

PRESENTERS



Henry Brandts-Giesen, Partner, Kensington Swan, Auckland

Henry is Head of Private Wealth at Kensington Swan. He is an experienced corporate and commercial lawyer and has a strong understanding of fiduciary risk having acted for both institutional and private trustees in numerous major transactions in New Zealand and overseas. Henry is one of a few lawyers in NZ to have experience and expertise in the new reporting regimes (FATCA and the Common reporting Standard) to which financial institutions are now subject.



Neil Russ, Partner, Buddle Findlay, Auckland

Neil is a Partner in Buddle Findlay's tax practice and has over 30 years' experience as a tax and finance practitioner in England and New Zealand. He is an expert in all New Zealand taxes, and has extensive experience advising banks, New Zealand and foreign corporates, funds and other investors on cross-border and domestic transactions. Neil is the Convenor of the NZLS Tax Law Committee.

The statements and conclusions contained in this paper are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

FATCA AND AEOI	1
INTRODUCTION TO FATCA AND AEOI	1
APPLICATION OF FATCA IN NEW ZEALAND	2
STATUS UNDER NEW ZEALAND LAW	2
GUIDANCE PROVIDED BY THE IRD AND NZLS	3
KEY TERMS AND CONCEPTS	5
IMPACT OF FATCA ON LAW FIRMS, LAW FIRMS' TRUST ACCOUNTS AND LAWYERS' NOMINEE COMPANIES	6
LAW FIRMS – TO BE OR NOT TO BE AN FI.....	8
TREATMENT OF TRUSTS.....	13
<i>How are Trusts Caught?</i>	13
<i>Trustee-Documented Trust Procedure</i>	14
<i>Examples</i>	14
<i>Trusts under the Common Reporting Standard</i>	16
COMPLIANCE WITH THE IGA – REGISTRATION	16
<i>Responsibility within Law Firms and other FIs or NFFEs</i>	16
<i>Need for Registration with the IRS and IRD</i>	16
<i>Other points to note in relation to registration</i>	18
COMPLIANCE WITH THE IGA - DUE DILIGENCE AND REPORTING REQUIREMENTS	18
<i>Due diligence</i>	18
<i>Reporting - US Reportable Accounts</i>	22
<i>Reporting – Non-Participating Financial Institutions</i>	22
<i>Bank requirements</i>	22
<i>Treatment as an NPFI for significant non-compliance</i>	23
<i>Collection of information by law firms for the purposes of FATCA compliance</i>	23
SELECTED PRACTICAL ISSUES	23
<i>Law Firms, and Clients who Refuse to Comply</i>	23
<i>Use of IRS self-certification forms</i>	24
AUTOMATIC EXCHANGE OF INFORMATION AND THE COMMON REPORTING STANDARD	25
<i>AEOI and global information sharing</i>	25
<i>Inland Revenue guidance on on AEOI implementation</i>	26
<i>Reporting NZFIs for CRS purposes</i>	27
<i>“Financial accounts” for CRS purposes</i>	29
<i>CRS Due Diligence Procedures</i>	31
<i>Record-keeping obligations</i>	32
<i>Penalties regime</i>	32
<i>Application of CRS to solicitors' trust accounts</i>	33
ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM REGIME	34
<i>Introduction to the AML/CFT regime – who is subject?</i>	34
<i>Compliance with the AML/CFT Act</i>	35
<i>Phasing in the AML/CFT Act</i>	36
<i>Alignment with other compliance regimes?</i>	37