

Submission

to the

Inland Revenue Department

on the

Automatic Exchange of Information – Excluded entities and accounts lists

7 February 2017

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following sixteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - Bank of Tokyo-Mitsubishi, UFJ
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited.

Background

3. NZBA welcomes the opportunity to provide feedback to the Inland Revenue Department (**IRD**) on the Automatic Exchange of Information (**AEOI**) Request for submissions – excluded entities (non-reporting financial institutions) and excluded accounts lists (**excluded entities and accounts**).
4. If you would like to discuss any aspect of the submission further, please contact:

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Executive summary

5. NZBA supports:
 - a. Alignment of the AEOI excluded entities and accounts to FATCA.
 - b. Excluding certain dormant accounts from due diligence and reporting.
 - c. Excluding KiwiSaver, Superannuation (including Legacy) and Workplace Savings schemes.

Alignment of excluded entities and accounts to FATCA

6. NZBA suggests that the New Zealand list of 'other low risk' excluded entities and accounts replicate those listed in Annex II of the FATCA Intergovernmental Agreement (**FATCA IGA**) with the United States. Such alignment is consistent with the IRD's aim of facilitating a pragmatic implementation approach that limits both implementation and ongoing compliance costs and burdens imposed on reporting New Zealand FIs (**NZFIs**).
7. In summary, the FATCA entities and accounts to be considered for alignment with the Common Reporting Standard (**CRS**) include:
 - a. Non-Reporting NZFIs (*FATCA IGA: Annex II/page 38*):
 - i. Exempt Beneficial Owners other than Funds
 1. Governmental Entities;
 2. International Organizations; and
 3. Maori Authorities.
 - ii. Funds that Qualify as Exempt Beneficial Owners
 1. Treaty-Qualified Retirement Fund;
 2. Broad Participation Retirement Fund;
 3. Narrow Participation Retirement Fund;
 4. Pension Fund of an Exempt Beneficial Owner; and an
 5. Investment Entity Wholly Owned by Exempt Beneficial Owners.
 - iii. Small or Limited Scope FIs such as Qualified Credit Card Issuers.
 - iv. Certain Investment Entities and other Special Rules
 1. Trustee-Documented Trust;
 2. Sponsored, Closely Held Investment Vehicle (Excluding Debt interests issued by FIs; where not solely an investment entity (for example, Covered Bonds, Commercial Paper and Medium Term Notes));
 3. Investment Advisors and Investment Managers; and
 4. Collective Investment Vehicles.
 - b. Any other entities that would have qualified as exempt for the purposes of FATCA under the FATCA IGA but under CRS would qualify as a reporting FI.
 - c. Accounts excluded from financial accounts (*FATCA IGA: Annex II/page 51*):
 - i. Certain Retirement Accounts or Products;

- ii. Certain Savings Accounts (including Retirement and Pension Accounts and Non- Retirement Savings Accounts e.g., KiwiSaver and other superannuation scheme accounts, charitable trusts registered under the Charities Act 2015 or accounts for donee organisations as defined in the Income Tax Act 2007);
- iii. Certain Term Life Insurance Contracts;
- iv. Account Held By an Estate;
- v. Escrow Accounts; and
- vi. Certain Other Accounts or Products (including tax pooling intermediaries).

Excluding dormant accounts from due diligence and reporting

8. NZBA submits that a dormant account (other than an annuity contract) with a balance that does not exceed US\$1,000 should be treated as an excluded account. An account is a dormant account if:
 - a. the account is treated as a dormant account under the Reporting NZFIs normal operating procedures, or
 - b. the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the Reporting NZFI in the previous three years,
 - c. the account holder has not communicated with the Reporting NZFI regarding the account or any other account held by the account holder with the Reporting NZFI in the previous six years, and
 - d. in the case of a cash value insurance contract, the Reporting NZFI has not communicated with the account holder regarding the account or any other account held by the account holder with the Reporting NZFI in the previous six years.

Excluding KiwiSaver, Superannuation (including Legacy) and Workplace Savings schemes

9. NZBA submits that KiwiSaver, Superannuation (including Legacy) and Workplace Savings schemes (**the Schemes**) also meet the criteria for exclusion for the following reasons.
10. An 'investment entity' (which is a FI) is an entity that primarily conducts its business of investing, administering, or managing financial assets or money on behalf of other persons. The Schemes fall within this category and therefore are considered FIs under the CRS in the first place.
11. The Schemes do not come within any of the other specific categories of non-reporting FIs:
 - a. The Schemes do not meet the description of Government Entity, International Organisation or Central Bank.

