

CRS applied standard – excluded account determination – Barristers' fee accounts maintained by a Reporting NZFI

Determination CRS 2019/013 – A barrister's fee account maintained by a Reporting NZFI is an excluded account for the purposes of the CRS applied standard and requirements under Part 11B of the Tax Administration Act 1994

Reference

This determination is made under section 91AAW of the Tax Administration Act 1994.

Interpretation

In this determination, unless the context otherwise requires:

"AML procedures" means anti-money laundering and countering the financing of terrorism procedures under the AML/CFT Act 2009.

"AML/CFT Act 2009" means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

"CRS applied standard" means the CRS standard as modified by section 1850 for the determination of requirements under the Tax Administration Act 1994.

"CRS publication" means the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, published by the Organisation for Economic Co-operation and Development.

"CRS reporting period" means the period from 1 April 2018 to 31 March 2019 and any subsequent 12-month period from 1 April to the following 31 March.

"CRS standard" means the *Common Standard on Reporting and Due Diligence for Financial Account Information*, as amended from time to time, which is a standard—

- (a) developed by the Organisation for Economic Co-operation and Development and the Group of Twenty countries; and
- (b) agreed by the Council for the Organisation for Economic Co-operation and Development on 15 July 2014; and
- (c) contained in Part IIB of the CRS publication.

"Escrow account" means an excluded account that fully satisfies the requirements of section VIII C(17)(e)(ii) of the CRS standard.

"Financial account" has the same meaning as in Section VIII(C)(1) of the CRS standard.

"FMC Act 2013" means the Financial Markets Conduct Act 2013.

"ITA 2007" means the Income Tax Act 2007.

"Law Firm" means:

- (a) any person practising on his or her own account in sole practice as a barrister and solicitor under the Lawyers and Conveyancers Act 2006; or
- (b) any group of persons (including a partnership) practising on their own account as barristers and solicitors under the Lawyers and Conveyancers Act 2006; or
- (c) any incorporated law firm (as defined in section 6 of the Lawyers and Conveyancers Act 2006).

"NZLS" means the New Zealand Law Society.

Discussion (which does not form part of the determination)

Rule 14.10 of the Lawyers Conduct and Client Care Rules (the Rules) enables a Law Firm to hold moneys paid in advance of fees for work to be carried out by a barrister for a client with no instructing solicitor in an escrow. The Rules provide that such money must be held and dealt with in accordance with terms prescribed by the NZLS. The account is set up to protect the client's interest and to ensure the payment for services provided by a barrister to a client.

These accounts are set up for very limited purposes and access to the funds is only permitted in terms of the conditions set out in the escrow agreement. Where a barrister issues an invoice to the client and the invoice is approved by the client, the Law Firm arranges for payment to be made to the barrister from the moneys held in escrow. On completion of the escrow arrangement or annually if the escrow arrangement extends for more than one year, the Law Firm must report to the client in respect to the moneys held in escrow.

Scope of determination

A barrister's fee account does not fully satisfy the requirements for, but has substantially similar characteristics to, the following types of accounts (and has other substituting characteristics which indicate that such an account presents a low risk of being used to evade tax):

- An escrow account as described in section VIII(C)(17)(e)(ii) of the CRS standard; and
- An escrow account as described in section VIII(C)(17)(e)(i) of the CRS standard.

This determination is issued by the Commissioner of Inland Revenue and applies to barristers' fee accounts maintained by a reporting NZFI bank and operated by a Law Firm, where:

- The barrister's fee account is established for the sole purpose to secure the obligation of the client to pay the barrister's fees.
- The moneys held in the account are paid or otherwise distributed to the barrister in payment for services rendered to the client (i.e. when those services have been performed) and any remaining balance is repaid to the client.
- The Law Firm is subject to AML procedures.
- The moneys held by the Law Firm in the barristers' fee accounts are subject to the Lawyers Conduct and Client Care Rules.
- The barrister's fee account is not a margin or similar account established in connection with a sale or exchange of a financial asset.
- The barrister's fee account is not associated with an account described in Section VIII(C)(17)(f) of the CRS standard.

Determining that a barrister's fee account is an excluded account and specifying this under New Zealand law, does not frustrate the purposes of the CRS standard.

Determination

A barrister's fee account, as outlined in the scope of this determination, is an excluded account for the purposes of the CRS applied standard and requirements under Part 11B of the Tax Administration Act 1994. If any of the above conditions are not satisfied for a particular barrister's fee account this determination will not apply to that account.

Application date

This determination applies for the reporting period beginning 1 April 2018, and subsequent reporting periods under the CRS applied standard.



Dated at Wellington this

15th day of May 2019.

Tony Morris Customer Segment Lead, Significant Enterprises