



Update

AEOI update: CRS (and foreign trust) legislation reported back

30 November 2016

Automatic Exchange of Information (“AEOI”) on track for 1 July 2017 NZ implementation



QUICK LINKS

KPMG New Zealand's FATCA and AEOI [alerts](#)

KPMG's global FATCA [site](#)

KPMG's global AEOI [site](#)

The Finance and Expenditure Committee of Parliament (“FEC”) has reported back the [Taxation \(Business Tax, Exchange of Information, and Remedial Matters\) Bill](#) with a number of changes.

This Tax Bill contains draft legislation to implement the Common Reporting Standard (“CRS”) for AEOI in New Zealand and also imposes new registration and annual reporting requirements on foreign trusts with NZ-resident trustees.

The FEC's changes to the AEOI rules

The FEC's key changes to the AEOI draft legislation are:

- Allowing AEOI information provided under the “wider” approach to be used by Inland Revenue for matching against non-residents’ tax rates and tax credits claimed. This includes information on residents of non-AEOI participating countries (referred to as “residual” information).
- A maximum limit per NZ financial institution (per reporting period) of \$10,000 for absolute liability penalties and \$100,000 for lack of reasonable care penalties. (The legislation, as introduced, did not cap penalties for CRS/FATCA non-compliance.)
- Extending the transitional period for the “reasonable efforts” penalty defence by 3 months (to 1 July 2019). A permanent defence of “circumstances outside a financial institution’s control” will also be available to NZ financial institutions.

The substance of the AEOI legislation, as originally introduced, is unchanged. The [Officials' Report](#) on submissions and the FEC have stayed close to the OECD's CRS framework. 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.

Foreign trust changes

The foreign trust legislation creates additional disclosure obligations (e.g. of settlements and distributions and also trust beneficiaries and settlors/controllers) on trust establishment, and annually thereafter, for the NZ-resident trustees of foreign trusts.

The FEC has recommended a number of changes to ease the compliance burden for NZ trustees that do not ordinarily perform trustee services, including: allowing Inland Revenue to not charge fees for registration/annual reporting and giving more time to comply with the new rules. The rules are otherwise largely unchanged from introduction.

KPMG has suggested that additional information on foreign trusts, collected under these new rules, could be used by Inland Revenue for CRS purposes (or vice versa). This would avoid the difficulties outlined above, in relation to NZ financial institutions having to identify beneficial ownership of trusts, for example. However, this approach has been rejected by Officials, resulting in potential duplication of reporting.

Inland Revenue's AEOI information sessions

In November, Inland Revenue conducted information sessions on the progress of NZ's AEOI implementation. Inland Revenue:

- Has indicated that draft guidance (as legislation is still pending) will be provided in December, with detailed/finalised guidance in early 2017, following enactment of the Tax Bill.
- Is requesting [submissions](#) on “excluded entities” and “excluded accounts” (i.e. entities/accounts not subject to AEOI due diligence and reporting obligations) by 31 January 2017.

To discuss AEOI implementation issues further please contact:



John Cantin
Partner, KPMG
04 816 4518
jfcantin@kpmg.co.nz



Darshana Elwela
National Tax Director, KPMG
09 367 5940
delwela@kpmg.co.nz

kpmg.com/nz



[Privacy & Disclaimer](#)

Please reply to this email if you do not wish to receive any further electronic messages from KPMG in relation to this communication.

© 2016 KPMG, a New Zealand partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.