- b. The Schemes are not Broad Participation Retirement Funds:
 - i. Membership of KiwiSaver and Superannuation schemes is not limited to current or former employees of one or more employers;
 - ii. there is no limit on holdings; and
 - iii. the Schemes do not satisfy any requirements listed under Section VIII.B(5)(c)(i)-(iv).
 - c. The Schemes are not Narrow Participation Retirement Funds:
 - i. Membership of KiwiSaver and Superannuation schemes is not limited to current or former employees of one or more employers;
 - ii. the Schemes will usually have more than 50 participants; and
 - iii. the Schemes have no limits on employer/employee contributions.
 - d. The Schemes are not Pension Funds of a Government Entity, International Organisation or Central Bank.
 - e. The Schemes are not Qualified Credit Card Issuers.
 - f. The Schemes are not 'exempt collective investment vehicles' as they do not restrict membership to members who are not Reportable Persons.
 - g. The Schemes do not meet the requirements of exempt trusts as Scheme trustees are not Reporting FIs and will not be reporting information required under CRS Section 1.
12. The Schemes have the following similarities to Broad Participation Retirement Funds:
- a. Purpose (to provide retirement benefits).
 - b. The Schemes are subject to government regulation and provide tax reporting.
13. The Schemes have the below substitute characteristics providing assurance that they present a low risk of being used to evade tax:
- a. KiwiSaver and open Superannuation Schemes:
 - i. Generally only New Zealand residents may apply to be a member of a KiwiSaver Scheme.
 - ii. Except in limited circumstances, funds are locked in until the member reaches at least 65 years.
 - iii. There is no tax relief associated with contributions as they are made from after-tax earnings. Employer contributions are subject to the deduction of Employer superannuation contribution tax (**ESCT**) before payment to a retirement fund. Income of the fund is taxed on an on-going basis.
 - b. Workplace Savings Schemes:

- i. Workplace savings schemes are not widely available. Membership is restricted to employees of participant employers.
 - ii. Access to funds must be restricted as set out in the Financial Markets Conduct Act 2013 (**FMCA**) section 130(1)(c) and the relevant scheme governing documents.
 - iii. There is no tax relief associated with the contributions as they are made. Contributions are made from after-tax earnings. Employer contributions are subject to the deduction of ESCT before payment to a retirement fund. Income of the fund is taxed on an on-going basis.
 - iv. Workplace savings schemes are not promoted as a tax minimisation vehicle.
 - c. Legacy Superannuation Schemes:
 - i. Legacy superannuation savings schemes are closed to new members.
 - ii. There is no tax relief associated with the contributions as they are made. Contributions are made from after-tax earnings. Employer contributions are subject to the deduction of ESCT before payment to a retirement fund. Income of the fund is taxed on an on-going basis.
 - iii. Access to funds is restricted. Pre-retirement withdrawals are limited to the circumstances set out in the scheme trust deed.
14. The Schemes present a low risk of being used to evade tax in terms of the following factors:
- a. Regulation:
 - i. KiwiSaver:
 - 1. KiwiSaver Schemes are regulated as Managed Investment Schemes under the FMCA and are subject to the provisions of the KiwiSaver Act 2006 and KiwiSaver Regulations 2006. Registration requirements for KiwiSaver Schemes are set out in sections 127 & 128 of the FMCA.
 - ii. Workplace Savings:
 - 1. Workplace savings schemes are regulated under the FMCA and are designated by Order in Council. Registration requirements for Workplace savings schemes are set out in sections 127 & 130 of the FMCA (including required purposes, restrictions on redemptions, withdrawals & membership).
 - iii. Superannuation Schemes:
 - 1. Superannuation schemes are regulated under the FMCA and subject to the registration requirements set out in sections 127 & 129 of the FMCA. A Legacy Superannuation scheme must be designated by an Order in Council under clause 23 of Schedule 4 of the FMCA.

- b. Reporting: Information regarding income allocated to Scheme members and tax paid on their behalf is reported to the IRD monthly (i.e. on an investor by investor basis).
- c. Anti-money laundering:
 - i. KiwiSaver:
 - 1. KiwiSaver accounts are subject to anti-money laundering customer due diligence requirements upon the triggering events set out in section 128 of the KiwiSaver Act
 - ii. The Schemes generally:
 - 1. Scheme accounts are subject to anti-money laundering customer due diligence requirements in accordance with clause 20 of the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011.
- d. Other reasons why the Schemes present a low risk of being used for tax evasion:
 - i. KiwiSaver:
 - 1. KiwiSaver schemes are the result of a government initiative to encourage long-term savings for New Zealanders. The IRD plays a key role in the establishment and administration of KiwiSaver accounts.
 - 2. In addition to the reasons listed above, further examples of why KiwiSaver schemes present a very low risk of being used for tax evasion are:
 - a. KiwiSaver accounts cannot be opened without an IRD number.
 - b. All employer and employee contributions and government tax credits are processed via the IRD.
 - ii. Superannuation and Workplace Savings:
 - 1. Superannuation and Workplace Savings schemes present a very low risk of being used for tax evasion are:
 - a. Superannuation schemes
 - i. Generally the member is unable to access funds until they reach the age of eligibility for New Zealand Superannuation or in other limited circumstances permitted by the as defined in the FMCA.
 - b. Access to funds in Workplace Savings schemes is limited by the terms of the relevant scheme trust deed. Benefits

are payable at retirement age, on ceasing employment and in other limited circumstances such as financial hardship.