices.”⁵⁶ The report concluded that the lack of disclosure requirements meant that NZFTs could be utilized for tax evasion and tax avoidance.⁵⁷ It stated that “New Zealand should not be or be seen as a country that effectively facilitates evasion through having disclosure and reporting requirements that

are sufficiently weak to cause offshore parties to conclude that detection is highly improbable.”⁵⁸ Based on a review of New Zealand tax authority files, it was “reasonable to conclude” that NZFTs were being used to hide illicit wealth and to avoid or evade taxation in foreign jurisdictions.⁵⁹

This conclusion clearly persuaded the government that [action was necessary](#), for it quickly put in place most of the changes proposed,⁶⁰ with legislation providing for further disclosure requirements through [amendments to the Income Tax Act 2007](#).⁶¹

The inquiry report’s proposed solution to the perceived problems with the NZFT were relatively simple: enhanced disclosure and record-keeping requirements, as well as a register that is searchable by the New Zealand authorities. The government quickly stated that it would [adopt all of the report’s recommendations](#),⁶² and these were implemented in the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017. The inquiry’s recommendations, and the government’s implementation of them (and the changes it made) can be summarised as follows.

Establish a formal register of foreign trusts and information on persons involved with the trust

The Inquiry recommended that a formal register of foreign trusts – searchable by regulatory agencies – be established. This is implemented by s 11 of the Act, replacing s 59B the Tax Administration Act 1994.

- The New Zealand trustee must register the NZFT, providing information including: the trust’s name; a copy of the trust deed and any other legally binding documents; information about each settlement of property made on the trust, including the settlor.
- The resident trustee must also provide identification details, contact details, and tax information relating to: each settlor; each “person with a power to appoint or dismiss a trustee, to amend the trust deed, or to add or remove a beneficiary”; each person with “power to control” the exercise of the aforementioned powers or a power to “control a trustee in the administration of the trust”; each trustee; each of the beneficiaries and nominees of a fixed trust; each of the minor beneficiaries, the parent or guardian of the beneficiary.
- The name, age, and taxpayer information number of minor beneficiaries of a fixed

trust must also be disclosed. In the case of a discretionary trust – where the beneficiaries do not have a right to any particular portion of the trust property – the resident trustee must provide “details of each beneficiary or class of beneficiary sufficient for the Commissioner to determine, when a distribution is made under the trust, whether a person is a beneficiary”.

Annual Return to be filed and alterations to trust information disclosed

In addition to the initial registration of the NZFT, the report recommended that the filing of an annual return should be required, including any changes to the information provided on registration, financial statements, and the amount and identification details relating to any distributions of trust property to beneficiaries. This was implemented by inserting s 59D into the Tax Administration Act 1994, which requires that the resident foreign trustee must make an annual return to the tax authorities, including financial statements, information about further settlements to the trust and the settlors who made them, and information about any distributions to beneficiaries.

Stricter sanction of losing tax exemption in cases of non-disclosure

The inquiry report recommended that the tax consequences for non-compliance with registration and disclosure requirements should be reviewed with an eye to strengthening them. Prior to the reforms, a NZFT that had a qualifying resident foreign trustee⁶³ could never be liable for tax due to non-compliance.⁶⁴ Even if this safe-harbour from the sanction does not apply, there had to be a conviction of the trustee for knowingly failing to keep or supply information before the tax exemption is lost.⁶⁵ While the Inquiry’s formal recommendation was only for a review of these issues, it stated its view that:⁶⁶

“the exemption foreign trusts enjoy from New Zealand tax on foreign source income should apply only where the registration and associated disclosure obligations at that time have been complied with.”

The government responded not with a review, but by agreeing with the report’s view that the tax exemption only apply where a trust has complied with registration and disclosure requirements. [It stated](#) that the appropriateness of this safe-harbour for qualifying resident foreign trustees had already been reviewed, and that the government agreed that it should be removed.⁶⁷ The change is realized

in s 6 of the Act.⁶⁸

Expedited inclusion of lawyers, accountants and real estate agents in AML regime, and other changes to AML requirements

In the report's recommendation, the exclusion of lawyers and accountants from the AML reporting requirements should be removed sooner than the current plans for this to occur in late 2017.⁶⁹ This was not accepted by the government, which argued that the application of the AML regime to lawyers and accountants will be progressed as soon as practicable, but that this will remain within the government's planned development of phase II of the AML reforms. This is due to "issues surrounding legal privilege and regime supervision that can only be dealt with through primary legislation and not regulation". The planned timeframe was expedited, with legislation expected to be passed in the first half of 2017. The Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill passed into law in late 2017.⁷⁰

A Lacuna of Information Sharing?

