**Form C**

**Self-certification and consent to release of**

**client information of Trust clients**

**(For use when the law firm is a non-financial foreign entity)**

The Foreign Account Tax Compliance Act (‘**FATCA**’) is US law which has effect in New Zealand under the Double Tax Agreements (United States of America – FATCA) Order 2014 (‘**FATCA Order**’). Our bank is required by law to obtain client information fromus where funds are held on interest bearing deposit through our trust account. If the information required by the bank relates to any United States trust or any trust with a ‘controlling person’ who is a US citizen or US tax resident, the bank must advise the IRD, which will pass relevant information to the US Internal Revenue Service. A ‘controlling person’ of a trust means the settlor, trustees, the protector (if any), the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust.

In addition to FATCA, New Zealand has endorsed the OECD’s Standard for Automatic Exchange of Financial Information in Tax Matters (‘**AEOI**’) which incorporates the Common Reporting Standard (‘**CRS**’). From 1 July 2017, CRS will facilitate the annual cross border automatic exchange of information on ‘financial accounts’ between the Competent Authority of each country with which New Zealand enters into a bi-lateral agreement to implement CRS. There are substantial similarities between the FATCA and CRS regimes. This form also applies to CRS information.

Questions 1-4 relate to both FATCA and CRS. Questions 5-7 relate to FATCA. Questions 8-10 relate to CRS.

**Further information and definitions can be obtained regarding FATCA at** [www.ird.govt.nz/international/nzwithos/fatca/documents/](http://www.ird.govt.nz/international/nzwithos/fatca/documents/), **and regarding CRS at** <http://taxpolicy.ird.govt.nz/publications/2016-other-aeoi-guidance-draft/overview>**.**

1. **Trust details**

Full name of Trust: (‘**Trust**’)

1. **Country of establishment**

Country where the Trust is established:

Trust’s Tax Identifying Number (or functional equivalent:

1. **Residency of Trust**

|  |  |  |
| --- | --- | --- |
| Does the Trust have one or more trustees resident in New Zealand for New Zealand income tax purposes or a New Zealand branch of a trustee (which branch is subject to New Zealand regulatory supervision)? (Circle correct answer)  If the answer is yes, proceed to question 4.  If the answer is no, proceed to question 5. | Yes | No |
|  |  |

1. **Financial Institution**

|  |  |  |  |
| --- | --- | --- | --- |
| Is the Trust a Financial Institution (a custodial institution, a depository institution or an investment entity) for FATCA purposes? (It is likely to be a Financial Institution if it has a portfolio of shares and/or bonds managed by an investment adviser, or has an ‘in business’ investment entity trustee.) (Circle correct answer) | | Yes | No |
|  |  |
| If the answer is yes, please provide the Trust’s Global Intermediary Identification Number (GIIN) then proceed to question 8. |  | | |
|  | | |

If the answer is no, proceed to question 5.

1. **United States Trust**

|  |  |  |  |
| --- | --- | --- | --- |
| Does a court within the US (i) have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the Trust; and (ii) one or more US persons have the authority to control all substantial decisions of the Trust? (Circle correct answer) | | Yes | No |
|  |  |
| If the answer is yes, please provide the Trust’s US federal taxpayer identifying number (US TIN) and proceed to question 8. |  | | |
|  | | |

1. **Source of the Trust’s gross income**

|  |  |  |
| --- | --- | --- |
| If the answer to the previous question is no, does 50% or more of the Trust’s gross income for the preceding calendar year or other appropriate reporting period come from passive income? (See note 2 for definition of ‘passive income’). (Circle correct answer) | Yes | No |
|  |  |
| Is 50% or more of the Trust’s assets held during the preceding calendar year or other appropriate reporting period producing, or held for the production of, passive income? (Circle correct answer) | Yes | No |
|  |  |

If either answer is yes, the Trust is a passive NFFE. Proceed to question 7.

If both answers are no, the Trust is an active NFFE. Proceed to question 8.

1. **Controlling persons of passive NFFE Trust**

|  |  |  |
| --- | --- | --- |
| Is any settlor, trustee, beneficiary or other person having control over the Trust a US citizen or US tax resident (see note 1 below)? (Circle correct answer) | Yes | No |
|  |  |

If the answer is yes, please provide details of the person(s) below:

Full name

Residential address

Date of birth (day/month/year)

Place of birth

US federal taxpayer identifying

number (US TIN) (if applicable)

Specify whether the person having  
control over the Trust is the settlor,  
trustee or beneficiary or other person

1. **CRS information**

|  |  |  |  |
| --- | --- | --- | --- |
| Is the Trust a Financial Institution (custodial institution, depository institution or investment entity) for CRS purposes? (It is likely to be a Financial Institution if it has a portfolio of shares and/or bonds managed by an investment adviser or has an ‘in business’ investment entity trustee.) Refer to link on page 1. (Circle correct answer) | | Yes | No |
|  |  |
| If the answer is yes, please proceed to sign this form.  If the answer is no, the Trust is an NFE (non-financial entity). Proceed to question 9 |  | | |
|  | | |

