

Discussion Document: Increasing the transparency of the beneficial ownership of New Zealand companies and limited partnerships

Submission from Tax Justice Aotearoa New Zealand (TJANZ)

3 August 2018

Introduction

The TJANZ is grateful to have the opportunity of providing comments on proposals for increasing transparency of the beneficial ownership of New Zealand companies and limited partnerships.

In brief, we support the initiative and are strongly in favour of Option 3. We are pleased that Option 3 is the favoured option, that is, for beneficial ownership information to be included on the companies and limited partnership registers with public access.

We have one general comment, one major concern and a number of suggestions relating to details of information which should be publicly available.

Who we are

The Tax Justice Aotearoa New Zealand is an independent non-governmental organisation launched in 2018 as a partner of the international Tax Justice Network. We are not aligned to any political party.

We aim to provide information, analysis and advocacy on national and international tax policy and law. We seek to create understanding on tax issues and promote reform for a fairer society. We represent a growing movement of people, groups, unions and activists, who want to see greater transparency, democratic oversight and redistribution of wealth in national and global tax systems.

General comment

The emphasis of the discussion paper and the proposals is on combatting criminal misuse of New Zealand companies and limited partnerships. We support this important objective.

We note however that company and partnership structures can be misused in ways which might not be categorised as criminal in a strict sense. Money laundering and tax evasion are clearly criminal, subject to offence and penalty provisions; but the line between such activities and tax avoidance/ tax minimisation is often tenuous. Indeed much tax avoidance which is not, under current law, 'illegal' has exactly the same effect as tax evasion in depriving government of revenue.

The harms posed by a lack of transparency of tax revenue go wider than overt criminal activity. The proposals should recognise the potential for such harms and provide a mandate

for a more general application of requirements relating to access to information on beneficial ownership.

Major concern

We do not agree that the application of the new registration requirements should be limited to companies and limited partnerships.

Our strong recommendation is that the requirements apply equally to trusts. As para 13, p 9 states: “..trusts can be used by criminals”.

Trusts are not, however, only used by criminals in the strict sense of criminality. As noted above, they are one of several vehicles available for various forms of tax avoidance, tax minimisation and asset protection. As stated on the New Zealand website (accessed 30 July 2018): <https://www.nztrustees.co.nz/types-of-trusts/>

“Use of a Family Trust may also maximise tax advantages thus making the retirement dream that much more achievable.”

...

“One of the great joys of parenthood and grandparenthood can be passing wealth to future generations to help them along life’s highway. For many families, their wealth has been passed from Family Trust to Family Trust, thus preserving it and ensuring the protection of Trusts is working for them over the decades”

Use of trusts for the types of purposes advertised above is legitimate, but we believe that the availability of trusts as a legal mechanism is a privilege. The use of this privilege should entail reciprocal obligations in terms of accountability and public transparency. By not including trusts, the door is left open for the NZ corporate structure to adapt its strategies for various purposes, including tax minimisation.

We recognise that issues relating to privacy, and costs, can be used to argue against provision of public information relating to trusts, but as is acknowledged similar issues can be raised in relation to public information on companies. Provision can be made to address major issues related to loss of confidentiality where, as noted below, the loss of privacy may entail potential for violent offending.

It may also not be appropriate for these requirements to apply to some types of trusts, for example cemetery trusts, or ones of a very small-scale.

Information to be collected about beneficial owners

Chapter 5 of the Discussion Document, section 7, requests views on what information should be collected on beneficial owners.

We agree with the proposal to collect details as outlined in para 111, ie full legal name, residential address, address for service, email, date and place of birth, and the basis on which beneficial owners are beneficial owners.

When applied to trusts, this information would include the trust name, links to information on the purpose of the trust, names of trustees and their addresses; and names of people who have benefited financially from the trusts.

However, the extent of details listed in the Discussion Document is limited. We propose that the following information is required:

1. Place of incorporation
2. Location of business activity
3. Names of directors
4. Nature of business activities
5. Names of owners of any stake in the business over 10 percent
6. Information on businesses which have a legal or financial connection with the company, partnership or trust (eg subsidiaries).

In addition the following financial details should be collected in relation to companies, partnerships, and trusts as relevant:

1. Income statement
2. Balance sheet
3. Cash-flow
4. Statement on taxes due for the current period, estimates of taxes due in future periods, and tax paid
5. Statement of accounting policies
6. Explanation of rewards paid to directors
7. Details of payments to other staff and the total numbers of staff
8. Notes explaining other data in the income statement and balance sheet
9. Country-by-country reporting data, if the company operates in more than one jurisdiction

Many of these details are based on those proposed by Richard Murphy in *Dirty Secrets*, Verso, 2017, pages 138-140; and are suggested for the reasons outlined by Murphy. These reasons include ensuring ‘that those really responsible for ensuring that the company complies with its legal obligations (such as paying tax) can be identified’. (p 140)

Should any collected information be kept confidential and not available on the public registers?

The discussion document seeks views on whether any collected information should be kept confidential. We see no reason for any information to be kept confidential, except in cases

where there is a real risk of violence or intimidation, eg, as noted on p 28, in relation to section 108 of the Domestic Violence Act 1995. Decisions on whether information should be withheld from public registers would be made on a case-by-case basis and in line with relevant statutory criteria. As noted on p 28, publicly withheld details would still be available to law enforcement agencies.

Obligations on beneficial owners (p 28)

Beneficial owners should have a legal obligation to provide identified information; and non-compliance with information provision and requests for information would be an offence. Details on how this could be enforced are beyond our scope, although it should be possible to include statutory conditions and consequences, as identified on p 30. For example operation of a company or functioning of a trust should be able to be suspended (or ultimately deregistered) on non-compliance with information requests and non-payment for fines incurred.

Summary of main recommendations

1. We support Option 3, but recommend that the requirements for public access to information on beneficial owners apply to trusts as well as companies and partnerships, recognising that some exceptions may be appropriate.
2. We recommend more extensive detail on information to be provided, as outlined above
3. We recommend full public access to all information collected, subject to some confidentiality on a case-by-by basis.

More comprehensive policy context

Details concerning beneficial owners are important to how law should ensure that business activity is transparent and ethical. Further steps are, however, required to ensure real transparency and to minimise the extent to which New Zealand can function as a minor tax haven. Along with public registers of beneficial owners for companies, trusts and partnerships (and any other such entities marketed to non-citizens), and real enforcement, additional measures are also required to fully achieve these aims. TJANZ is preparing a comprehensive set of policy recommendations for this purpose. In the meantime, we urge endorsement of our recommendations on this discussion document and we are happy to provide further details on our comments.

Please contact spokespersons for TJANZ: Louise Delany and Gervais Lawrie. Our organisational email address is currently: taxjusticeanz@gmail.com

Louise Delany and Gervais Lawrie