Although the response of the government was generally proactive and comprehensive in relation to the inquiry report's recommendations, neither the recommendations nor the government's reforms led to any automatic sharing of the information disclosed to foreign tax authorities, for example those of the jurisdictions of tax residence of the trust's settlor, beneficiaries, trustee, or other persons holding key powers over trust decisions. In other words, at the point that the trust is established and registered, the jurisdictions where the foreign individuals involved in the trust are tax residents will still not know of the trust's existence. The new disclosure regime does nothing to alter this.

Yet this is not really a lacuna, because the enhanced disclosure requirements sit within a wider framework of measures to tackle money laundering and harmful tax practices. Although the IRD will not automatically share the information that it receives through the new disclosure regime with other jurisdictions' tax authorities under the disclosure regime itself, there are other legal mechanisms under which this will happen.

One option would be for the IRD to disclose suspicious trust structures to home jurisdictions spontaneously – without request from the home jurisdiction. As mentioned above, this is (by volume) the main way currently that information about NZFTs is being provided to foreign tax authorities.

According to many of New Zealand's double taxation agreements, New Zealand must provide such information where it is foreseeably relevant for the enforcement of the other state's tax law.⁷¹ It seems likely that the fuller information provided to the IRD will reveal more of the kinds of trust structures that IR is already reporting spontaneously to foreign tax authorities.

The other way that the information concerning the NZFT may be made available to foreign tax authorities is through the international Automatic Exchange of Information (AEIO) regime;⁷² the offshore financial institution that holds the assets of the foreign trust is likely to be located in a country that has undertaken automatic exchange obligations. If so, the account and personal information relating to all the parties involved in the trust must be acquired and reported to their home jurisdiction. Then, on the basis of gaining information that its tax residents have some involvement with the NZ foreign trust, if there is an 'on request' obligation in place, the home jurisdiction may make a request for NZ to acquire and provide more detailed information about the NZ trust to help with the home jurisdiction's investigations. The disclosure requirements recommended by the report will be a good foundation for the provision of this information.

As is inevitable, there may be loopholes to exploit. The new information requirements depend on the information gathered and verified by the trustee, and there may be ways for the unscrupulous to hide their interests in the NZFT behind undeclared nominees. There is also the possibility that jurisdictional arbitrage may occur, with the assets of the NZFT being deliberately placed in jurisdictions that are not participating in the AEIO regime, or which have not agreed to provide information to the jurisdiction where the parties to the trust are resident. Or it may be that the parties to a trust are not resident in a jurisdiction that is participating in the AEIO regime. In such cases, the information about the existence of a NZFT that the home jurisdiction's tax residents have some relationship to will not be disclosed to those authorities. In such cases the NZFT will retain its status as an entity which provides a degree of secrecy from an individual's home tax authorities. However, with the continuing shift to transparency, it seems foolhardy to set up trusts for the reason of tax evasion or avoidance – at least if this requires a relatively long-term structure – because of the risk that holdouts against the AEIO regime will cave to international pressures or that the home jurisdiction may agree to further information-sharing with New Zealand, at which point the sharing of the information held by IRD seems likely.

Impact of the changes

[It is reported](#) that of the around 11,750 NZFTs previously registered with IRD, fewer than 3000 have re-registered and provided the required information, 3000 have actively deregistered and the 6000 others are unaccounted for.⁷³

Underlying issues

The most glaring inadequacies in New Zealand's foreign trust rules have been largely addressed, but the recent reforms do not tackle more fundamental and systemic problems which relate to both foreign and non-foreign trusts. While these problems do not clearly concern direct fraudulent behavior, they either enable tax avoidance or avoid disclosure of information which would allow tax avoidance to be brought to light. Two of these issues are:

1. Lack of public disclosure of details concerning those who own and/or benefit from trusts; and
2. Inadequacies in New Zealand's law on trusts that enable both New Zealand citizens and foreigners to use trusts as vehicles to avoid tax.

