

20 May 2016

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Government Inquiry into Foreign Trust Disclosure Rules

The New Zealand Law Society appreciates the opportunity to comment on the Government Inquiry into Foreign Trust Disclosure Rules. We have limited our comments to issues that relate to lawyers and their responsibilities as professionals and officers of the court. Beyond that there are of course a wide range of views in the legal profession as to the appropriate policy settings in this area. The Law Society would welcome the opportunity to contribute to any law reform proposals that might come out of the inquiry.

A New Zealand foreign trust is required to have a “resident foreign trustee” (i.e. a trustee that is resident in New Zealand). The New Zealand Law Society is an approved organisation under the Tax Administration Act 1994, and so lawyers can be qualifying resident foreign trustees, or may be directors of trustee companies. We note that lawyers have professional duties¹ not to assist in any activity that the lawyer knows to be fraudulent or criminal,² and associated disclosure requirements.³ The Law Society has a comprehensive statutory complaints and disciplinary regime and has established processes for when lawyers breach the rules of conduct and client care and fall below acceptable standards. There is also an obligation on lawyers to report suspected misconduct of another lawyer.⁴

We note also that Inland Revenue is currently undertaking work in connection with the Government’s commitment to adopt the global Standard for Automatic Exchange of Financial Account Information in Tax Matters (AEOI) initiative.⁵ The Common Reporting Standard (CRS) is a

¹ Under the Lawyers and Conveyancers Act (Lawyer: Conduct and Client Care) Rules 2008

² Rule 2.4

³ Rules 8.2 to 8.4

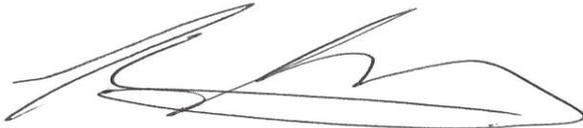
⁴ Rule 2.8

⁵ <http://www.ird.govt.nz/international/nzwithos/fatca/role/shift-auto-eoi-tax-admins.html> accessed on 17.5.16.

component of this. Once implemented, the AEOI regime and the requirements under the CRS will require financial institutions (which will include trustees of foreign trusts) to carry out due diligence and report certain information to the tax authority in the jurisdiction in which they are resident. Each participating jurisdiction will then exchange this information with the other participating jurisdictions. New Zealand's implementation of the global AEOI standard will create significant additional reporting obligations for New Zealand trustees and for Inland Revenue to provide that information to CRS jurisdictions.

If you would like further information or to discuss the Law Society's comments, please do not hesitate to contact the Law Society's Executive Director, Christine Grice (04 463 2924 / christine.grice@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, appearing to be 'K. Beck', written over a horizontal line.

Kathryn Beck
President