

COMPETENT AUTHORITY ARRANGEMENT

The Competent Authorities of the United States and New Zealand have reached the following arrangement (“Arrangement”) concerning the meaning of the term “resident in New Zealand” as that term applies to a Financial Institution that is a trust (other than a “unit trust” which is deemed to be a company for purposes of the Income Tax Act 2007) under paragraph 1(l) of Article 1 (Definitions) of the Agreement between the Government of the United States of America and the Government of New Zealand to Improve International Tax Compliance and to Implement FATCA, signed on 12 June 2014 (“IGA”). This Arrangement is entered into pursuant to paragraph 2 of Article 1 of the IGA and paragraph 3 of Article 24 (Mutual Agreement Procedure) of the Convention between the United States of America and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol, done at Washington on December 1, 2008.

It is understood that for purposes of this Arrangement, “Article” refers to an Article of the IGA.

New Zealand Financial Institution under Article 1(1)(l) of the IGA

Article 1(1)(l) provides that the definition of the term “New Zealand Financial Institution” means “any Financial Institution resident in New Zealand, but excluding any branch of such Financial Institution that is located outside New Zealand” and “any branch of a Financial Institution not resident in New Zealand, if such branch is located in New Zealand.”

Under Article 1(2), “[a]ny term not otherwise defined in this Agreement [the IGA] shall, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Party applying this Agreement [the IGA], any meaning under the applicable tax laws of that Party prevailing over the meaning given to the term under the laws of that Party.”

A Financial Institution that is a trust is a New Zealand Financial Institution if it is resident in New Zealand. The laws of New Zealand provide residency rules for income tax purposes for individuals and certain entities that have a separate legal personality. Trusts (with the exception of unit trusts) are not separate legal entities in New Zealand, and thus New Zealand does not have residency rules for income tax purposes for trusts (other than unit trusts).

Common Meaning of the Term “Resident in New Zealand” with Respect to a Financial Institution that is a Trust (other than a Unit Trust)

Pursuant to Article 1(2), New Zealand has requested, and the Competent Authorities of the United States and New Zealand have reached, the following common understanding

of the meaning of the term “resident in New Zealand” with respect to a trust (other than a unit trust):

Beginning on or before April 1, 2017, the term “resident in New Zealand” means, in the context of a Financial Institution that is a trust (other than a unit trust), a trust that has one or more trustees resident in New Zealand for New Zealand income tax purposes at any time during the reporting period, or is managed by a branch of a trustee located in New Zealand provided that the branch of the trustee is subject to regulatory supervision in New Zealand. However, a Financial Institution that is a trust (other than a unit trust) would not be considered “resident in New Zealand” if the trust is resident in a Partner Jurisdiction or in another jurisdiction that permits the trust to comply with the requirements of a participating FFI under the U.S. Treasury Regulations, and the trust reports all the information required to be reported pursuant to the Partner Jurisdiction’s IGA or the U.S. Treasury Regulations, as applicable, with respect to Financial Accounts maintained by the trust.

Prior to April 1, 2017, a trust (other than a unit trust) may rely on any reasonable definition for the term “resident in New Zealand” including, for instance, in the context of a Financial Institution that is a trust (other than a unit trust), a trust that is established under the laws of New Zealand, whereby the trust is settled, executed, and governed by New Zealand law.

Upon signature of both Competent Authorities, this Arrangement is operative.

David W. Horton
United States Competent Authority
Acting Deputy Commissioner International

John Nash
New Zealand Competent Authority
Manager, International Revenue Strategy

Date

Date