



Business Tax Bill reported back

Snapshot

The Finance and Expenditure Select Committee ("FEC") has also reported back the August 2016 **Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill** with a number of changes:

- **Foreign trust disclosure requirements:** safeguards for information sharing with other countries, a process for exchanging information with the Overseas Investment Office ("OIO"), and simplifying the requirements for trustees that are not in the business of providing trustee services.
- **Automatic Exchange of Information ("AEOI") rules:** capping penalties, extending penalty defences, and clarifying the use of information by Inland Revenue.
- **Business tax:** allowing estimation taxpayers to apply the use of money interest ("UOMI") safe harbour but removing the ability of close-companies to make provisional tax payments for shareholder-employees pending further simplification.
- **Regulation making power:** limiting its scope to resolving administrative issues from Inland Revenue's Business Transformation ("BT") and only when necessary and with consultation.

The Business Tax Bill has been reported back by the FEC with some useful improvements

The FEC has paid particular attention to the operation of the new disclosure rules for foreign trusts and use of information collected under AEOI. It has also limited the scope of regulation making powers to supporting BT

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What are the key changes in the reported back Bill?

The reported back Business Tax Bill:

Foreign trust registration and disclosure

- Supports Inland Revenue evaluating each jurisdiction before sharing foreign trust information and allowing information sharing with the OIO in relation to investment in sensitive NZ assets.
- Clarifies that a foreign trust exists if there is a foreign settlor at a point in time, for registration and disclosure purposes. The current definition requires a distribution to be made.
- Narrows the definitions of “settlor” and “settlement” to persons that have provided money, goods or services that are more than incidental.
- Allows Inland Revenue discretion to reinstate the foreign sourced income exemption if a trustee’s registration/disclosure mistake is unintentional and remedied within certain timeframes.
- Simplifies requirements for resident individual trustees of foreign trusts that are not in the business of providing trustee services by:
 - Allowing Inland Revenue to exempt registration and annual filing fees.
 - Extending the grace period for complying with the new rules to 4 years (from 2 in the Bill as introduced).
 - Limiting information disclosures on historical settlements to 4 years.
- Requires Inland Revenue to prescribe minimum standards for financial statements for foreign trusts and extends the annual return filing date to within six months of balance date.

Automatic Exchange of Information

- Confirms AEOI information collected under the “wider” approach can be used by Inland Revenue for matching against tax rates and tax credits claimed.
- Proposes a maximum limit per financial institution (per reporting period) of \$10,000 for absolute liability penalties and \$100,000 for lack of reasonable care penalties.
- Extends the transitional period for “reasonable efforts” penalty defences by 3 months (to 1 July 2019) and provides a permanent defence of “circumstances outside a financial institution’s control”.

Business Tax

- Prevents use of the Accounting Income Method if adjustments have the sole purpose of reducing provisional tax below a reasonably accurate assessment amount.
- Allows an estimation provisional taxpayer who has used the standard method to calculate provisional tax at the first and second instalments to also apply the UOMI safe harbour (except where residual income tax is less than \$60,000).
- Removes the rules for closely-held companies to make provisional tax payments for shareholder employees, pending further work to simplify them.
- Replaces the \$150,000 unpaid tax debt threshold for information sharing with credit reporting agencies with an amount to be set by regulation.
- Extends by 3 months the application date of the labour hire contractors withholding rules for firms genuinely unable to comply by 1 April 2017.

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Inland Revenue Business Transformation – transitional regulations

- Supports the ability to make transitional regulations, but with explicit safeguards to limit the regulations to BT administrative issues, without increasing taxpayers' liabilities or diminishing their rights, and only where necessary and following appropriate consultation.

Our view

The FEC's recommended changes are largely fine tuning rather than policy changes to the Business Tax Bill. The report back assumes a degree of familiarity with the proposals (our original taxmail on the Business Tax Bill is available [here](#)).

The Business Tax proposals are varied but positive. The FEC has left these largely unchanged – other than removing a proposal to allow Officials additional time to simplify its operation.

It is worth noting that there is a focus on information: what Inland Revenue will collect and who it shares that with. The FEC has taken a particular interest in this. The additional oversight is both welcome, and important, to ensure that taxpayer information is being managed appropriately. However, the substance of the foreign trust disclosure and AEOI rules is unchanged.

The Officials' Report on submissions and the FEC have stayed true to the OECD's Common Reporting Standard ("CRS") for AEOI. In our view, this ignores the practical difficulties of implementing AEOI. For example, Officials consider that the status of all trust beneficiaries should be determined at account "on-boarding" to remove the difficulty of identifying when a distribution is made. This is an impractical and arguably impossible option for discretionary trusts. It is disappointing that the CRS is seen to be so inflexible that practical local solutions cannot be applied.

The FEC has indicated that the information on foreign trusts may also be useful for the OIO in its deliberations. This is an extension of foreign trust information sharing. The Bill originally allowed for sharing with police and internal affairs only. While it is important that the OIO have access to all relevant information, the concern may be that this further adds to the time for OIO approval.

In the FEC's report, the Labour, Greens and NZ First minority criticised the Government for not applying Phase 2 of the Anti-Money Laundering regulations to lawyers, accountants and real-estate agents and not setting up a publicly searchable register of foreign trusts (similar to companies). These comments underscore the continuing political focus on greater transparency of foreign trust information.

We welcome the FEC limiting the scope of the BT-related regulation making power in the [Supplementary Order Paper](#) to the Bill. KPMG's concern was not with the power itself. The power is needed to support an orderly transition. We were concerned with the rushed process and poorly defined scope. It is pleasing to see the FEC take on board a number of the concerns raised by KPMG (and others).

For those wanting some bedtime reading, refer the 257 page [Officials' Report](#).

For further information

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