

House of Representatives

Supplementary Order Paper

Tuesday, 10 May 2016

Taxation (Transformation: First Phase Simplification and Other Measures) Bill

Proposed amendment

Julie Anne Genter, in Committee, to move the following amendment:

New clause 45A

After clause 45 (page 16, after line 24), insert:

45A 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

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- (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 **(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 provided 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: Commissioner, distribution, foreign trust, resident in New Zealand, settlement, settlor, trustee

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

Explanatory note

This Supplementary Order Paper inserts *new clause 45A*, which replaces *section HC 11*, to impose a new registration and fuller 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, as recently highlighted again by the release of the Panama Papers.

This amendment would simply require all foreign trusts to more fully 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.