Lack of public disclosure

In accordance with the 2017 statutory changes, foreign trusts must provide specified information, including identification, to the NZ IRD as well as, potentially, the regulatory agencies of other jurisdictions through exchange of information. The public, however, does not have access to this information or the registers now established. This lack of transparency means that, for example, journalists and members of civil society cannot (without considerable difficulty) research the legitimacy or otherwise of trusts and the behavior of those involved, including any possible use of trusts as a vehicle for tax avoidance. This gap is ironic given that the 2017 provisions were only established in New Zealand as a result of the leaking of information provided to activist journalists. Details of ownership, beneficial rights, and possible tax dodging should not have to depend on the actions of whistle-blowers. Awareness of public disclosure should also act as an incentive to trust owners and beneficiaries to behave responsibly.

While there may be concerns about the safety of trust beneficiaries in some situations (through mandatory publication of identity) such concerns can easily be addressed by limited exemptions to be applied on a case-by-case basis.

The general use of trusts for tax planning purposes

Trusts have a long legal history, with a degree of tax avoidance as one of their purposes. A New Zealand Law Commission report states that:

It is not possible to determine the number of trusts in New Zealand with certainty because there is no definitive record of trusts. However, the indications from the records that are kept are that New Zealand has a high number of trusts per head of population relative to other countries. There are at least 237,500 trusts, as this was the number of tax returns filed by trusts with Inland Revenue for the 2007–2008 tax year. This number increased from 145,900 in the 2000–2001 tax year. Based on the 2008 figure, the most cautious assessment is that there is one trust for every 18 people in New Zealand.⁷⁴

There is no doubt that trusts are used to avoid tax liabilities. As the Law Commission states:

Estate duty was not charged on distributions from a trust, so it long provided an incentive for people to gradually transfer their property to a trust for distribution to others.⁷⁵

While no details are available on the extent of revenue losses, in 2010 the Victoria University of Wellington (VUW) Tax Working Group estimated that the ability to shelter income in trusts cost the government roughly \$300 million in tax revenue in 2007.⁷⁶

Conclusions and recommendations

The most egregious aspects of New Zealand's rules on foreign trusts, and their role in allowing New Zealand to function as a tax haven (albeit in a limited way) have been largely addressed by recent law changes, and have significantly reduced the number of foreign trusts in New Zealand. However, pervasive problems with law on trusts in New Zealand remain. A more systemic approach to reform would (a) require public disclosure of details on trusts; and (b) ensure that the owners and beneficiaries of trusts are liable for tax on trust distributions (at least), thus disincentivising the use of trusts as vehicles for tax dodging.

With thanks to [Tax Justice Aotearoa New Zealand](#) and to Mark J. Bennett, a senior lecturer at Victoria University of Wellington

Further reading

- John Shewan Government Inquiry into Foreign Trust Disclosure Rules (2016) available at www.treasury.govt.nz/publications/reviews-consultation/foreign-trust-disclosure-rules/pdfs/report-giftdr-27jun2016.pdf
- Inland Revenue Special Report on Foreign Trust Disclosure Rules (March 2017) <http://taxpolicy.ird.govt.nz/sites/default/files/2017-sr-foreign-trust.pdf>
- John Prebble “The New Zealand Offshore Trust Regime” (2009) International Financial Centre Review 134 <https://ssrn.com/abstract=1605491>
- Michael Littlewood “Using New Zealand as a Tax Haven: How is it Done? Could it Be Stopped? Should it Be Stopped?” (2016) <https://ssrn.com/abstract=2761993>
- Mark J. Bennett “Implications of the Panama Papers for the New Zealand Foreign Trusts Regime” (2015) 21 NZ Association of Comparative Law Yearbook 27 <https://ssrn.com/abstract=2914687>
- Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: New Zealand 2013 <http://dx.doi.org/10.1787/9789264205864-en>
- Reserve Bank of New Zealand AML guidance and publications <http://www.rbnz.govt.nz/regulation-and-supervision/anti-money-laundering/guidance-and-publications>

