New Zealand Law Society
Te Kāhui Ture o Aotearoa

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Stewart Donaldson
Principal Policy Advisor
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Wellington

By email: stewart.donaldson@ird.govt.nz

Tēnā koe Stewart,

Re: Trust annual return / disclosure rules, exemption categories – NZLS feedback

Thank you for your email of 15 January 2021. You have invited feedback on potential exemption categories for trusts that are not the intended target of the additional trust information disclosure rules introduced in the Taxation (Income Tax Rate and Other Amendments) Act 2020, enacted on 7 December 2020.

Proposed additional exemptions, for inclusion in remedial SOP

The rules introduced in December contained exclusions for non-active trusts, foreign trusts, trusts with trustees incorporated under the Charitable Trusts Act 1957, and trusts with trustees eligible to become a Māori authority. You have indicated that these trusts were not the intended target of the new disclosure requirements, which focus on *trusts of a private nature*, and that since the legislation was enacted, Inland Revenue has received feedback from stakeholders that the exemption categories should be expanded to include additional trusts that are not the intended target of the disclosure requirements.

The trusts that have been recommended for additional exclusion are:

- Energy consumer trusts,
- Community trusts established under the Trustee Banks Restructuring Act 1988 and now operating under the Community Trusts Act 1999,
- Widely-held superannuation funds, and
- Trusts registered under the Charities Act 2005

It has also been suggested that the Commissioner be given a discretion to exclude classes of trusts from the new disclosure requirements.

Consequently, Inland Revenue proposes to recommend additional exclusions as a remedial matter in the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill, via a Supplementary Order Paper at the Committee of the whole House stage.

You have asked for any feedback from the New Zealand Law Society | Te Kāhui Ture o Aotearoa about other classes of trusts that may also warrant exclusion from the new disclosure rules because they are not trusts of a private nature. Members of the Law Society's Tax Law Committee have provided brief comments on the exemption categories – and given the short time available, these have been provided verbatim.

The Law Society and the Tax Law Committee also reiterate concerns recently expressed in letters to Inland Revenue and the Minister about the undesirable rushed law-making process which in this instance (as in others) has led to an urgent remedial SOP being required.

Feedback from the NZLS Tax Law Committee

- "One immediate thought is that the new rules should also not apply to a trust established as part of a financing or investment structure. Such trusts are typically used for structural reasons in commercial transactions, for good, non-tax, reasons. For example, securitisation structures frequently use a corporate trustee to provide a bankruptcy remote structure capable of creating security over the relevant securitised assets, and capable of passing amounts through to investors in accordance with the relevant funds flow waterfall, whilst preserving their original character. Investors also commonly use trusts for a variety of reasons, both domestically and in a cross-border context.

  One further immediate thought is that trusts established by the tax pools should also not be subject to these rules."

- "The suggested addition I have is no reporting should be required where all income earned by the trust during the year has been subject to withholding. This mirrors the position with individuals who aren't required to file income tax returns.

  Also, could we suggest that they clarify somewhere that unit trusts are not covered? I think this is the position anyway, but at least some commentary on that would help."

- "In relation to an exclusion for investors, I think we should also be submitting that trusts and unit trusts used for the purposes of investment funds should be excluded from the annual return/disclosure rules. Possibly also trusts established by corporate groups for the purposes of holding employee share scheme shares?"

The Law Society has no objection to the Commissioner of Inland Revenue having discretion to exclude further categories of trusts, provided any exclusions are publicly notified and readily available.

Should you want to discuss the feedback, I can be contacted through the Law Society's Law Reform and Advocacy Advisor Emily Sutton (Emily.Sutton@lawsociety.org.nz).

Nāku noa, nā

Neil Russ
Convenor, NZLS Tax Law Committee