New Zealand is not a tax haven

New Zealand is not a tax haven. That's the conclusion of the Shewan report, rebutting a lot of colourful allegations made since the leak of the Panama papers.

Mr Shewan's conclusion has not had the same level of media coverage as the allegations so there is probably still a mistaken perception that New Zealand is indeed a tax haven.

Allegations included that foreign trusts based in New Zealand are being used for money laundering, concealing taxable assets, or taxable income from foreign tax authorities.

None of those allegations have been either proved or disproved because of the incomplete nature of the information leaked.

Unfortunately in the debate, distinctions were lost between what's legitimate and what is not.

The right to privacy and the right to contract are legitimate. They are intrinsic to sound business of all kinds.

Exempting foreign trusts from New Zealand tax is legitimate – foreign trusts that do not hold New Zealand-sourced income or distribute income to New Zealand-resident beneficiaries - on the accepted principle that New Zealand residents should be taxed on their worldwide income and non-residents on income sourced in New Zealand.

Tax competition is legitimate. Setting tax rates at a competitive level helps attract foreign investment needed for business development. A lower rate of tax helps raise total tax revenues by stimulating business and economic growth.

Having a relatively light-handed regulatory regime, another aspect of tax competition, is also legitimate. Heavy regulation deters domestic and foreign investment and economic growth. What's needed is a balance - deterring wrongdoing without imposing undue compliance requirements.

Tax competition becomes harmful, the OECD argues, when the following factors are present:

- Artificial definition of tax base
- Failure to adhere to international transfer pricing principles
- Foreign source income exempt from residence country taxation

- Negotiable tax rate or tax base
- Existence of secrecy provisions
- Access to a wide network of tax treaties
- The regime is promoted as a tax minimisation vehicle

And such behaviour can indicate a tax haven if four key factors are present:

- No or only nominal taxes
- Lack of effective exchange of information
- Lack of transparency
- No substantial activities

On the basis of these OECD criteria the Shewan report concludes that New Zealand is not a tax haven.

The report's recommendations don't alter that conclusion.

The Shewan report recommendations for strengthening New Zealand's foreign trust regulations have received widespread agreement and look likely to be largely adopted. They are consistent with the direction of other tax reforms that New Zealand is engaged in internationally and will add to New Zealand's reputation of having a fair, robust and workable tax system.

They will allow for more transparency and clearer regulatory oversight of foreign trusts - while continuing to remind us that New Zealand is not a tax haven.

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