

6 May 2016

Mr Alex Harris  
fyi-request-3856-951ca993@requests.fyi.org.nz

Dear Mr Harris,

Thank you for your request made under the Official Information Act 1982 (the OIA), which we received on 5 April 2016. You requested the following information:

- *How many times in the last year did IRD request information from an NZ foreign trust?*
- *How many times was such a request successful*
- *On how many occasions was information requested from an NZ foreign trust disclosed to a foreign government? If the answer is more than zero, I would like a breakdown by country.*
- *If any request for information was not successful, what action was taken, if any?*

Firstly, I apologise for the time it has taken to provide you with a response to your request.

I have decided to withhold the information you have requested under section 18(c)(i) of the OIA because releasing it would be contrary to the provisions of a specified enactment – section 81 of the Tax Administration Act 1994 (TAA). My reasons for this decision are outlined below.

The information that you have requested is covered by the secrecy provisions contained in section 81 of the TAA. It can, therefore, only be released if one of the exceptions to secrecy (as set out in section 81) applies and the Commissioner has decided to exercise her discretion under that exception.

I have considered the exceptions to secrecy, including the general exception contained in section 81(1B). This requires the release of information to support a duty of the Commissioner and involves considering whether release would be reasonable in light of the following five factors:

- (i) the Commissioner's obligation at all times to use best endeavours to protect the integrity of the tax system; and
- (ii) the importance of promoting compliance by taxpayers, especially voluntary compliance; and
- (iii) any personal or commercial impact of the communication; and
- (iv) the resources available to the Commissioner; and
- (v) the public availability of the information.

Releasing the information you have requested would not support a duty of the Commissioner.

In addition, responding to your request would require a search of 11646 records about each foreign trust registered in New Zealand. This would not be a reasonable use of the resources available to the Commissioner.

I have also considered the importance of promoting taxpayer compliance, potential personal and commercial impacts and the public availability of the information. Having regard to the duties of the Commissioner and these five factors, it would not be reasonable to disclose the requested information to you.

As you may be aware, Cabinet has recently appointed Mr John Shewan to conduct a Government Inquiry into the disclosure rules covering foreign trusts registered in New Zealand (the Inquiry).

The terms of reference include reviewing the disclosure rules as they apply to record keeping, enforcement and the exchange of information with other tax jurisdictions. You can find further information about the Inquiry, including the full terms of reference at [www.gazette.govt.nz/notice/id/2016-go2253](http://www.gazette.govt.nz/notice/id/2016-go2253). The Inquiry has been asked to report to the Government by 30 June 2016 after which the Government may respond.

Even if this information was readily available, release of the information could prejudice the outcome of the Inquiry and consequently have a detrimental effect on the integrity of the tax system. For this reason, if secrecy did not apply to this information (which it does), it could have been withheld under section 6(c) of the OIA because disclosure would be likely to prejudice the maintenance of the law in the context of the Inquiry.

You may be interested to know that the information you have requested is similar to information requested in written Parliamentary Questions to the Minister of Revenue, Hon Michael Woodhouse. The Minister's responses to these questions are publicly available on the Parliament website, [www.parliament.govt.nz](http://www.parliament.govt.nz). The questions that may be of interest are 3998 (2016), 4421 (2016), 4426 (2016), 4648 (2016) and 4650 (2016).

### **Right of review**

You have the right to ask the Ombudsman to investigate and review my decision to withhold this information. The Office of the Ombudsman can be contacted at PO Box 10152, The Terrace, Wellington 6143.

Alternatively, you may have the decision reviewed by a review officer. Choosing the internal right of review does not preclude you from subsequently seeking a review by the Ombudsman should you be dissatisfied with the department's internal review. If an internal review is sought, please write to the Commissioner of Inland Revenue, PO Box 2198, Wellington 6140, setting out the details of your complaint.

Yours sincerely,



Christina Goodall  
**Manager, Government and Executive Services**