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Panama Papers: New Zealand is 'complicit' in tax avoidance, expert

NZ Herald, 2016

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An international collection of journalists published a report on the financial activities of a dozen current and former world leaders that said associates of Russian President Vladimir Putin have moved as much as US\$2 billion through offshore accounts. Source: ICIJ

NZ Herald

New Zealand is complicit in tax avoidance schemes, says an academic.

"It's shameful for New Zealand to be caught up in international tax avoidance," Deborah Russell from Massey's School of Accountancy said this afternoon.

"The loophole in our laws that allows New Zealand foreign trusts to escape taxation has been known about for years, but nothing has been done to shut it down. This makes us complicit in schemes to avoid tax," she said.

Another tax law expert has also said that the rules around the what foreigners with New Zealand trusts must disclose to Inland Revenue are "weak".

Revenue Minister Michael Woodhouse, however, said it was "ridiculous to suggest that New Zealand is a tax haven".

"Tax havens thrive on secrecy," Woodhouse said.

"Our tax rules require foreign trusts to be registered. We also have a strong tax treaty network with the express purpose of discovering and preventing tax avoidance by exchanging information between tax jurisdictions," he said.

More than 11,600 foreign trusts are registered with Inland Revenue and are likely to deal with billions of dollars worth of assets.

Foreign trusts were thrown into the spotlight this morning, when New Zealand was named in a massive leak of documents from Panamanian law firm Mossack Fonseca.

According to The International Consortium of Investigative Journalists, the 11.5 million document trove show that the law firm's services appear to have been used to "facilitate massive money laundering, tax avoidance and criminal activity, including drugs and arms dealing".

While this country is named by the ICIJ as a "tax haven" used by Mossack Fonseca, New Zealand entities only make up a tiny proportion of those cited in the scandal.

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However, trusts with links to Mossack Fonseca are said to have been set up in New Zealand.

This includes the Rotorua Trust, established by Malta's Energy and Health Minister Konrad Mizzi for "family estate planning" purposes. It, in turn, holds shares in a Panama-based company.

This trust is managed by Orion Trust New Zealand, a trustee company based at Bentleys Chartered Accountants in central Auckland.

Its directors include Remuera's Roger Thompson and two men from Panama.

The Australian Financial Review referred to Orion as a "Mossack Fonseca trustee company" but Thompson said he couldn't disclose whether or not that was the case.

"We can't give any specific comment on any specific client which we might act for. As a general comment, we always undertake a rigorous due diligence process with any clients we accept and all tax laws and anti-money laundering laws and all those sorts of things are complied with," he said.

News coverage of the Mossack Fonseca leak also said one of Mexico's wealthiest tycoons, Juan Armando Hinojosa Cantú, is linked to New Zealand via a "chain of offshore entities".

Part of why foreigners set up trusts in New Zealand is that the country is a stable democracy, with a robust legal system.

Our rules also mean that if a foreigner sets up a trust here and then invests trust funds overseas, then they pay no tax here.

New Zealand trustees acting on behalf of a foreign client (unless they are Australian) are only required to disclose the name of a trust and the resident trustees contact details.

They are not required to disclose the assets settled in the trust.

Russell said that a loophole in laws relied on New Zealand tax authorities not collecting and sharing basic information about foreign trusts.

"Trustees of New Zealand foreign trusts should be required to disclose the identities of the people putting property into the trusts, and benefitting from the trusts, and Inland Revenue should be authorised to share this information with other countries' tax authorities.

"This would enable other countries to pursue people who are sheltering property and income in New Zealand foreign trusts."

The only people in New Zealand who benefit from the foreign trusts loopholes are the tax consultants and trustee companies collecting fees from providing trustee services, Russell said.

"Shutting down the loophole might reduce these fees, but it would also restore New Zealand's reputation for being corruption free."

University of Auckland professor and tax law specialist Craig Elliffe said, for instance, a wealthy South American family could settle \$200 million in a New Zealand trust, which then invests those funds in a Panamanian company.

"The question is, does the South American country have any right to tax their residents where they've settled a foreign trust? And often the rules will be such that the answer to that question is 'no, they don't have the right,'" Elliffe said.

While New Zealand doesn't have any specific secrecy laws blocking another country getting information about foreign trusts, the rules around what these trusts must disclose are "weak", Elliffe said.

"In fact it is so weak that it is actually almost dangerously weak," he said.

Elliffe said it was hard for a foreign government investigating the affairs of one of its citizens to find out about a New Zealand trust unless they knew one existed and what it was called.

"We don't know or, more importantly, foreign revenue authorities have no way of effectively exchanging information with New Zealand revenue authorities in a meaningful way which will expose whether this [the use of a New Zealand-based trust] is blatant tax avoidance or clever tax planning," he said.

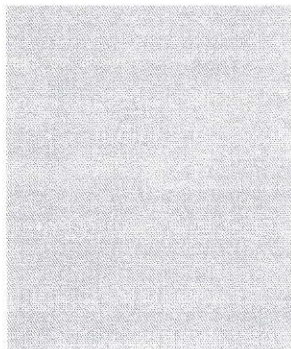
Woodhouse said the OECD had previously looked at New Zealand's foreign trust rules and had "no concerns with them".

"We have an ongoing responsibility to ensure these rules are robust so we can comply with our international obligations.

"The tax treatment of foreign trusts may come up in the OECD's Base Erosion and Profit Shifting work programme in which case we would look at our own rules in the context of everyone else's."

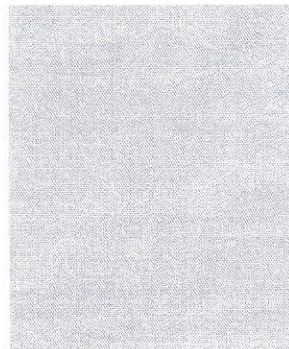
"New Zealand has also been a very active participant in the OECD and G20 work to combat tax avoidance. We continue to be a strong voice in this area," he said.

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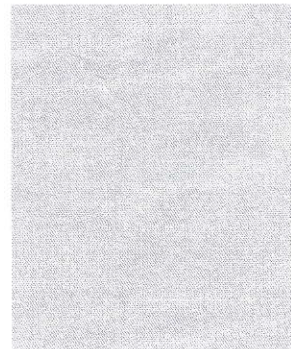
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