1. **Source of the Trust’s gross income (for CRS purposes)**

|  |  |  |
| --- | --- | --- |
| If the answer to the previous question is no, does 50% or more of the Trust’s gross income for the preceding calendar year or other appropriate reporting period come from passive income? (See note 5) (Circle correct answer) | Yes | No |
|  |  |
| Is 50% or more of the Trust’s assets held by the Trust during the preceding calendar year or other appropriate reporting period producing, or held for the production of, passive income? (Circle correct answer). | Yes | No |
|  |  |
| If either answer is yes (and the Trust does not qualify as an active NFE – refer note 7), the Trust is a passive NFE. Proceed to question 10. |  |  |
| If both answers are no, the Trust is an active NFE.  Proceed to sign this form. |  |  |

1. **Controlling persons of a passive NFE trust**

|  |  |  |
| --- | --- | --- |
| See note 3 for definition of ‘controlling persons’. Is any settlor, trustee, beneficiary or other person having control over the Trust resident in any country (other than New Zealand or the US)? (Circle correct answer) | Yes | No |
|  |  |

If the answer is yes, please provide details of the person(s) below:

Full name

Residential address

Date of birth (day/month/year)

Place of birth

Country of tax residence

Tax Identifying Number (or  
functional equivalent)

Specify whether the person having  
control over the Trust is the settlor,  
trustee or beneficiary or other person

**To: [law firm]  
  
I/We, being the trustees of the trust, certify the information given above is correct and consent to you providing any information held by you relating to the trust’s FATCA or CRS status or FATCA or CRS matters to the IRD and/or any bank maintaining a trust account for you.**

**I/We agree to notify you in writing immediately if there is any change which I/we become aware of which would render any answer above to be incorrect, and to re-submit this form to you upon your request.**

**Dated:**

**Signed:**

**Notes:**

1. A US citizen includes persons born in the US, having a US citizen parent or persons who are US-naturalised, a former alien who has been naturalised as a US citizen, and an individual born in Puerto Rico, Guam or the US Virgin Islands. A US tax resident includes a green card holder and someone who satisfies the substantial presence test. The substantial presence test is satisfied when a person is present in the US for 31 days in the current year (calendar year), and for at least 183 days in the period of the current year and the two years prior to the current year. When assessing the 183 days, this includes all days present in the US in the current year, 1/3 of the days present in the US in the year prior to the current year, and 1/6 of the days present in the US in the year two years prior to the current year.
2. For FATCA purposes, ‘passive income’ is determined in accordance with New Zealand tax law. It includes dividends, interest, rents and royalties (other than rents and royalties derived in the active conduct of a trade or business), annuities, and amounts received under cash insurance contracts.
3. The term ‘controlling persons’ is defined for FATCA and CRS purposes to mean, in the case of a trust, the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.
4. Active NFFEs for FATCA purposes also include certain types of holding companies, start-ups, hedging financing centres and tax exempt charitable entities – refer to the definition of ‘Active NFFE’ in VI B4 of Annex 1 of the FATCA Order. If an NFFE is not an active NFFE, it is a passive NFFE.
5. ‘Passive income’ for CRS purposes is defined in s3(1) of the Tax Administration Act 1994 as follows:

**passive income,** in the application of the CRS applied standard to a person or entity for a period, means an amount that is not income from a transaction entered into in the ordinary course of the business of a dealer in financial assets and that is—

1. a dividend:
2. interest:
3. income equivalent to interest:
4. rent or a royalty, other than rent or a royalty derived in the active conduct of a business conducted, partly or wholly, by employees of the person or entity:
5. an annuity:
6. for financial assets that give rise to amounts included under paragraphs (a) to (e), the amount by which gains from the sales or exchanges of the financial assets in the period exceed losses from the sales or exchanges:
7. the amount by which gains from the transactions in financial assets in the period exceed losses from the transactions:
8. the amount by which gains from the foreign currency transactions in the period exceed losses from the transactions:
9. the amount by which gains from the swaps in the period exceed losses from the swaps:
10. an amount received under a cash value insurance contract
11. For CRS purposes, a ‘financial asset’ generally covers all assets (including, for example, shares, bonds, and money) other than physical commodities or direct interests in real property.
12. ‘Active NFE’ is defined in Section VIII(D)(8) of the CRS. Refer to the CRS link on page 1. If an NFE is not an active NFE, it is a passive NFE.
13. Where moneys held by a law firm on interest-bearing deposit are:
    * 1. escrow money, or
      2. held for a deceased estate where the law firm holds a copy of the deceased’s will or death certificate (and can provide that documentation to the bank if required) (this exemption does not apply to testamentary trust continuing on following the distribution of an estate)

the account is exempted from being a financial account and cannot be reported on by the bank. Other accounts are exempted (for example, for FATCA purposes, accounts held by charitable organisations registered under the Charities Act 2005 or Charitable Trusts Act 1957 and donee organisations are excluded from being financial accounts).