Endnotes

- 1 See Transparency International New Zealand ‘Corruption Perceptions Index’ <http://www.transparency.org.nz/Corruption-Perceptions-Index>; 29.01.2020.
- 2 The original version of this report was authored by Professor Mark J. Bennet, based on research conducted in the course of writing the article Mark J. Bennett “Implications of the Panama Papers for the New Zealand Foreign Trusts Regime” (2015) 21 NZ Association of Comparative Law Yearbook 27 <https://ssrn.com/abstract=2914687>; 04.02.2020.
- 3 <https://www.taxjustice.net/2017/07/13/post-panama-papers-sunlight-new-zealand-trusts/>; 29.01.2020.
- 4 Income Tax Act 2007, s HC 11.
- 5 Income Tax Act 2007, ss CW 54 and HC 26.
- 6 Income Tax Act 2007, ss BD 1(4) and BD 1(5)(c). See Prebble “New Zealand Trusts in International Tax Planning”, at 558.
- 7 For further discussion, see Craig Elliffe International and Cross-Border Taxation in New Zealand (Thomson Reuters, Wellington, 2015), at 101-107 and 145-149.
- 8 See John Prebble “The New Zealand Offshore Trust Regime” (2009) International Financial Centre Review 134; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1605491; 29.01.2020.
- 9 Inquiry Report at [4.18].
- 10 John Prebble “New Zealand’s 1988 International Tax Regime for Trusts” (1989) 6 Australian Tax Forum 65 available at <https://ssrn.com/abstract=1580507>; 29.01.2020 at 86-87; John Prebble “New Zealand Trusts in International Tax Planning” (2000) 5 British Tax Review 554 at 556-557; Craig Elliffe International and Cross-Border Taxation in New Zealand (Thomson Reuters, Wellington, 2015), at 103. For further discussion of New Zealand’s settlor regime, see Mark Brabazon “Trust Residence, Grantor Taxation and the Settlor Regime in New Zealand” (2016) Sydney Law School Legal Studies Research Paper No. 16/55 available at <https://ssrn.com/abstract=2796843>; 29.01.2020.
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PART 2: SECRECY SCORE

OWNERSHIP REGISTRATION

- 27 1. Banking Secrecy
- 50 2. Trust and Foundations Register
- 90 3. Recorded Company Ownership
- 50 4. Other Wealth Ownership
- 100 5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

- 80 6. Public Company Ownership
- 100 7. Public Company Accounts
- 100 8. Country-by-Country Reporting
- 100 9. Corporate Tax Disclosure
- 100 10. Legal Entity Identifier

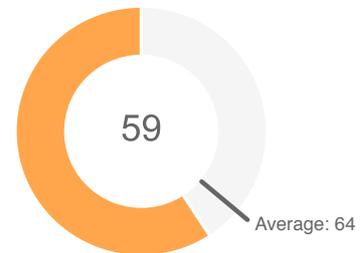
INTEGRITY OF TAX AND FINANCIAL REGULATION

- 50 11. Tax Administration Capacity
- 75 12. Consistent Personal Income Tax
- 40 13. Avoids Promoting Tax Evasion
- 75 14. Tax Court Secrecy
- 25 15. Harmful Structures
- 50 16. Public Statistics

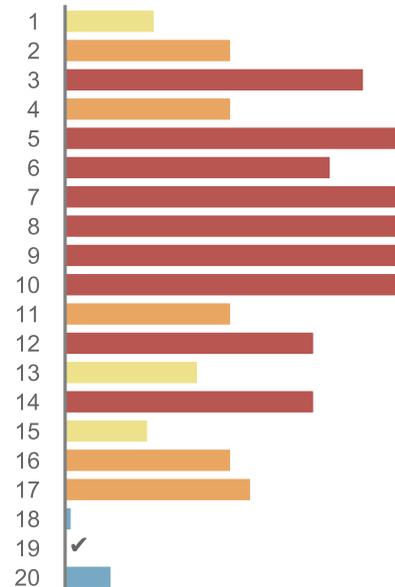
INTERNATIONAL STANDARDS AND COOPERATION

- 56 17. Anti-Money Laundering
- 2 18. Automatic Information Exchange
- 0 19. Bilateral Treaties
- 14 20. International Legal Cooperation

Secrecy Score



Key Financial Secrecy Indicators



Notes and Sources

The FSI ranking is based on a combination of a country's secrecy score and global scale weighting (click [here](#) to see our full methodology).

The secrecy score is calculated as an arithmetic average of the 20 Key Financial Secrecy Indicators (KFSI), listed on the right. Each indicator is explained in more detail in the links accessible by clicking on the name of the KFSI.

A grey tick in the chart above indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This report draws on data sources that include regulatory reports, legislation, regulation and news available as of 30 September 2019 (or later in some cases).

Full data is available here: <http://www.financialsecrecyindex.com/database>.

To find out more about the Financial Secrecy Index, please visit <http://www.financialsecrecyindex.com>.